

SOUTH AUSTRALIA

MAGISTRATES ACT 1983

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 4 May 1995.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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MAGISTRATES ACT 1983

being

Magistrates Act 1983 No. 107 of 1983
[Assented to 22 December 1983]¹

as amended by

Magistrates Act Amendment Act 1984 No. 85 of 1984 [Assented to 29 November 1984]

Statutes Amendment (Remuneration) Act 1985 No. 59 of 1985 [Assented to 30 May 1985]²

Judicial Administration (Auxiliary Appointments and Powers) Act 1988 No. 95 of 1988 [Assented to 15 December 1988]

Magistrates Act Amendment Act 1990 No. 2 of 1990 [Assented to 22 March 1990]

Statutes Amendment (Attorney-General's Portfolio) Act 1995 No. 27 of 1995 [Assented to 27 April 1995]³

¹ Came into operation 2 April 1984: *Gaz.* 22 March 1984, p. 724.

² Came into operation 13 June 1985: *Gaz.* 13 June 1985, p. 2132.

³ Came into operation 4 May 1995: *Gaz.* 4 May 1995, p. 1705.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

An Act to provide for the appointment of magistrates; to provide for the organisation and regulation of the magistracy; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Magistrates Act 1983*.

Commencement

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

Interpretation

3. In this Act, unless the contrary intention appears—

"the Chief Justice" means the Chief Justice of the Supreme Court and includes an acting Chief Justice of the Supreme Court:

"the Chief Magistrate" means the person holding or acting in the office of the Chief Magistrate under this Act:

"stipendiary magistrate" means a magistrate remunerated by salary in respect of his magisterial office:

"working day", in relation to a stipendiary magistrate, means a day on which he would ordinarily be required to work (assuming that he were not on leave).

Transitional provisions

4. (1) A person holding office as a special magistrate immediately before the commencement of this Act shall, upon the commencement of this Act, be deemed to have been appointed as a magistrate under this Act.

(2) Where a magistrate to whom subsection (1) applies was, immediately before the commencement of this Act, a stipendiary magistrate, he shall be deemed to have been appointed as a stipendiary magistrate under this Act.

(3) A stipendiary magistrate to whom this section applies retains his existing and accruing rights in respect of recreation leave, sick leave and long service leave and—

(a) any such right that had accrued before the commencement of this Act may be exercised as if it had accrued under this Act; and

(b) service in respect of which any such right was accruing immediately before the commencement of this Act shall be treated as if it were service under this Act.

(4) A magistrate who, immediately before the commencement of this Act, had the status and title of Senior Special Magistrate shall, for so long as he remains a magistrate, have the status and title of Senior Magistrate.

(5) A reference in any Act or other instrument to a "special magistrate", "stipendiary magistrate" or "magistrate" shall, where the context admits, be read as a reference to a magistrate holding office under this Act.

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PART 2
APPOINTMENT AND ADMINISTRATION OF MAGISTRACY

Appointment of magistrates

5. (1) The Governor may, upon the recommendation of the Attorney-General, appoint such magistrates as he thinks necessary for the proper administration of justice.

(2) A magistrate appointed under this section shall, if the instrument of his appointment so provides, be a stipendiary magistrate.

(3) A magistrate appointed under this section shall, if the instrument of his appointment so provides, be an acting magistrate and, in that case, his appointment shall be for a term (not exceeding 12 months) specified in the instrument of appointment.

(3a) A former magistrate who has retired from office is eligible for appointment as an acting magistrate.

(4) The Attorney-General shall not make a recommendation for the appointment of a magistrate unless he has consulted with the Chief Justice in relation to the proposed appointment.

(5) A person is not eligible for appointment as a magistrate unless he is a legal practitioner of at least five years standing.

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

Appointment to administrative offices in the magistracy

6. (1) There shall be—

(a) a Chief Magistrate; and

(b) a Deputy Chief Magistrate; and

(c) such number of Supervising Magistrates and Assistant Supervising Magistrates as the Attorney-General determines.

(2) The Chief Magistrate, the Deputy Chief Magistrate, the Supervising Magistrates and the Assistant Supervising Magistrates shall be appointed by the Governor on the nomination of the Attorney-General.

(3) A person is not eligible for appointment as the Chief Magistrate or Deputy Chief Magistrate or a Supervising Magistrate or Assistant Supervising Magistrate unless he is a stipendiary magistrate.

(4) An appointment made under this section shall, subject to subsection (5), be effective for so long as the appointee remains a stipendiary magistrate.

(5) Subsection (4) is subject to the following qualifications:

(a) a person holding an office under this section may resign that office without simultaneously resigning from his office as a stipendiary magistrate;

- (b) if a person holding an office under this section is suspended from his office as a magistrate, the suspension shall extend and operate in relation to his office under this section;
- (c) if a person holding office as a Supervising Magistrate or Assistant Supervising Magistrate under this section is no longer required to carry out the duties of that office, his appointment to that office may, with the approval of the Chief Justice, be revoked by the Governor without affecting his office as a stipendiary magistrate.

(6) Notice of a magistrate's intention to resign an office under this section must be given to the Attorney-General at least one month before the resignation is to take effect.

Responsibility for administration and control of the magistracy

7. (1) The Chief Magistrate is responsible, subject to the control and direction of the Chief Justice, for the administration of the magistracy.

(2) The Deputy Chief Magistrate may, if the office of Chief Magistrate is vacant, or the Chief Magistrate is absent or unavailable to carry out the duties of his office, exercise any of the powers or functions of the Chief Magistrate.

(3) The Chief Magistrate may (without derogation from his own powers) delegate to any magistrate any of his administrative powers or functions.

(4) A delegation under subsection (3) may be absolute or conditional and is revocable at will.

Responsibility of magistrates to the Chief Magistrate

8. (1) A magistrate (being a stipendiary magistrate or an acting magistrate) is responsible to the Chief Magistrate in relation to administrative matters and, in particular, is subject to direction by the Chief Magistrate as to the duties to be performed by him and the times and places at which those duties are to be performed.

(2) A magistrate (other than a stipendiary magistrate or an acting magistrate) is responsible to the Chief Magistrate in relation to administrative matters related to the performance of magisterial functions that he has consented to perform and, in particular, is subject to direction by the Chief Magistrate as to the duties to be performed by him in connection with those functions and the times and places at which those duties are to be performed.

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**PART 3
TENURE OF OFFICE**

Tenure of office

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

- (a) he resigns his office; or
- (b) having attained the age of fifty-five years, he retires from his office; or
- (c) he attains the age of sixty-five years; or
- (d) in the case of an acting magistrate—his term of office expires; or
- (e) he is removed from office by the Governor.

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

(3) A stipendiary magistrate may, with the consent of the Attorney-General, resign from his office as a stipendiary magistrate without ceasing to hold office as a magistrate.

(4) 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 him and, for the purposes of those proceedings, he shall be deemed to continue as a magistrate.

Suspension of magistrate from office

10. (1) The Governor may, on the advice of the Chief Justice, suspend a magistrate from office.

(2) Where a magistrate is suspended from office under this section, notice of the suspension shall be served upon him.

(3) A magistrate shall not be suspended from office unless—

- (a) there are, in the opinion of the Chief Justice, reasonable grounds to suspect that he is guilty of an indictable offence; or
- (b) an investigation or inquiry has been commenced under this Act for the purpose of determining whether proper cause exists for removing the magistrate from office.

(4) Except as otherwise determined by the Chief Justice, a stipendiary magistrate shall be entitled to remuneration in respect of a period of suspension from office.

(5) A suspension imposed under this section shall, if the Chief Justice so recommends, be revoked.

Removal of magistrate from office

11. (1) The Attorney-General may, of his own motion, and shall, at the request of the Chief Justice made after consultation with the Chief Magistrate, conduct an investigation in order to determine whether proper cause exists for removing a magistrate from office.

(2) When an investigation under subsection (1) is completed, the Attorney-General shall cause a written report upon the investigation to be prepared and copies of the report to be forwarded to the Chief Justice and the Chief Magistrate.

(3) Where it appears to the Attorney-General or the Chief Justice (whether from the results of an investigation conducted under this section or otherwise) that there should be a judicial inquiry to determine whether proper cause exists for removing a magistrate from office, the Attorney-General shall apply to the Supreme Court for such an inquiry.

(4) An inquiry under this section shall be conducted by a single judge of the Supreme Court.

(5) Where—

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

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

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

(6) Where the Full Court determines, upon an application under subsection (5), that a magistrate should be removed from office, the Governor may remove him from office.

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

(8) 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 his 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 his office.

Magistrate not to be removed, etc., except as provided by this Act

12. Except as provided in this Act, a magistrate shall not be removed or suspended from office.

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PART 4
REMUNERATION

Remuneration of magistrates

13. (1) Subject to this section, the remuneration of—

- (a) the Chief Magistrate; and
- (b) the Deputy Chief Magistrate; and
- (c) the Supervising Magistrates; and
- (ca) the Assistant Supervising Magistrates; and
- (d) the Senior Magistrates; and
- (e) the stipendiary magistrates,

shall be at rates determined by the Remuneration Tribunal in relation to the respective offices.

(1a) A stipendiary magistrate, while performing special duties for the time being directed by the Chief Justice with the concurrence of the Attorney-General, shall be entitled to such additional remuneration as may be determined by the Remuneration Tribunal.

(2) A magistrate (not being a stipendiary magistrate) shall be entitled to such remuneration (if any) as may be determined by the Remuneration Tribunal.

(3) A rate of salary determined under this section shall not be reduced by subsequent determination.

(4) The remuneration payable under this section shall be paid out of the General Revenue of the State which is appropriated to the necessary extent.

(5) In this section—

"remuneration" means—

- (a) in relation to a stipendiary magistrate—salary, or salary and allowances;
- (b) in relation to a magistrate who is not a stipendiary magistrate—fees, or fees and allowances.

**PART 5
OTHER CONDITIONS OF OFFICE**

Superannuation

14. A stipendiary magistrate is an "employee" within the meaning, and for the purposes, of the *Superannuation Act 1974*.

Recreation leave

15. (1) A stipendiary magistrate shall be entitled to twenty working days recreation leave in respect of each completed year of service.

(2) A proportionate entitlement to recreation leave shall accrue in respect of each completed month of service.

(3) Subject to this section, recreation leave shall be taken at such times as the Chief Magistrate may approve or direct.

(4) The taking of recreation leave shall not be deferred for more than one year after completion of the year of service in respect of which the entitlement arose unless the Chief Magistrate is satisfied that there are special reasons justifying the deferral and approves the deferral.

(5) The Chief Magistrate shall not, by the exercise of his power of approval under subsection (4), extend a period within which recreation leave must be taken by more than one year.

(6) A stipendiary magistrate shall, unless the Chief Magistrate otherwise directs, take recreation leave on every day (not being a Saturday or a public holiday) falling between Christmas Day of each year and New Year's Day of each following year.

(7) Where a stipendiary magistrate fails to take recreation leave to which he is entitled at or within a time required or approved by or pursuant to this section, he shall cease to be entitled to the leave.

(8) Where a person ceases for any reason to be a stipendiary magistrate before he has taken recreation leave to which he is entitled under this section, he shall be entitled, in lieu of that leave, to the monetary equivalent of that leave standing to his credit on the date on which he ceased to be a stipendiary magistrate.

Sick leave

16. (1) A stipendiary magistrate shall be entitled to twelve working days sick leave in respect of each completed year of service.

(2) A proportionate entitlement to sick leave shall accrue in respect of each completed month of service.

(3) In the case of illness or other pressing necessity, the Chief Magistrate may approve the taking of sick leave by a stipendiary magistrate for a period not exceeding the period of sick leave currently credited to the stipendiary magistrate and, in that event, the period credited shall be reduced by the period of that leave.

Long service leave

17. (1) A stipendiary magistrate shall be entitled to long service leave calculated as follows:

(a) in respect of the first ten years of service—ninety days leave;

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

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

(2) A stipendiary magistrate may, if he so elects, take leave to which he is entitled under this section at half his ordinary remuneration and, in that event, he shall be entitled to twice the number of days leave to which he would otherwise have been entitled.

(3) Long service leave to which a magistrate is entitled shall be taken at such times and in such periods as the Chief Magistrate may approve or direct.

(4) Every day falling on or after the commencement of a period of long service leave shall be counted as a day of that leave until the period for which the leave was granted is exhausted.

(5) Where a person ceases for any reason to be a stipendiary magistrate before he has taken long service leave to which he is entitled under this section, he shall be entitled, in lieu of that leave, to a sum ascertained in accordance with the following formula:

$$P = SD + \left[S \times \frac{AM}{12} \right]$$

Where—

P is the amount payable;

S is an amount arrived at by dividing the annual remuneration of the stipendiary magistrate immediately before the cessation of his service by 365;

D is the number of days long service leave on full pay to which the stipendiary magistrate would have been entitled in respect of completed years of service if he had commenced his long service leave on the day on which he ceased to be a stipendiary magistrate;

A is the number of additional days long service leave to which the stipendiary magistrate would have been entitled if he had completed a further year of service;

M is—

(a) where the period of the stipendiary magistrate's service is not divisible exactly into complete years—the number of complete months (if any) in the remainder;

(b) where the period of the stipendiary magistrate's service is divisible into complete years with no remainder or a remainder of less than one month—zero.

(6) Where a person ceases to be a stipendiary magistrate after completing not less than seven years service but before he becomes entitled to long service leave under this Act, he shall be entitled to a sum representing *pro rata* long service leave, ascertained in accordance with the following formula:

$$P = 9SD + \left[9S \times \frac{M}{12} \right]$$

Where—

- P is the amount payable;
- S is an amount arrived at by dividing the annual remuneration of the stipendiary magistrate immediately before the cessation of his service by 365;
- D is the number of complete years in the period of the stipendiary magistrate's service;
- M is—
- (a) where the period of the stipendiary magistrate's service is not divisible exactly into complete years—the number of complete months (if any) in the remainder;
 - (b) where the period of the stipendiary magistrate's service is divisible into complete years with no remainder or a remainder of less than one month—zero.

Special leave

18. (1) The Chief Magistrate may grant special leave to a stipendiary magistrate for any reason that, in the opinion of the Chief Magistrate, justifies the grant of such leave.

(2) Subject to subsection (3), special leave may be granted with or without remuneration, and for any period that the Chief Magistrate thinks fit.

(3) A stipendiary magistrate is not entitled to more than three working days remunerated special leave in any financial year unless the Governor has consented to the grant of the leave.

(4) Special leave without remuneration shall count as service for the purposes of this Act only to such extent (if any) and for such purposes (if any) as may be determined by the Governor.

Determination of rights on transition from other employment

19. (1) Where a person is appointed as a stipendiary magistrate under this Act, the Governor may determine—

- (a) that rights to recreation leave, sick leave and long service leave that had accrued to the appointee in previous employment should be treated as if they had accrued under this Act; and
- (b) that service by the appointee in previous employment should be treated in a manner and to an extent determined by the Governor as service under this Act for the purpose of determining the rights of the appointee to recreation leave, sick leave or long service leave, or in respect of superannuation.

(2) A determination under subsection (1) shall have effect in accordance with its terms.

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(3) A determination under subsection (1) may be made upon such conditions as the Governor thinks fit.

Payment of monetary equivalent of leave to personal representative, etc.

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

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

(3) The Attorney-General may, in his discretion, direct that the whole or a part of an amount payable under subsection (1) or (2) shall be paid to a dependant of the deceased magistrate or shall be 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 he thinks necessary are given.

(5) No action shall lie 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 shall relieve 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 in part dependent upon the earnings of the stipendiary magistrate at the time of his death.

Industrial awards, etc., not to affect stipendiary magistrates

21. No award or industrial agreement affecting the remuneration or conditions of service of stipendiary magistrates shall be made under the *Industrial Conciliation and Arbitration Act 1972*.

PART 6
EXERCISE OF MAGISTERIAL POWERS BY OTHER MEMBERS OF JUDICIARY

Certain members of the judiciary may assume magisterial powers

22. Any of the following persons, namely—

- (a) a Judge of the Supreme Court; or
- (b) a Master of the Supreme Court; or
- (c) a District Court Judge,

may exercise the jurisdiction, powers or functions of a magistrate.

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APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 5(3):	amended by 95, 1988, Sched. 3
Section 5(3a):	inserted by 95, 1988, Sched. 3
Section 5(6):	inserted by 95, 1988, Sched. 3
Section 6(1):	amended by 2, 1990, s. 2(a)
Section 6(2):	amended by 2, 1990, s. 2(b)
Section 6(3):	amended by 2, 1990, s. 2(c)
Section 6(5):	amended by 85, 1984, s. 2; amended by 2, 1990, s. 2(d)
Section 7(3):	amended by 2, 1990, s. 3; 27, 1995, s. 17
Section 13(1):	amended by 59, 1985, s. 11; amended by 2, 1990, s. 4
Section 13(1a):	inserted by 85, 1984, s. 3; amended by 59, 1985, s. 11
Section 13(2):	amended by 59, 1985, s. 11