

Courts Legislation Amendment (Magistrates) Bill 2021

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**Part 3 — *Magistrates Court Act 2004*
amended**

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Western Australia

LEGISLATIVE ASSEMBLY

**Courts Legislation Amendment (Magistrates)
Bill 2021**

A Bill for

**An Act to amend the *Children's Court of Western Australia Act 1988*
and the *Magistrates Court Act 2004*.**

The Parliament of Western Australia enacts as follows:

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Courts Legislation Amendment (Magistrates) Act 2021*.

4

5

2. Commencement

6

This Act comes into operation as follows —

7

(a) Part 1 — on the day on which this Act receives the Royal Assent;

8

9

(b) the rest of the Act — on the day after that day.

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- 1 (c) after paragraph (c) insert:
2
3 (d) the reference in Schedule 1 clause 14(1)(c) of
4 that Act to section 25(3) of that Act included a
5 reference to section 12A(4) of this Act; and
6 (e) the reference in Schedule 1 clause 14(2)(b) of
7 that Act to consulting the Chief Magistrate
8 were a reference to consulting the Chief
9 Magistrate and the President.
10

11 Note: The heading to amended section 10 is to read:

12 **Appointment of magistrates**

13 **7. Section 11 inserted**

14 After section 10 insert:
15

16 **11. Work of magistrates appointed to both Magistrates**
17 **Court and Children's Court**

- 18 (1) In this section —
19 *Children's Court functions* means functions of a
20 magistrate of the Court;
21 *dually appointed magistrate* means a person who holds
22 office both as a magistrate of the Magistrates Court and
23 as a magistrate of the Court.
24 (2) The President may, by written notice, inform the Chief
25 Magistrate that the President considers that, to deal
26 with the workload of the Court, it is necessary or
27 desirable for a particular dually appointed magistrate
28 for the time being to perform Children's Court
29 functions —
30 (a) on a full-time basis; or
31 (b) on a part-time basis as specified in the notice.

- 1 (3) If the President gives a notice under subsection (2) in
2 relation to a dually appointed magistrate —
- 3 (a) the Chief Magistrate may consent, or refuse to
4 consent, to the magistrate for the time being
5 performing Children's Court functions on the
6 basis specified in the notice; and
- 7 (b) if the Chief Magistrate consents — the Chief
8 Magistrate must, in giving any directions to the
9 magistrate under the *Magistrates Court*
10 *Act 2004* section 25, take into account that for
11 the time being the magistrate is required to
12 perform Children's Court functions on the basis
13 specified in the notice.
- 14 (4) If a particular dually appointed magistrate has
15 performed Children's Court functions on a full-time or
16 part-time basis or has been the subject of a notice under
17 subsection (2), the President may, by written notice,
18 inform the Chief Magistrate —
- 19 (a) that the President considers that, to deal with
20 the workload of the Court, it is not necessary or
21 desirable for the magistrate for the time being
22 to perform Children's Court functions at all; or
- 23 (b) that the President considers that, to deal with
24 the workload of the Court —
- 25 (i) it is not necessary or desirable for the
26 magistrate for the time being to perform
27 Children's Court functions on the basis
28 that previously applied; and
- 29 (ii) it is necessary or desirable that the
30 magistrate should instead for the time
31 being perform Children's Court
32 functions on a part-time basis as
33 specified in the notice (which must, in
34 the case of a magistrate who previously

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- 1 performed those functions on a
2 part-time basis or was the subject of a
3 notice under subsection (2)(b), be a
4 reduced part-time basis).
- 5 (5) If the President gives a notice under subsection (4) in
6 relation to a dually appointed magistrate, the Chief
7 Magistrate must, in giving directions to the magistrate
8 under the *Magistrates Court Act 2004* section 25, take
9 into account —
- 10 (a) in the case of a notice under
11 subsection (4)(a) — that for the time being the
12 magistrate is not required to perform Children's
13 Court functions; or
- 14 (b) in the case of a notice under
15 subsection (4)(b) — that for the time being the
16 magistrate is required to perform Children's
17 Court functions on the specified part-time basis
18 and not otherwise.
- 19 (6) In determining whether to give a notice under
20 subsection (2) or (4) in relation to a dually appointed
21 magistrate, the President has absolute discretion and is
22 not required to take into account the seniority or length
23 of service of the magistrate or any other matter.
- 24 (7) A notice under this section in relation to a magistrate is
25 subject to any subsequent notice under this section in
26 relation to the magistrate.
27

1 **8. Section 12A inserted**

2 At the end of Part 2 Division 2 insert:

3

4 **12A. President may assign duties to magistrates**

5 (1) The President, by directions given from time to time to
6 a person who is a magistrate, may —

7 (a) specify which case or cases, or class or classes
8 of case, the person is to deal with; and

9 (b) specify which administrative duties the person
10 is to perform for the time being; and

11 (c) specify where, when and at what times to deal
12 with those cases or perform those duties.

13 (2) A direction given under subsection (1) must relate only
14 to the person's functions as a magistrate of the Court.

15 (3) A direction given to a magistrate under subsection (1)
16 does not limit the functions of the magistrate.

17 (4) A magistrate must comply with a direction given under
18 subsection (1).

19 (5) A contravention of subsection (4) is not an offence.

20 (6) The Chief Magistrate is not entitled, under the
21 *Magistrates Court Act 2004* or any other law, to direct
22 a person to perform functions as a magistrate of the
23 Court or in relation to the performance of those
24 functions.
25

1 **9. Part 8 inserted**

2 After section 53 insert:

3

4 **Part 8 — Transitional provisions for *Courts***
5 ***Legislation Amendment (Magistrates) Act 2021***

6 **54. Magistrates performing Children's Court functions**
7 **before commencement of *Courts Legislation***
8 ***Amendment (Magistrates) Act 2021***

9 (1) In this section —

10 ***Children's Court functions*** and ***dually appointed***
11 ***magistrate*** have the meanings given in section 11(1).

12 (2) This section applies to a dually appointed magistrate
13 who has performed Children's Court functions on a
14 full-time or part-time basis before the day
15 (***commencement day***) on which the *Courts Legislation*
16 *Amendment (Magistrates) Act 2021* Part 2 comes into
17 operation.

18 (3) Without limiting section 11, the President may give the
19 Chief Magistrate a notice under section 11(2) or (4) in
20 relation to the magistrate.

21 (4) If no notice has been given under section 11(2) or (4)
22 in relation to the magistrate, section 11 applies in
23 relation to the magistrate as if on commencement
24 day —

25 (a) the President, by notice under section 11(2),
26 informed the Chief Magistrate that the
27 President considers that, to deal with the
28 workload of the Court, it is necessary or
29 desirable for the magistrate for the time being
30 to perform Children's Court functions on the

- 1 basis on which those functions were performed
2 before commencement day; and
3 (b) the Chief Magistrate consented under
4 section 11(3)(a) to the magistrate for the time
5 being performing Children's Court functions on
6 that basis.
7

1 **Part 3 — *Magistrates Court Act 2004* amended**

2 **10. Act amended**

3 This Part amends the *Magistrates Court Act 2004*.

4 **11. Section 25 amended**

5 After section 25(5) insert:

6

7 (6) If a person holds office both as a magistrate of the
8 Court and as a magistrate of the Children’s Court, the
9 Chief Magistrate must not give a direction under
10 subsection (1) in relation to the person’s functions as a
11 magistrate of the Children’s Court.

12

13 **12. Schedule 1 clause 12 amended**

14 After Schedule 1 clause 12(5) insert:

15

16 (6) If a person holds office both as a magistrate of the Court and
17 as a magistrate of the Children’s Court, and the person
18 resigns from only one of those offices, the resignation is
19 taken to be a resignation from both of those offices.

20 (7) If, before the day (***commencement day***) on which the *Courts*
21 *Legislation Amendment (Magistrates) Act 2021* Part 3 came
22 into operation, a person held office both as a magistrate of
23 the Court and as a magistrate of the Children’s Court and
24 resigned from only one of those offices (the ***first office***) —

25 (a) the resignation is taken to have been a resignation
26 from both the first office and the other office; and

27 (b) the resignation from the other office is taken to take
28 effect on the later of —

29 (i) commencement day; and

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- (ii) the day on which the resignation from the first office takes effect under subclause (4).

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