

Chapter 43.  
***Magisterial Service Act 1975.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 43.

***Magisterial Service Act 1975.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Magisterial Service Act 1975,***

Being an Act to implement Section 173 (*establishment of the Magisterial Service*) of the Constitution by making provision for and in respect of the Magisterial Service.

**PART I. – PRELIMINARY.**

**1. INTERPRETATION.**

In this Act, unless the contrary intention appears–

“**the Commission**” means the Judicial and Legal Services Commission appointed under Section 183 (*establishment of the Commission*) of the Constitution;

“**the Conditions of Service Determinations**” means any determinations under Section 10;

<sup>1</sup>“**Deputy Chief Magistrate**” means the Deputy Chief Magistrate appointed under Section 6;

“**the Service**” means the Magisterial Service established under Section 173 (*establishment of the Magisterial Service*) of the Constitution;

“**this Act**” includes the regulations.

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<sup>1</sup> Section 1 (definition of “Deputy Chief Magistrate”) added by No. 42 of 1980, s1.

**PART II. – THE CHIEF MAGISTRATE.****2. POWERS, ETC., OF CHIEF MAGISTRATE.**

In addition to his other powers, functions, duties and responsibilities under this Act or any other law, the Chief Magistrate—

- (a) is responsible to the Commission for the efficient functioning and operation of the Service; and
- (b) has such powers, functions, duties and responsibilities in relation to the Service (including disciplinary powers over magistrates) as are conferred or imposed on him by the Conditions of Service Determinations; and
- (c) shall carry out any direction or instruction by the Commission in relation to the Service; and
- (d)<sup>2</sup> [*Repealed.*]
- (e) is responsible for the posting of magistrates; and
- (f) is responsible for the allocation of duties as between magistrates posted to the same place; and
- (g) as directed by the Commission, shall submit to the Commission reports on the Service and on individual magistrates.

**3. RECOMMENDATIONS AS TO COURT BUILDINGS, ETC.**

The Chief Magistrate may advise and make recommendations to the Commission on any matters related to design, forward planning, allocation and budgeting with regard to court buildings and facilities.

**4. DELEGATION.**

The Chief Magistrate may, by instrument, delegate to any person all or any of his powers and functions under this Act or any other law (except this power of delegation and any powers and functions delegated to him by the Commission).

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<sup>2</sup> Section 2(d) amended by the *Public Service (Management) (Consequential Amendments) Act* 1986 (No. 29 of 1986), s8; repealed by the *Magisterial Service (Amendment) Act* 1990 (No. 24 of 1990).

**PART III. – CLASSIFICATION OF MAGISTRATES<sup>3</sup>.**

**5. CLASSIFICATION OF MAGISTRATES.**

<sup>4</sup>There shall be within the Service–

- (a) two Deputy Chief Magistrates; and
- (b) such number of–
  - (i) Principal Magistrates; and
  - (ii) District Court Magistrates,

as the Commission determines.

**6. APPOINTMENT.**

<sup>5</sup>(1) Subject to this Act, the Commission may appoint–

- (a) a person to be a Deputy Chief Magistrate; and
- (b) persons to be magistrates.

(2) A person shall not be appointed as Deputy Chief Magistrate unless he is qualified for appointment as a Magistrate Grade V.

(3)<sup>6</sup> <sup>7</sup>A Deputy Chief Magistrate shall be appointed for a term of six years and is eligible for re-appointment.

**7. QUALIFICATIONS OF MAGISTRATES.**

(1)<sup>8</sup> <sup>9</sup>Subject to Subsection (2), the qualifications for appointment as Deputy Chief Magistrate, Principal Magistrate or District Court Magistrate are as determined by the Commission, not being less than any qualifications prescribed by or under Act.

(2) A person shall not be appointed as a magistrate unless–

- (a) he provides evidence to the satisfaction of the Commission as to–
  - (i) his health and physical fitness; and
  - (ii) his possession of the necessary qualifications; and
  - (iii) his age; and
  - (iv) his good character; and
- (b) he makes the Judicial Declaration.

<sup>3</sup> Part III: heading repealed and replaced by No 12 of 2000 s. 1.

<sup>4</sup> Section 5 amended by No. 42 of 1980, s2. Section 5 repealed and replaced by No 12 of 2000 s. 2.

<sup>5</sup> Section 6 replaced by No. 42 of 1980, s3.

<sup>6</sup> Section 6(3) added by No 12 of 2000 s. 3.

<sup>7</sup> Section 6(3) added by No 12 of 2000 s. 3.

<sup>8</sup> Section 7(1) amended by No 12 of 2000 s. 4.

<sup>9</sup> Section 7(1) amended by No 12 of 2000 s. 4.

**7A. DEPUTY CHIEF MAGISTRATE AND PRINCIPAL MAGISTRATES.**

<sup>10</sup>In addition to his other powers, functions, duties and responsibilities, the Deputy Chief Magistrate and each Principal Magistrate has such non-judicial powers, functions, duties and responsibilities as are—

- (a) delegated to him by the Commission or the Chief Magistrate; and
- (b) directed by the Chief Magistrate.

**8. SENIOR MAGISTRATES.**

(1) The Commission shall appoint a magistrate in each province to be the Senior Magistrate for that province.

(2) The Senior Magistrate for a province has, in addition to his other powers, functions, duties and responsibilities, such non-judicial powers, functions, duties and responsibilities, in and in relation to the province for which he is appointed, as are—

- (a) conferred or imposed on him by the Conditions of Service Determinations; or
- (b) delegated to him by the Commission or the Chief Magistrate; or
- (c) directed by the Chief Magistrate.

**9. JURISDICTION, ETC.**

<sup>11</sup>(1) The jurisdiction, powers, functions, duties and responsibilities of a Deputy Chief Magistrate, Principal Magistrate or District Court Magistrate are as determined by or under Act.

(2) Unless the contrary intention appears, where any jurisdiction, power, function, duty or responsibility is conferred or imposed by or under Act on magistrates of a particular grade it shall be deemed also to have been conferred or imposed on magistrates of any higher grade.

(3) The Chief Magistrate and the Deputy Chief Magistrate have the same jurisdiction as the highest grade of magistrate.

**10. CONDITIONS OF SERVICE.**

(1)<sup>12</sup> <sup>13</sup>The rates of salaries and allowances and the other conditions of service of the Deputy Chief Magistrate and of magistrates, including—

- (a) the obligations of membership of the Service; and
- (b) internal administration of the Service; and

<sup>10</sup> Section 7A added by No. 42 of 1980, s4.

<sup>11</sup> Section 9 amended by No. 42 of 1980, s5; Section 9(1) repealed and replaced by No 12 of 2000 s. 5.

<sup>12</sup> Section 10(1) amended by No. 42 of 1980, s6; amended by the *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s9.

<sup>13</sup> Section 10(1) amended by No. 42 of 1980, s6; amended by the *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s9.



- (c) discipline; and
- (d) leave (including furlough); and
- (e) retirement; and
- (f) fares and removal expenses; and
- (g) housing,

are as determined by the Commission after consultation with the Departmental Head of the Department of Personnel Management.

(2) The *Public Officers Superannuation Act* applies to and in relation to magistrates as though they were officers of the Public Service.

#### **11. OTHER DETERMINATIONS.**

The Commission may make determinations in relation to any matters that by this Act are required or permitted to be determined, or that are necessary or convenient to be determined for carrying out or giving effect to this Act.

**PART IV. – MISCELLANEOUS.**

**12. REGULATIONS.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed for carrying out or giving effect to this Act.

Office of Legislative Counsel, PNG