

COURTS LEGISLATION AMENDMENT (MAGISTRATES) BILL 2021

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, read a first time.

Second Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [7.01 pm]: I move —

That the bill be now read a second time.

The Courts Legislation Amendment (Magistrates) Bill 2021 will amend the Children’s Court of Western Australia Act 1988 and the Magistrates Court Act 2004 to provide a framework for the allocation of juridical resources between the Magistrates Court and the Children’s Court of Western Australia; clarify the powers of the President of the Children’s Court and the Chief Magistrate in respect of giving directions to magistrates; and ensure a flexible magistracy that is available to perform the various functions for which magistrates are appointed.

Members may be aware that prior to the commencement of the Magistrates Court in May 2005, there were multiple Courts of Petty Sessions and multiple local courts. Each individual court operated independently, meaning there was operational complexity in judicial officers moving between jurisdictions and no uniformity of procedures. This led to inefficiencies and dysfunction, which the establishment of the Magistrates Court sought to address. A reform package of legislation was introduced to Parliament in 2004, consisting of some seven separate bills, which, in part, authorised magistrates to exercise certain functions without moving in or out of any particular jurisdiction. One of the key outcomes of the reforms was to enable magistrates of the Magistrates Court to be appointed to multiple commissions to exercise those jurisdictions anywhere in the state, ensuring the court was able to deal more efficiently and expeditiously with the cases that came before it.

The Chief Magistrate was also recognised in statute as the principal judicial officer of the court and given express powers to assign duties and issue directions in respect of a magistrate’s judicial and administrative functions. These amendments served to provide judicial and administrative leadership to the court, as is the case with the Supreme and District Courts. Supporting provisions were introduced to provide that a magistrate must comply with the directions given by the Chief Magistrate or risk suspension from office.

The reforms also clarified the role and position of magistrates attached to the Family Court of Western Australia by ensuring that those magistrates are responsible to the Chief Judge of the Family Court. It is now the case that all magistrates of the Magistrates Court also hold commissions as magistrates of the Children’s Court as well as being appointed as industrial magistrates under the Industrial Relations Act 1979 and wardens of mines under the Mining Act 1978. A person appointed as a magistrate under the Magistrates Court Act is also deemed to be appointed as a coroner under the Coroners Act 1996. These appointment arrangements mean magistrates are available to perform the various functions for which they are appointed under a range of statutes. This, in turn, ensures a flexible magistracy that can respond to judicial resourcing requirements as they arise.

Despite the breadth of the 2004 reform package, it did not address the way in which the President of the Children’s Court and the Chief Magistrate interact for the purposes of dealing with the workload of the Children’s Court. The bill will address this by clarifying for future purposes the respective powers of the President of the Children’s Court and the Chief Magistrate in respect of the administration and workload allocation of the Children’s Court. In particular, the bill will provide the President of the Children’s Court with the discretion about the best way to operate a specialist court and to maximise the utilisation of judicial resources, recognising that the Children’s Court is a separate court to the Magistrates Court and the president is the head of jurisdiction.

The amendments proposed by the bill are consistent with the 2004 reform package to ensure that court jurisdictions in this state are efficient and flexible, with appropriate powers allocated to the respective heads of jurisdictions to manage the workload of the courts.

Before I turn to the detail of the bill, I note that there is a proceeding on foot before the Supreme Court of Western Australia commenced by the plaintiff, Magistrate Catherine Crawford, against Judge Hylton Quail, President of the Children’s Court. The parties to this proceeding raised issues related to whether the president had the power to make certain directions to the plaintiff. The State of Western Australia intervened in the proceeding with the primary purpose of addressing the proper construction of the president’s powers. The power under new section 12A will not be retrospective and will apply from commencement. The passage of the bill will resolve, for future purposes, issues about the scope of the president’s powers. The future conduct of the proceeding will be a matter for the parties and the court.

I turn now to the detail of the bill. New section 11 of the Children’s Court act will prescribe a process whereby the president may inform the Chief Magistrate that a particular magistrate is required to deal with the workload of the court, either on a part-time or full-time basis. It will introduce the concept of a “dually appointed” magistrate,

being a magistrate who holds office as a magistrate of both the Magistrates Court and the Children’s Court. The magistrate will be made available to perform Children’s Court functions only if the Chief Magistrate consents. If the president no longer requires a particular magistrate to perform Children’s Court functions, or requires the magistrate on a reduced basis, the president may inform the Chief Magistrate accordingly. The president will have absolute discretion in determining which particular magistrate is, or is not, necessary or desirable for the time being to deal with the workload of the Children’s Court. The reason for the breadth of this discretion is to enable the president to operate the Children’s Court in the manner that appears to be best to the president, without any person having an expectation that they will remain in the Children’s Court upon the basis of their past service.

The power to request a particular magistrate is for practical purposes. For example, the president will be able to request that a particular regional or remote magistrate, who may already be performing judicial functions in a court location where there is a resourcing need, also perform Children’s Court functions. The transitional provisions in clause 9 of the bill make clear that the president is not required to give a notice in respect of a dually appointed magistrate who is currently performing, or has performed, functions in the Children’s Court.

New section 12A of the Children’s Court act will provide the president with the power to give directions to a magistrate in respect of the magistrate’s functions in the Children’s Court. These powers are broadly consistent with the powers available to the Chief Magistrate in directing magistrates. In clauses 8 and 11, the bill provides a clear delineation between the powers of the President and the Chief Magistrate to direct magistrates to the extent they are performing functions in their respective courts. Consequential amendments will also be made to ensure that noncompliance by a magistrate with a direction of the president has the same potential consequence as noncompliance with a direction of the Chief Magistrate; that is, suspension from office. As well, the Attorney General will be required to consult with both the Chief Magistrate and the President prior to issuing a show-cause notice regarding a proposed suspension to a Children’s Court magistrate under the applied Magistrates Court Act schedule 1, clause 14.

The principal amendment to the Magistrates Court Act contained in clause 12 reflects that the appointment of magistrates to the Children’s Court is for the purposes of satisfying a need to deal with the “workload of the court” at the time of appointment and to ensure the resourcing needs of the court can be met into the future. Under the current arrangements, if a person ceases to be a magistrate under the Magistrates Court Act 2004, they cease to be appointed as an industrial magistrate, warden of mines, and coroner. However, a similar arrangement does not apply to appointment as a magistrate of the Children’s Court. This means a magistrate can resign as a magistrate of the Magistrates Court and remain appointed as a magistrate of the Children’s Court only, undermining the purpose of appointing magistrates to multiple offices. Accordingly, the bill includes a provision that provides when a person appointed as a magistrate of both the Children’s Court and the Magistrates Court resigns from one of those offices, they will be taken to have resigned from both offices. This will assist in ensuring magistrates are available to perform the various functions for which they are appointed and the courts’ resourcing requirements can be addressed as and when they arise.

The bill aims to strike a balance between prescribing a clear process and leaving room for judicial comity in the allocation of magistrate resources between the jurisdictions. Overall, the proposed amendments are consistent with the practical operation of the courts and will ensure the effective operation of courts and administration of justice in Western Australia.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth. I commend the bill to the house and table the explanatory memorandum.

[See paper [428](#).]

Debate adjourned, pursuant to standing orders.