



ANNO TRICESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1983

No. 108 of 1983

An Act to amend the Industrial Conciliation and Arbitration Act, 1972; the Justices Act, 1921; the Local and District Criminal Courts Act, 1926; and the Public Service Act, 1967.

[Assented to 22 December 1983]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

- Short title.** 1. This Act may be cited as the "Statutes Amendment (Magistrates) Act, 1983".
- Commencement.** 2. This Act shall come into operation on a day to be fixed by proclamation.
- Amendment of Industrial Conciliation and Arbitration Act.** 3. The Industrial Conciliation and Arbitration Act, 1972, is amended—
- (a) by striking out from subsection (1) of section 4 the passage "the schedule" and substituting the passage "the first schedule";
- (b) by striking out section 13 and substituting the following section:
- Industrial magistrates.** 13. (1) There shall be such industrial magistrates as are appointed, or continue in office, under the provisions of the second schedule to this Act.
- (2) The provisions of the second schedule to this Act are consolidated with, and shall be read and construed as part of, this Act.;
- (c) by inserting after subsection (2) of section 14 the following subsection:
- (3) A Judge of the Court may exercise the jurisdiction, powers or functions of an industrial magistrate.;
- (d) by striking out from the schedule the heading "THE SCHEDULE" and substituting the heading "THE FIRST SCHEDULE";
- and
- (e) by inserting the following schedule after the present schedule:

THE SECOND SCHEDULE

The Industrial Magistracy

Section 13.

Part I—Preliminary

1. In this Schedule, unless the contrary intention appears— Interpretation.

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

“magistrate” means an industrial magistrate:

“the President” means the President of the Industrial Court of South Australia and includes a Deputy President of that Court while acting in the office of the President:

“stipendiary magistrate” means an industrial magistrate remunerated by salary in respect of his magisterial office:

“the Supervising Industrial Magistrate” means the person holding or acting in the office of the Supervising Industrial Magistrate under this Schedule:

“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).

2. (1) A person holding office as an industrial magistrate immediately before the commencement of this Schedule shall, upon the commencement of this Schedule, be deemed to have been appointed as a magistrate under this Schedule. Transitional provision.

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

(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 Schedule may be exercised as if it had accrued under this Schedule;

and

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

Part II—Appointment and Administration of Magistracy

3. (1) The Governor may, upon the recommendation of the Minister, appoint such magistrates as he thinks necessary or desirable for the exercise of the jurisdiction and Appointment of magistrates.

powers conferred under the law of the State on industrial magistrates.

(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 three months) specified in the instrument of appointment.

(4) The Minister shall not make a recommendation for the appointment of a magistrate unless he has consulted with the President 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.

4. (1) There shall be a Supervising Industrial Magistrate.

(2) The Supervising Industrial Magistrate shall be appointed by the Governor on the nomination of the Minister.

(3) A person is not eligible for appointment as the Supervising Industrial 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 office as Supervising Industrial Magistrate may resign that office without simultaneously resigning from his office as a stipendiary magistrate;

(b) if a person holding office as Supervising Industrial Magistrate is suspended from his office as a magistrate, the suspension shall extend and operate in relation to his office as Supervising Industrial Magistrate.

(6) Notice of a magistrate's intention to resign his office as Supervising Industrial Magistrate must be given to the Minister at least one month before the resignation is to take effect.

(7) If the office of Supervising Industrial Magistrate is vacant, or the Supervising Industrial Magistrate is absent or unavailable to carry out the duties of his office, a stipendiary magistrate nominated by the President shall act in the office of Supervising Industrial Magistrate.

(8) In the exercise of his powers and functions under this Schedule, the Supervising Industrial Magistrate is subject to direction and control by the President.

5. (1) The President is responsible for the administration of the industrial magistracy. Responsibility for administration and control of the magistracy.

(2) The President may (without derogation from his own powers) delegate to the Supervising Industrial Magistrate any of his administrative powers or functions.

(3) A delegation under subsection (2) may be absolute or conditional and is revocable at will.

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

(2) A magistrate (other than a stipendiary magistrate or an acting magistrate) is responsible to the President 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 President 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.

Part III—Tenure of Office

7. (1) A person ceases to hold office as a magistrate if— Tenure of office.

(a) he resigns his office;

(b) having attained the age of fifty-five years, he retires from his office;

(c) he attains the age of sixty-five years;

(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 Minister at least one month before the resignation or retirement is to take effect.

(3) A stipendiary magistrate may, with the consent of the Minister, 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 President, 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.

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

(6) The Chief Justice shall not give any advice, or make any recommendation or determination under this section unless he has first consulted with the President in relation to the proposed advice, determination or recommendation.

Removal of
magistrate from
office.

9. (1) The Minister may, of his own motion, and shall, at the request of the Chief Justice made after consultation with the President, 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 Minister 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 President.

(3) Where it appears to the Minister 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 Minister 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 Minister 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 Minister 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;

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

(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.

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

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

Part IV—Remuneration

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

(a) the Supervising Industrial Magistrate;

and

(b) the stipendiary magistrates,

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

Remuneration of magistrates.

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

(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 V—Other Conditions of Office

12. A stipendiary magistrate is an “employee” within the meaning, and for the purposes, of the Superannuation Act, 1974.

Superannuation.

Recreation leave.

13. (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 Supervising Industrial 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 Supervising Industrial Magistrate is satisfied that there are special reasons justifying the deferral and approves the deferral.

(5) The Supervising Industrial 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 Supervising Industrial 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.

14. (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 Supervising Industrial 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.

15. (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;

(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 Supervising Industrial 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, 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.

16. (1) The Supervising Industrial Magistrate may grant special leave to a stipendiary magistrate for any reason that, in the opinion of the Supervising Industrial 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 Supervising Industrial 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 Schedule 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.

17. (1) Where a person is appointed as a stipendiary magistrate under this Schedule, 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 Schedule;

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 Schedule 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.

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

18. (1) Where a stipendiary magistrate dies without having taken all the recreation leave and long service leave to which he is entitled under this Schedule, 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 magistrate immediately before his death.

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

(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 Minister 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 Minister 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 Minister 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.

19. 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.

Industrial awards, etc., not to affect stipendiary magistrates.

4. The Justices Act, 1921, is amended—

Amendment of the Justices Act.

(a) by inserting in subsection (1) of section 4 before the definition of “clerk” the following definition:

“the Chief Magistrate” means the person for the time being holding, or acting in, the office of the Chief Magistrate under the Magistrates Act, 1983;

(b) by striking out from subsection (1) of section 4 the definition of “the senior magistrate”;

(c) by inserting in subsection (1) of section 4 after the definition of “special justice” the following definition:

“special magistrate” includes an industrial magistrate;

- (d) by striking out from subsections (2) and (3) of section 9a the passage “the senior magistrate” wherever it occurs and substituting, in each case, the passage “the Chief Magistrate”;
- (e) by striking out sections 11 and 12;
- (f) by striking out from section 13 the passage “So long as his commission remains in force and unrevoked, every” and substituting the word “Every”;

and

- (g) by striking out section 13a and the heading immediately preceding that section.

Amendment of
the Local and
District Criminal
Courts Act.

5. The Local and District Criminal Courts Act, 1926, is amended—

- (a) by striking out from section 12 the passage “special magistrates,”;
- and
- (b) by striking out section 14.

Amendment of
the Public Service
Act.

6. The Public Service Act, 1967, is amended—

- (a) by striking out paragraphs (b) and (c) of subsection (1) of section 8 and substituting the following paragraphs:
 - (ab) the Judges of the Industrial Court of South Australia;
 - (ac) the District Court Judges;
 - (b) the magistrates holding office as stipendiary magistrates under the Magistrates Act, 1983;
 - (c) the industrial magistrates holding office as stipendiary magistrates under the Industrial Conciliation and Arbitration Act, 1972; ;

and

- (b) by striking out paragraph (d) of subsection (1) of section 99 and substituting the following paragraph:
 - (d) an officer or employee of the Crown (whether in right of this State, any other State of the Commonwealth, or the Commonwealth); .

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor