

NORTHERN TERRITORY OF AUSTRALIA

MAGISTRATES ACT

As in force at 1 January 1991

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 January 1991

MAGISTRATES ACT

An Act relating to the provision of Magistrates

Part I Preliminary

1 Short title

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

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Definitions

In this Act, unless the contrary intention appears:

Coroner has the same meaning as in the *Coroners Act*.

Magistrate means the Chief Magistrate, a Stipendiary Magistrate, a Special Magistrate or a Relieving Magistrate.

Relieving Magistrate means a person appointed as a Relieving Magistrate under section 9A.

Part II Chief Magistrate and Stipendiary Magistrate

4 Chief Magistrate and Stipendiary Magistrate

- (1) For the purposes of this Act, there shall be:
 - (a) an office of Chief Magistrate; and
 - (b) so many other offices of Stipendiary Magistrate as the Minister thinks fit.
- (2) The Chief Magistrate is a Stipendiary Magistrate.

- (3) The Administrator may appoint persons to hold offices referred to in subsection (1).
- (4) Where a person holding an office of Stipendiary Magistrate is appointed to hold the office of Chief Magistrate, the person ceases to hold the former office of Stipendiary Magistrate.

5 Eligibility for appointment

A person is not eligible for appointment under section 4(3) unless:

- (a) the person is admitted to practise as a legal practitioner (however described) in:
 - (i) the High Court or a Supreme Court of a State or Territory of the Commonwealth;
 - (ii) New Zealand;
 - (iii) Papua New Guinea; or
 - (iv) England, Scotland or Northern Ireland,and has been so admitted for not less than 5 years or,
- (b) he has held a position of magistrate or, in the opinion of the Minister, its equivalent, in a jurisdiction referred to in paragraph (a) and has the educational qualifications prescribed for admission as a legal practitioner of the Supreme Court under section 11 of the *Legal Practitioners Act*.

6 Terms and conditions of appointment

Unless and until express provision is made in relation thereto, by or under an Act, a Magistrate appointed under this Part:

- (a) shall be paid such remuneration and allowances; and
 - (b) holds office on such terms and conditions,
- as the Administrator, from time to time, determines.

7 Tenure of office

- (1) Subject to this Act, a Magistrate appointed under this Part holds office until he attains the age of 65 years.
- (2) A person who has attained the age of 65 years shall not be appointed under section 4(3).

8 Resignation

A Magistrate appointed under this Part may resign his office by writing signed by him and delivered to the Minister.

9 Acting Chief Magistrate, acting Stipendiary Magistrate

(1) Where:

- (a) there is a vacancy in the office of Chief Magistrate; or
- (b) the Chief Magistrate is absent from duty or from the Territory or, for any other reason, is unable to carry out the duties of his office,

the Administrator or the Minister may appoint a Stipendiary Magistrate to act as Chief Magistrate during that vacancy, absence or inability, as the case may be.

(2) Where:

- (a) there is a vacancy in an office of Stipendiary Magistrate; or
- (b) a Stipendiary Magistrate is absent from duty or from the Territory or, for any other reason, is unable to carry out the duties of his office,

the Administrator or the Minister may appoint a person who is eligible for appointment under section 4(3) to act as a Stipendiary Magistrate during that vacancy, absence or inability, as the case may be.

(3) Subject to this section, a person appointed under subsection (1) or (2) shall not continue to act as Chief Magistrate or Stipendiary Magistrate, as the case may be, for more than:

- (a) if he was so appointed by the Administrator – 12 months; or
- (b) if he was so appointed by the Minister – 3 months.

(4) Where a person is acting as Chief Magistrate in pursuance of an appointment under subsection (1) or as Stipendiary Magistrate in pursuance of an appointment under subsection (2):

- (a) a reference in a law of the Territory to the Chief Magistrate or a Stipendiary Magistrate, as the case may be, includes a reference to that person; and

- (b) that person has all the powers, functions and duties conferred or imposed upon the Chief Magistrate or a Stipendiary Magistrate, as the case may be, by any law of the Territory.
- (5) The Administrator may:
- (a) determine the terms and conditions of appointment of a person under this section; and
 - (b) at any time terminate such an appointment.
- (6) Where a person is acting as Chief Magistrate in pursuance of an appointment under subsection (1) and the office of Chief Magistrate becomes vacant while that person is so acting, or where a person is acting as a Stipendiary Magistrate in pursuance of an appointment under subsection (2) and that office of Stipendiary Magistrate becomes vacant while that person is so acting, that person may continue to act until the Administrator otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (7) A person may resign an appointment under subsection (1) or (2) by writing signed by him and delivered to the Minister.
- (8) The validity of anything done by a person acting as Chief Magistrate in pursuance of an appointment under subsection (1) or as a Stipendiary Magistrate in pursuance of an appointment under subsection (2) shall not be called in question by reason of any defect or irregularity in or in connection with his appointment or on the ground that the occasion for his acting had not arisen or had ceased.

9A Relieving Magistrate

- (1) Where the Minister is of the opinion that the efficient administration of justice requires it, the Minister may appoint a person who is eligible for appointment under section 4(3) to be a Relieving Magistrate for such period, not exceeding 6 months, as is specified in the instrument of appointment.
- (2) A reference in a law of the Territory to a Stipendiary Magistrate includes a reference to a Relieving Magistrate.
- (3) A Relieving Magistrate has all the powers, functions and duties conferred or imposed upon a Stipendiary Magistrate by a law of the Territory.
- (4) A Relieving Magistrate holds office upon such terms and conditions, whether as to remuneration or otherwise, as the Minister determines.

- (5) A Relieving Magistrate may resign his office by writing signed by him and delivered to the Minister.
- (6) The validity of anything done by a person appointed, or purported to be appointed, as a Relieving Magistrate under subsection (1) shall not be called in question by reason of any defect or irregularity in or in connection with the appointment or on the ground that the occasion for the appointment had not arisen or had ceased.

10 Removal from office

A Magistrate appointed under section 4(3) shall not be removed from office unless:

- (a) he has failed to comply with a direction given by the Chief Magistrate under section 13(2); or
- (b) the Administrator is satisfied that the Magistrate is:
 - (i) incapable of carrying out his duties;
 - (ii) incompetent to carry out his duties; or
 - (iii) for any other reason unsuited to the performance of his duties.

11 Magistrates not to undertake other work

- (1) A Magistrate appointed under this Part shall not engage in practice as a legal practitioner during the term of the appointment.
- (2) A Magistrate appointed under this Part shall not, without the consent of the Minister, engage in paid employment outside the duties of his office under this Act or any office or appointment held by him in the Defence Force.
- (3) The acceptance by a Magistrate of appointment to a judicial office in another Territory does not affect his office under this Act.

12 Rights of public servants

Where a Magistrate appointed under this Part was, immediately before his appointment an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928* of the Commonwealth applied, he retains his existing and accruing rights.

13 Appointment of courts, &c.

- (1) The Minister may, after consultation with the Chief Magistrate, appoint the places in the Territory where Magistrates and Justices shall hold courts or sit in the exercise of jurisdiction conferred on them under this Act or any other law in force in the Territory.
- (2) The Chief Magistrate shall assign and apportion their duties to Magistrates and Justices and may for this purpose give such directions, including directions as to the places in the Territory where they shall perform those duties, as may be necessary.
- (3) Where the Chief Magistrate, in exercising his powers under subsection (2), gives a direction to a Magistrate or a Justice, the Magistrate or Justice shall comply with the direction.

Part III Special Magistrates**14 Appointment of Special Magistrate**

- (1) For the purposes of this Act, the Administrator may appoint such Special Magistrates as are required.
- (2) A person is not eligible for appointment under subsection (1) unless he is a Justice of the Peace.

16 Resignation

A Special Magistrate may resign his office by writing signed by him and delivered to the Minister.

17 Terms and conditions of appointment

A Special Magistrate holds office upon such terms and conditions, whether as to remuneration or otherwise, as the Administrator, from time to time determines.

Part IV Jurisdiction and protection of Magistrates**18 Powers of Magistrates**

- (1) Subject to subsection (2), each Magistrate has jurisdiction, power and authority to do alone whatsoever any one, 2 or more Justices may lawfully do under the Justices Act, or under or by virtue of any Act conferring jurisdiction, power or authority upon Justices.

- (2) Subsection (1) does not authorize a Magistrate to exercise any jurisdiction or to do any act which he is, by the express provisions of any Act, authorized to exercise or do only in conjunction with other Justices.
- (3) Every Stipendiary Magistrate has the jurisdiction and all the powers and functions of a Special Magistrate whether given by or under the *Justices Act* or by or under any other law in force in the Territory.

19 Acts done beyond the Territory

- (1) An act done by a Magistrate, by virtue of his office, outside the Territory for the purpose of authenticating the signature of a person to an instrument intended to take effect in the Territory shall, unless the act is required by law to be done in the Territory, be effective for the purposes of any law of the Territory.
- (2) An oath administered by a Magistrate, by virtue of his office, outside the Territory in any case in which an oath may be administered by a Magistrate shall, unless the oath is required by law to be administered in the Territory, be effective for the purposes of any law of the Territory.

19A Protection of Magistrates

A Magistrate has, in the performance of his or her duties as a Magistrate, the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

Part V Miscellaneous

20 Oath, &c., of office

- (1) Subject to subsection (3), a person appointed under section 4(3), 9, 9A or 14(1) shall not exercise or perform any of the powers, functions or duties conferred or imposed upon him by any law of the Territory unless he has taken an oath in accordance with the form in the Schedule.
- (2) An oath for the purpose of subsection (1) shall be taken or made before a Judge of the Supreme Court.
- (3) Where a person has taken the oath required by subsection (1) on his appointment under section 4(3), 9, 9A or 14(1) and:
 - (a) afterwards ceases to hold that appointment; or

- (b) not being the Chief Magistrate, is appointed to be the Chief Magistrate,

it is not necessary for him to take an oath for the purpose of subsection (1) on his again being appointed under section 4(3), 9, 9A or 14(1).

20A Matters pending when term of office expires, &c.

A Magistrate is authorized to complete the hearing and determination of a proceeding that is pending before the Magistrate at the time of his or her resignation or expiration of office so that, notwithstanding that there may not be a vacancy in an office as required by section 9(1), where relevant, he or she holds an appointment as an acting Stipendiary Magistrate during any period while completing such hearing and determination.

21 Transitional and savings provisions

- (1) Where:

- (a) the appointment of a person under section 4(3) has effect from and including the date of commencement of this Act;
- (b) immediately before the commencement of this Act, that person held office as a Chief Magistrate or as a Stipendiary Magistrate by virtue of an appointment under section 10(3) of the *Justices Act*; and
- (c) at the date of commencement of this Act, a Court or Tribunal constituted by that person had commenced the hearing of proceedings but:
- (i) the hearing had not been completed; or
 - (ii) the proceedings had not been determined,

the Court or Tribunal constituted by that person may continue the hearing of the proceedings and may determine the proceedings as if:

- (d) this Act had come into operation before the hearing of the proceedings commenced; and
- (e) that person had been appointed under section 4(3) immediately before the hearing of the proceedings commenced.

- (2) A person who, immediately before the commencement of this Act, held office as a Special Magistrate by virtue of an appointment under section 10(3) of the *Justices Act* continues after the commencement to hold office as if:
- (a) this Act had been in operation when the appointment was made; and
 - (b) the appointment had been made under section 14(1),
but such an appointment may be revoked.
- (3) For the purposes of any law of the Territory that:
- (a) confers or imposes any power, function or duty upon a Magistrate or upon a Coroner; or
 - (b) confers any jurisdiction upon a Court or Tribunal,
- an act done before the commencement of this Act by a person holding office as the Chief Magistrate, as a Stipendiary Magistrate or as a Special Magistrate by virtue of an appointment under section 10(3) of the *Justices Act* has the same force and effect after the commencement as it would have had if:
- (c) this Act had been in operation when the act was done; and
 - (d) the person had, at that time, held office under section 4(3) or 14(1).

24 References to Magistrates appointed under *Justices Act*

A reference in any law in force in the Northern Territory to a Magistrate however appointed, shall be read as a reference to a Magistrate appointed under this Act.

Schedule

section 20

OATH

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, Her heirs and successors, according to law, that I will well and truly serve in the office of

and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God!

AFFIRMATION

I, A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, Her heirs and successors, according to law, that I will well and truly serve in the office of

and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended
 app = appendix
 bl = by-law
 ch = Chapter
 cl = clause
 div = Division
 exp = expires/expired
 f = forms
 Gaz = Gazette
 hdg = heading
 ins = inserted
 lt = long title
 nc = not commenced

od = order
 om = omitted
 pt = Part
 r = regulation/rule
 rem = remainder
 renum = renumbered
 rep = repealed
 s = section
 sch = Schedule
 sdiv = Subdivision
 SL = Subordinate Legislation
 sub = substituted

2**LIST OF LEGISLATION*****Magistrates Ordinance 1977 (Act No. 4, 1977)***

Assent date 10 February 1977
 Commenced 4 April 1977 (*Gaz* No. 13A, 4 April 1977, p 492)

Magistrates Ordinance 1978 (Act No. 14, 1978)

Assent date 29 May 1978
 Commenced 29 May 1978

Transfer of Powers (Self-Government) Ordinance 1978 (Act No. 54, 1978)

Assent date 1 July 1978
 Commenced 1 July 1978 (s 8)

Magistrates Act 1979 (Act No. 152, 1979)

Assent date 12 December 1979
 Commenced 12 December 1979

Magistrates Amendment Act 1980 (Act No. 12, 1981)

Assent date 9 January 1981
 Commenced 6 February 1981 (*Gaz* G5, 6 February 1981, p 1)

Statute Law Revision Act (No. 2) 1981 (Act No. 63, 1981)

Assent date 20 July 1981
 Commenced 20 July 1981

Statute Law Revision Act 1985 (Act No. 49, 1985)

Assent date 1 October 1985
 Commenced 1 October 1985

Statute Law Revision Act (No. 2) 1987 (Act No. 59, 1987)

Assent date 31 December 1987
 Commenced 31 December 1987

Magistrates Amendment Act 1988 (Act No. 35, 1988)

Assent date 14 September 1988
 Commenced 14 September 1988

Local Court (Consequential Amendments) Act 1989 (Act No. 14, 1989)

Assent date 5 June 1989
 Commenced s 6: 5 June 1989; rem: 1 January 1991 (s 2, s 2 *Small Claims Amendment Act 1988* (Act No. 43, 1988), *Gaz G17*, 3 May 1989, p 2, s 2 *Local Court Act 1989* (Act No. 31, 1989) and *Gaz G49*, 12 December 1990, p 2)

Statute Law Revision Act 1989 (Act No. 60, 1989)

Assent date 2 October 1989
 Commenced 2 October 1989

3 SAVINGS AND TRANSITIONAL PROVISIONS

s 4 *Magistrates Ordinance 1978* (Act No. 14, 1978)
 s 8 *Transfer of Powers (Self-Government) Ordinance 1978* (Act No. 54, 1978)
 s 7 *Magistrates Amendment Act 1980* (Act No. 12, 1980)

4 LIST OF AMENDMENTS

It amd No. 12, 1981, s 8
 ss 1 – 2 amd No. 12, 1981, s 8
 s 3 amd No. 12, 1981, s 8; No. 49, 1985, s 4; No. 35, 1988, s 3
 s 4 amd No. 14, 1978, s 3; No. 54, 1978, ss 3 and 4; No. 12, 1981, s 8; No. 59, 1987, s 5
 s 5 sub No. 35, 1988, s 4
 s 6 amd No. 54, 1978, s 4; No. 12, 1981, s 8
 s 7 amd No. 12, 1981, s 8
 s 8 amd No. 54, 1978, s 4
 s 9 amd No. 54, 1978, s 4; No. 152, 1979, s 2; No. 35, 1988, s 5
 s 9A ins No. 35, 1988, s 6
 s 10 amd No. 54, 1978, s 4
 sub No. 12, 1981, s 4
 s 11 amd No. 54, 1978, s 4; No. 12, 1981, s 8; No. 35, 1988, s 7; No. 60, 1989, s 6
 s 12 amd No. 12, 1981, s 8
 s 13 sub No. 12, 1981, s 5
 s 14 amd No. 54, 1978, s 4; No. 12, 1981, s 8
 s 15 amd No. 54, 1978, s 4
 rep No. 12, 1981, s 6
 s 16 amd No. 54, 1978, s 4
 s 17 amd No. 54, 1978, s 4; No. 35, 1988, s 8
 pt IV hdg sub No. 14, 1989, s 5
 s 18 amd No. 12, 1981, s 8; No. 35, 1988, s 9; No. 60, 1989, s 6
 s 19 amd No. 60, 1989, s 6
 s 19A ins No. 14, 1989, s 5
 s 20 amd No. 63, 1981, s 2; No. 35, 1988, s 10; No. 60, 1989, s 6
 s 20A ins No. 35, 1988, s 11
 s 21 amd No. 12, 1981, s 8; No. 63, 1981, s 2
 s 22 amd No. 12, 1981, s 8; No. 63, 1981, s 2
 rep No. 35, 1988, s 12
 s 23 rep No. 12, 1981, s 8
 s 24 amd No. 12, 1981, s 8; No. 60, 1989, s 6