COURTS LEGISLATION AMENDMENT (MAGISTRATES) BILL 2021

Second Reading

Resumed from 23 June.

MS M.J. DAVIES (Central Wheatbelt — Leader of the Opposition) [4.19 pm]: I rise to speak on this bill as the opposition spokesperson in this house. I note that the shadow Attorney General, Hon Nick Goiran, is in the Legislative Council. He, no doubt, will delve into this legislation in greater detail than I will. Nevertheless, with the indulgence of the Attorney General, I want to put on the record a few things and ask why the bill is so important? I want to know about the genesis of how the government arrived at deciding that this bill would be the most urgent piece of legislation—it is number one on the government's agenda—after returning from the winter break. The Attorney General has a number of other bills within his portfolio and I suggest that a couple of them are more significant than this one, so it perplexes me somewhat why this bill made it to the top of the list. Perhaps the Attorney General will provide some feedback on that. The bill was read in on Wednesday, 23 June, just before the house rose for the winter recess. As I said, it is listed as the government's priority—first cab off the rank—upon returning from a five-week break. The opposition has some questions to ask of, and seeks clarification from, the Attorney General, particularly about the consultation that was undertaken in drafting the bill and the motivation, as I said, for bringing these changes about.

The second reading speech refers to a reform package of legislation introduced way back in 2004 that at the time consisted of seven separate bills and, in part, authorised magistrates to exercise certain functions without moving in or out of any particular jurisdiction. The Attorney General outlined that the changes that were made are a result of the amendments which were quite significant at the time. He then came to the crux of the matter and advised the house that the reform package 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. Although there had been significant reforms back in 2004, for some reason the Attorney General of the day—I think it was Hon Jim McGinty—did not believe that those reforms were required. The second reading states —

> … 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 second reading speech, provided by the Attorney General, states —

> 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.

As I mentioned, that was not raised in 2004, so if could the Attorney General could provide some advice on why that is the case, it would be appreciated.

Mr J.R. Quigley: People were walking in front of me; I am sorry, Leader of the Opposition—as to what would be the case?

Ms M.J. DAVIES: Why did the Attorney General in 2004, when that significant reform was brought to the house, exclude that from that package of reform? The Attorney General said when he provided the second reading speech that that legislation was a significant reform, but that this was not anticipated at the time. The legislation has now been operating since 2004—by my count that is more than 17 years—and now we see this as an urgent piece of legislation.

I will touch briefly on each of the amendments and will start with proposed section 11. I have been abandoned by my team. I have a piece of paper that I need that is not on my desk here so at some point I will have to ask one of them to bring a letter that has been written to me. I hope that some of my staff are listening to me while I am reading through the remainder of my notes and provide it to me. Team?

New section 11 of the Children's Court Act will prescribe a process whereby the President of the Children's Court 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. The president will have absolute jurisdiction 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. As I understand it, currently, the president does not have that ability; I think this is being tested in the courts at the moment. Is it the other way around?

Mr J.R. Quigley: We don't know.

Ms M.J. DAVIES: The Attorney General is saying that he does not know. The court is testing it so the Attorney General will probably say that the court has not tested it, but that is what the legislation is seeking to remedy, as I understand it.

New section 12A of the Children's Court Act will provide the President of the Children's Court with a power to give directions to a magistrate in respect of the magistrate's functions in the Children's Court. In essence, this delineates

between the powers of the president and the Chief Magistrate to direct magistrates to the extent that they are performing functions in their respective courts. It also provides that when a person appointed as a magistrate of both the Children's Court and the Magistrates Courts resigns, they will be taken to have resigned from both offices. That is not the case under the current legislation. I am not a lawyer, Attorney General, so I would appreciate an explanation on why it is important that a person who resigns from one jurisdiction must automatically resign from another? Why does that cause an issue? I think for the purposes of clarity in this place and for those of us who are not lawyers it is important that we listen to Attorney General's explanation on that.

Look at that. My staff must have been listening. That file is exactly what I was after.

I understand that there are 50 to 55 magistrates in Western Australia and that seven are exclusively appointed to the Children's Court. Perhaps the Attorney General can clarify this, but it is my understanding that six of those seven have been directly appointed to the Children's Court and one has been appointed, or transferred, from the Magistrates Court. I imagine that magistrates who preside over the Children's Court need a certain level of expertise. They deal with complex and serious child development issues. It is quite a specialised area to deal with the challenging issues that come before these courts and it would require a specialised understanding.

I understand why we are here today, but I have a number of questions. The opposition and I are curious why, after 17 years and after the reforms that were introduced in 2004, the government requires this remedy. Why is this bill the first cab off the rank, as it were, upon returning from the winter break? It shows that the bill is a high priority for the government. We would like to know whether various stakeholders have raised this issue with the Attorney General and the government; and, if that is the case, have they required or asked for these amendments? If so, when were those concerns raised with the government and how was the government made aware of those concerns? Has the Attorney General received correspondence from the Chief Magistrate, the Chief Justice, the President of the Children's Court and magistrates who have served or are serving in relation to this matter? We would like to know who was consulted and what was the genesis of the legislation to arrive at these amendments? If the Attorney General is in receipt of correspondence from key stakeholders, as I am—I know at least one from one particular group—would it be possible for the Attorney General to share that information with us so we can better understand why these changes are required? I would be very interested to know what specific circumstances or cases would have been remedied or what situations would have been easily managed by these amendments. I understand that the opposition shadow Attorney General asked the same question in the briefing that he was provided but was not furnished with specific information. We would like to know who and what stakeholders were consulted.

This bill has raised some questions for us. I do not think that they are unreasonable questions for an opposition to ask. How did these amendments arrive in this place and what is the reason for secrecy? Is it because we have not been able to access information or has there been a misunderstanding? We now have a chance to put on the record and to share some examples of situations that have arisen that could have benefited from the proposed changes that are being put forward. That will help us to understand why this is the first bill that the government has brought forward.

I believe that the shadow Attorney General also requested a briefing from the Chief Magistrate on the legislation, but that has not been forthcoming. Again, I do not fully understand the relationship and whether or not the Attorney General has a role to play in that, but perhaps he could provide me with some advice on that as well. I do not want to sound like a conspiracy theorist—I talked earlier about the court case that is currently in play—but I think it would be remiss of the opposition not to note for the record a matter that the Attorney General referred to briefly in his second reading speech. I refer to the President of the WA Children's Court, Hylton Quail, who is being sued by one of the court's magistrates over a decision to move her back to the Perth Magistrates Court. I am aware that this legislation will not be applied retrospectively. Regardless of the outcome of the court case, if this legislation is put in place, presumably whoever is the president of the court will be provided the opportunity to have the last say on where magistrates can be shifted. Can the Attorney General confirm, or otherwise, whether that is in fact what prompted the legislation to be introduced? The President of the Children's Court is being sued by a magistrate of the Children's Court. I am not sure whether that is normal in legal circles. I do not know, because I do not move in those circles. Perhaps it is normal in legal circles for people who are sitting on the bench to sue each other, although I cannot imagine that it is normal. If that is abnormal, the question then becomes: Are we dealing with this legislation to try to resolve a personality conflict? Is it a workload management issue? Is it systemic? They are the questions the opposition has about why we are here dealing with this today. It would be hugely concerning to the opposition if we were trying to resolve a conflict between two individuals instead of a systemic issue that warranted our time in this house to move amendments to legislation that has operated since 2004. Given that the 2004 reforms were of considerable breadth—they are the Attorney General's words—explaining why these amendments were not made at the time would make it easier for us to find our way to supporting this legislation. That certainly is something that we are looking for.

The opposition has been contacted by the Aboriginal Family Legal Services. I know that it has written to the Attorney General as well because I was copied in on the same letter. It went to the Minister for Child Protection, Hon Simone McGurk; the Attorney General; our shadow minister, Hon Nick Goiran; and me. The Aboriginal Family

Legal Services has raised some concerns about the amendments. In short, it is concerned that if the drafting issues that it has raised are not addressed, the AFLS fears that the following outcomes will come into play. The Aboriginal Family Legal Services was quite succinct in its letter. It has listed four issues that it feels will come about as a result of the concerns it is raising. They are: firstly, that Aboriginal children and families will be disadvantaged in care and protection and juvenile justice proceedings in the Children's Court. Secondly, that the President of the Children's Court will have the potential to abuse the expanded powers in the Children's Court. Thirdly, that the principles of administration of justice and the independence of judicial officers in the Children's Court will be thwarted. Fourthly, that there will be confusion amongst magistrates about who is responsible for directing them and removing them. They seem to me to be quite serious concerns, and so the opposition is seeking assurances from the government and the Attorney General that there are answers to those questions and concerns. I think the Aboriginal Family Legal Services has provided a very succinct precis of its concerns.

With the indulgence of the chamber, I will read in part of its correspondence, because we are dealing with very serious issues that are before the Children's Court. I imagine that the Aboriginal Family Legal Services deals with some of the most difficult issues members could imagine coming before a court. The Aboriginal Family Legal Services is very respectful. The letter contains a summary of the AFLS's concerns and its respectful recommendations. The AFLS has not only put them on record, but also provided some solutions. The Aboriginal Family Legal Services letter states —

> **A. Clause 7 – Section 11 (Children's Court Act)**
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> Unique requirements of Magistrates in the Children's Court
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> If inserted, section 11 will broaden the power of the President of the Children's Court to have absolute discretion in determining if a Magistrate is or is not necessary or desirable to deal with the workload of the Children's Court, and to inform the Chief Magistrate of their decision. If the President no longer requires a particular Magistrate to perform Children's Court functions, the President may inform the Chief Magistrate accordingly.
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> AFLS contends that this section, if left in the *Bill,* will remove the strength of the Children's Court system, which is that Magistrates have exclusive jurisdiction and specialized knowledge on care and protection and juvenile justice matters. There are distinctive demands required of a Magistrate in the Children's Court, not limited to unique communication skills, understanding of child development and Indigenous culture, understanding of juvenile justice procedure, and the structural causes of off ending.[2] The Children's Court of Victoria, in their Statement of Priorities for 2019–2021, referred to the demand for their Magistrates to have knowledge of interrelated and adverse social issues when managing Children's Court matters, including the overrepresentation of Aboriginal and Torres Strait Islander families in the out-of-home care system, family and domestic violence, homelessness, mental health issues, fetal alcohol spectrum disorder, and alcohol and other drugs issues.[3] And, in a submission to the Inquiry into the Magistrates Court of Western Australia's Management of Matters Involving Family and Domestic Violence, the Children's Court of Western Australia itself reported that the court is "aware of the need to try to communicate with young people who suffer from trauma, impairment and other disabilities."[4]
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> AFLS is concerned that if the proposed amendments in the *Bill* are passed, they will threaten the growth of a team of specialized judicial officers in the Children's Court who are experienced, skilled and understand the complex needs of families who have come into contact with the child protection or juvenile justice systems, and, particularly for Aboriginal children and families, knowledgeable about the impact of intergenerational trauma. The demands of a Magistrate in the Children's Court are different to the demands of a Magistrate in any other court, and the requirements of a Children's Court Magistrate to understand and engage appropriately with families and children cannot be ignored.
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> AFLS is also concerned that if the proposed amendments in the *Bill* are passed, the traversing of Magistrates across courts will risk consistency in decision making, application of the best interests principle for children, knowledgeable oversight of the quality of evidence provided about parental capacity and whether children are at unacceptable risk of harm in care and protection matters, and ensuring that parents of children in care and protection matters are involved in decision-making.
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> AFLS recommends removal of the section from the *Bill.*

They are some serious issues. I have no doubt that the government has considered this as it brings this legislation forward, but I would imagine that the Aboriginal Family Legal Services quite regularly frequents the Children's Court and would have experience of the day-to-day issues that come before these magistrates. Certainly, I think the point AFLS makes about consistency and depth of knowledge in these complex matters is well made.

The second part of the AFLS letter is concerned with new section 11 and broadening the power of the President of the Children's Court to have absolute discretion in determining whether a magistrate is or is not necessary or desirable

to deal with the workload of the Children's Court and to inform the Chief Magistrate of the decision. Essentially, the premise of AFLS's argument is that this type of power should not rest wholly with the president of the court. Trying to understand the workload of the Children's Court is one of the reasons that we have asked for examples of being able to draw people in and out and whether that practice has changed over the last 17 years. Is there an excessive workload? Will this legislation assist in being able to manage it? What impact will it have on the remainder of the magistrates in that pool? Alternatively, are we trying to remedy a situation that has arisen as a result of a personality conflict? I truly hope it is not the latter. The AFLS contends in its letter to the Attorney General that the proposed broadening of the powers of the president has the potential for an abuse of power by the president, which is not consistent with the principles of the administration of justice or the independence of judicial officers.

The last issue raised in the letter relates to clause 6 and new paragraph (d) added to section 10(5) of the act. It refers to the consequences that will apply if a magistrate contravenes a direction of the President of the Children's Court when they are asked to shift courts. They will face the same possible consequences as they would if they contravened a direction of the Chief Magistrate. Aboriginal Family Legal Services WA goes on to say —

> Similar to our concerns with section 11, this proposed amendment to the Bill would create powers for the President consistent with the powers available to the Chief Magistrate in removing Magistrates, AFLS is concerned that if inserted into the *Bill*, section 12A would create an excessive expansion of powers of the President of Children's Court, beyond the scope of the President, and infringing on the powers available to the Chief Magistrate in directing Magistrates, per the *Magistrates Court Act 2004*.
>
> AFLS contends that the proposed broadening of the powers of the President has the potential for the abuse of power … and is not consistent with the principles of administration of justice or the independence of judicial officers.
>
> AFLS recommends removal of this section from the *Bill*.

I have outlined what AFLS believes will happen if these recommendations are not taken on, and I look to the Attorney General to provide an explanation and some comfort to stakeholders like the Aboriginal Family Legal Services on how those concerns will be addressed or whether he believes they are unfounded. I think the Attorney General can surmise that the opposition has some concerns with the proposed legislation. That has been exacerbated by the fact that the shadow Attorney General has requested some information from the Attorney General's office on briefings from officers of the court that might have provided insight on some of the problems that the government is seeking to remedy with the amendments, but it has not been forthcoming. We simply seek to understand why this legislation is so urgent now and why it has become a government priority. The opposition is not going to oppose the bill. I will have some questions on particular clauses, and I expect that the shadow Attorney General in the other place will have many more. I think the bill might even warrant consideration by the Standing Committee on Legislation in that house. In fact, I know that the Legislative Council has changed its standing orders to limit the speaking times Council members have to interrogate bills and that the Leader of the House has encouraged members to utilise the committee system to go through these issues when they are contentious. I hope the government will consider that favourably when the bill gets to the Legislative Council. Of course, we do not have the numbers to achieve that outcome, but it would not harm anyone for the bill to go to the legislation committee to give Council members the opportunity to interrogate it to a greater depth. With that, I look forward to the Attorney General's response.

MR J.R. QUIGLEY (Butler — Attorney General) [4.42 pm] — in reply: Thank you, Leader of the Opposition. Let me try to deal with the opposition's concerns serially. I do not know what was in the then Attorney General's mind in 2004. He was a brilliant Attorney General, but I cannot tell members exactly what was in his mind in relation to this particular matter in 2004. The Courts Legislation Amendment (Magistrates) Bill 2021 does no more than give the President of the Children's Court the same sort of authority over his jurisdiction that the Chief Magistrate would have under section 25 of the Magistrates Court Act. For example, under the Magistrates Court Act, the Chief Magistrate can call one of these magistrates back from the Children's Court at any time they choose, or under section 25 of the Magistrates Court Act, they can send a magistrate to sit in Kununurra. The magistrate might not like it, but that is the statutory power of the Chief Magistrate. The Chief Magistrate can order someone to sit in the Children's Court or order someone to come back from the Children's Court. Some of the issues articulated by the Aboriginal Family Legal Services are already in the legislation. The Chief Magistrate now can direct magistrates in and out of the court and can send a magistrate to sit in any court in Western Australia, and does so regularly. It is on almost a monthly basis. That is how often we appoint magistrates. They are retiring and we are expanding the bench. They get new appointments, and off they go.

At every magistrate's appointment I have attended at Government House, Leader of the Opposition, the magistrate has received two commissions: a commission to sit as a stipendiary magistrate and a commission to sit as a Children's Court magistrate. It is not an exclusive commission. They take two oaths: to sit as a stipendiary magistrate and as a Children's Court magistrate. The necessity for that, of course, is, and the Leader of the Opposition mentioned this, that there are 55 magistrates, or thereabouts—I have lost count, but I think the Leader of the Opposition was right in that order—sitting all over Western Australia. Those magistrates out in the regions, at Kalgoorlie and

Albany—the Albany magistrate comes up to sit in Narrogin—sit as Children's Court magistrates. First of all, they will convene the court as a Children's Court, and run it according to the Children and Community Services Act, sitting as a Children's Court magistrate. Later on, they will adjourn and resume as a petty sessional magistrate hearing adult charges. Therefore, they are given two commissions: one as a Children's Court magistrate and one as an adult court magistrate.

Similarly, when a District Court judge is sworn in—I was at the swearing-in of one the other day—they are given two commissions as well. They are sworn in as a District Court judge and as a Supreme Court judge. In answer to the Leader of the Opposition's earlier question, if a District Court judge who has been sworn in as a Supreme Court judge and a District Court judge took it upon him or herself to resign just the District Court commission, that would not leave them as just a Supreme Court judge, and they would not have elevated themselves by resigning from the District Court and saying, "Well, I'll keep hold of the other one, thanks." That is sort of what we will have dealt with in new section 12A of the legislation, that they are given this dual appointment.

When was this issue first raised with me? It was first raised with me in, I think, 2017, but not in the exact way that it is presented at the moment. The limitation on the administrative powers of the president was first raised with me, as I recall, on one of my first visits to the Children's Court by then District Court judge and President of the Children's Court His Honour Judge Reynolds. He is a very highly regarded President of the Children's Court. He said, "I might be the President of the Children's Court, but my powers here are somewhat constrained. I don't have any administrative powers over my bench." Judge Reynolds retired, and I had a very similar observation put to me by the new president. The President of the Children's Court is a District Court judge, as members would appreciate. The next President of the Children's Court was Her Honour Chief Judge Wager. She was President of the Children's Court and has now become our second female Chief Judge of the District Court.

Ms M.J. Davies interjected.

Mr J.R. QUIGLEY: Sorry?

Ms M.J. Davies: I might need an organisation chart!

Mr J.R. QUIGLEY: When Judge Reynolds retired, Judge Wager went over and became the president, and she was doing a fantastic job. Then she was promoted, if you like, or moved to Chief Judge of the District Court. Then another judge of the District Court had to take her place and become president—that is, Judge Hylton Quail.

Magistrates are different from judges, because they not only do not get a judicial pension but also, historically, came from the public service. They do not come from there anymore; they are legal practitioners. When they are appointed, Leader of the Opposition, they are not chosen for office by the Attorney General. It is an advertised position. There is a panel and they are interviewed, and, ultimately, a recommendation comes forward. That is the case for the lowest bench of the court system. At the highest bench of the Supreme Court, it is up to the Attorney General to bring a recommendation forward for who will be Chief Justice. It is not an advertised position; it is an executive choice. That is what occurs with judges.

The Children's Court is a specialist court. The leader of this specialist court is not someone who has been there forever, leading the Children's Court as a career; it is a District Court judge. Judge Quail will not be forever the President of the Children's Court but will go back to the District Court, and a new judge from the District Court will come to take over as president. Those judges hear the more serious cases involving children and have to take into account all sorts of considerations involving the welfare and sentencing of children. That is because in the sentencing of children, the child's interests are pre-eminent. I do not want to get too stridently political here, but the Aboriginal Family Legal Services has expressed concern about this legislation. It need not! This bill is only about the administration of the court; it is not about the exercise of the power of any judge or magistrate.

Let me take Judge Quail as an example. When we came to office, there were about 210 young people in Banksia Hill Detention Centre. The Leader of the Opposition may have been out there. Tragically, about 80 to 85 per cent of children at the centre are Indigenous. Under Judge Quail's leadership, and I think it started under Judge Wager, that number has been as low as 80 and has bounced up to 105, as different care and protection orders and diversions are used for these young children. Once they are captured within the criminal net of the imprisonment system, it has been proven that they do not get out of it—they move from Banksia Hill to Hakea Prison. We have to try to divert them early. In response to comments by and correspondence from the Aboriginal Family Legal Services, I would say that there has been a huge change and step forward in dealing with these young people. It is for the head of jurisdiction to say which person will hear which case in terms of lists, but not in terms of outcome. This legislation does not interfere with judicial independence at all. It deals only with administration. This government, and me in particular as Attorney General, has been at pains to stand aside from criticism of independent judicial decisions. When decisions have been made in relation to dangerous sex offenders or the sentencing of serious offenders, in four and a half years I have never come out and sought to direct or criticise the judiciary. I respect their total independence.

Let us look at what has happened at the Children's Court. The Leader of the Opposition would find it worthwhile going over the therapeutic model that Judge Quail introduced. I have been over there. It is wonderful. There was a young mother from South Hedland whose baby was probably under 12 months old. She had a methamphetamine problem and had broken into houses. She was not imprisoned at that time but the department took her child into care. Under the therapeutic model that Judge Quail had introduced, the judge did not sit at the bench but sat down in the body of the court. I went there with Minister McGurk. The family were flown down from South Hedland and they were there with the mum, and there were lamingtons and cups of tea on the judge's table. It was more like a family discussion with this young mother as to how she would be reunited with her baby and how to help her during those early months of motherhood. It was an eye-opener for me to see a court working in this way, under what Judge Quail calls his new therapeutic model. I encourage the Aboriginal Family Legal Services to take their concerns to His Honour rather than to me as the Attorney General. This legislation will deal only with the administration of the court.

The Leader of the Opposition mentioned a particular case involving Magistrate Crawford. This does not come down to personality. This case was highlighted and sharpened because of the pleadings and the mediation conferences involved. These are confidential and I cannot disclose them; and, by the way, they were not disclosed to me. The President of the Children's Court does not have the power to direct a Children's Court magistrate to go and sit in the Fremantle Children's Court. It is remarkable. We are about to open five new courthouses at Armadale and there will be a need for a Children's Court magistrate to sit at Armadale because of the demand there. The President of the Children's Court does not have the power to make the direction, "I direct you to sit at Armadale."

Ms M.J. Davies: The Chief Magistrate does not have the power?

Mr J.R. QUIGLEY: The Chief Magistrate has that power, but he is sitting in a different court in charge of 55 magistrates. As I recall from the speech—I might stand to be corrected—at the welcoming ceremony for our wonderful Chief Justice Hon Peter Quinlan, SC, he said that under the Supreme Court Act, he is not the Chief Justice of the Supreme Court but the Chief Justice of Western Australia. The legislation was changed so that he is the Chief Justice of Western Australia, but under the act he has next to no powers. The judge can be told, "There is a three-month trial in Kununurra, and I am listing you there", and the judge goes off to Kununurra to hear the three-month trial. It is the same with the District Court.

The President of the Children's Court, however, does not have the same authority, if you like, of goodwill over his or her, in the case of Julie Wager, own bench, because they are all secondees from another court. They fall under the power of the Chief Magistrate, and if the Chief Magistrate takes a different view from the President of the Children's Court about the best use of magisterial resources, there is nothing the President of the Children's Court can do. This case has brought that into sharp relief. No-one had ever thought of that before. Everyone got on and did it like the Chief Justice does, but no doubt the pleadings in this case brought this into sharp relief, and it needed clarification.

The Leader of the Opposition asked about consultation. The consultation was with stakeholders, but not with the Aboriginal Family Legal Services or Developmental Disability WA. I think the Leader of the Opposition mentioned or had a letter from another stakeholder—those letters. We did not consult with them, because they were not to do with the administration of the court. If there is a particular way the court is operating, and this is true of the Supreme Court, go to the head of the jurisdiction. I know that there have been cases pleaded before the Supreme Court, and in one case, I will not mention their honour by name, it was over two years before judgement was delivered. Infamously, when the judgement was delivered, it was a very, very short judgement. It was overturned on appeal, but it was a very short judgement. In another case, which was an appeal to the Supreme Court in its capacity to hear a single judge-alone appeal, the case went before the Supreme Court judge and, I kid members not, it took three years for judgement. The litigants could not come to the Attorney General. I cannot interfere with the court. They have to go to the Chief Justice. The judge concerned must have had writer's block, but eventually with the advent of a new Chief Justice who was known for his—what could I say?—pastoral approach to his bench, a judgement was soon produced, and I am not aware of it having been overturned.

Mr S.A. Millman: The problem with that, Attorney General, is that if you are a litigant in those proceedings, you worry about prejudicing your client's position by complaining to the court.

Mr J.R. QUIGLEY: You do not want to upset the bench, that is for sure; you go with the court!

If some of these stakeholders are concerned about the way the Children's Court is proceeding and they have written to me, I have written them back urging them to see Judge Quail. Judge Quail is not a fearsome man, except on the dance floor, where I have seen him! He is not a fearsome man. He is a man of bonhomie and good humour. He is not a person to be feared in any sense.

Ms M.J. Davies: He will not be the President forever, as you have already said.

Mr J.R. QUIGLEY: No, he will not be.

Ms M.J. Davies: And we do not make decisions based on the individual in the role at the time.

Mr J.R. QUIGLEY: That is right, and that is why it is up to Attorneys to choose the right people to go there. When I first met Judge Julie Wager, the Chief Judge of the District Court, she was junior counsel assisting on the Royal Commission into Aboriginal Deaths in Custody back in the early 1990s. She worked with the Aboriginal Legal Service and went to the bar. She inaugurated the Drug Court, where she was dealing with the drug addicts in a sort of pastoral way. Then she went to the District Court and then became President of the Children's Court. Before her, Judge Denis Reynolds was renowned for his approach to children. He had to retire. He is still a great advocate for children. He writes to me regularly concerning the age of criminal responsibility for children as young as 10 and 11 years of age, which is what year? The Leader of the Opposition visits schools in her electorate.

Ms M.J. Davies: Eleven years old is year 6.

Mr J.R. QUIGLEY: That is what I am saying, and 10 years of age is year 5. The question is about those 10 and 11-year-olds. At the moment, Attorneys General around Australia are looking at whether 10 and 11 years of age is an appropriate developmental age to be arrested and incarcerated or whether those children should be diverted into some other stream at that stage of care. Judge Reynolds has not just gone to the golf clubs, he has gone to the fountain pen as well and keeps on my case. He is a wonderful, pastoral man.

I want to say that this legislation should not be distilled into a case of personalities, which it is not. However, as I mentioned in my second reading speech, there was a case of a magistrate suing the president. That is extraordinary.

Ms M.J. Davies: I don't know! It seems extraordinary to me, but I don't know what you legal types do on your days off! It is extraordinary to me that you have somebody from your own bench suing you.

Mr J.R. QUIGLEY: It is absolutely extraordinary. It would be like the Leader of the Opposition, when she was in cabinet, suing the Premier because she did not like what he had said.

Ms M.J. Davies: Right, I have some sense of the gravitas.

Mr J.R. QUIGLEY: It is like the Leader of the Opposition when she was in cabinet suing the Premier. There is only one other case I am aware of and that was when the Chief Magistrate in Brisbane moved a magistrate to Townsville or somewhere up in the north of Queensland and the Chief Magistrate was sued. I think it went the whole way and it was found out that he could not be sued. There was immunity for the Chief Magistrate. It went all the way to the High Court. There was a lot of talk within the legal bubble, but outside of the legal bubble no-one would have known it was happening. In this particular case, before the pleadings in the case, it had never occurred to me, even though Chief Judge Reynolds and Chief Judge Wager had said to me, "We've got no administrative control over here. It all lays with the Chief Magistrate of another court. I'm the boss here, but all the authority and all the directive authority is elsewhere." I thought: yes, okay, but things are rolling along. It is not something I ran with straightaway. But then, when it came to the pleadings, I sat down and thought: wow, this is really bringing it into sharp focus. There was consultation. I did not undertake the consultation; I thought it best in these circumstances for the WA Solicitor-General to do that. If I can just put in a little plug here, I think that when Mr Palmer challenged our border closure, the extraordinary performance of Mr Joshua Thomson, SC, our Solicitor-General, marked him out as Australia's best Solicitor-General in a number of respects. I have never come across such a hardworking or knowledgeable man. I set him about the task of doing the consultation.

Mr Joshua Thomson came back to me after consulting with the Chief Judge in the Magistrates Court, the Chief Judge in the District Court, the Chief Justice of Western Australia and the Chief Magistrate, and those consultations are private consultations. We do not discuss what heads of jurisdictions might say. The Solicitor-General came back with drafting instructions for a bill. Members know what the process is: we take our drafting instructions to cabinet; I got this recommendation back from the Solicitor-General with these drafting instructions, permission to draft, and off it goes to the Parliamentary Counsel's Office, which drafted the bill that is before us this afternoon.

As to the other point that the Leader of the Opposition raised about urgency, I have many urgent bills. I had them in the last term as well. I have that many urgent bills; which one is more urgent? This seemed like a small bill. There is a trial listed in this matter of Crawford, but that is not for months. It is not crashing to get this through before that trial. That trial, I think, is at the end of October, three months away. The next bill on the notice paper is another one that will have them hanging off the rafters to listen to—that is, the Legal Profession Uniform Law Application Bill 2021.

Ms M.J. Davies: I am learning a lot about the legal profession, Attorney General, I have to say!

Mr J.R. QUIGLEY: I am sure there will be so much interest in it that the uniform legal profession bill will have them hanging off the rafters, Leader of the Opposition! That will take Western Australia into the national profession. We call it a national profession; at the moment, there are only two states in it—Victoria and New South Wales—but when we go in, it will start to create a critical mass.

As a side issue, when I went over to negotiate the national legal profession with the wonderful Liberal Attorney General from New South Wales, a very urbane man, Mr Mark Speakman, SC, I sat down in his office for a teleconference with the Labor Attorney-General in Victoria. I said, "We'll come in on one condition. I've got Mr Thomson here, and I'm doing the politic talking. We will come in on one condition." He asked what that was, and I said that on any decision made in this national legal profession, Western Australia gets a right of veto. He said, "What?" I said that we want a right of veto. We have been in these national schemes before—to wit, the GST—whereby we went in with good intentions that we were going into a national thing; then, later on, when it gets down to the fine print, we have to live with it. I said that we want it in black and white that WA has a right of veto. He said that he was not sure. The meeting was in one of those office towers. I said, "Mr Thomson and I will go and take a cup of tea downstairs. You can talk to Victoria. You can ring us up. If you give us right of veto, you won't hear from me for the rest of the day. Mr Thomson will talk about the rules of the legal profession. If there is no right of veto, we're on the midday flight home." He is a wonderful Solicitor-General, and he consulted all these heads of jurisdiction and said, "Attorney, this is the solution."

It encourages, as I said in the second reading speech, comity between the president and the Chief Magistrate. But the person with his finger on the pulse at the Children's Court is the president, watching it day in and day out, how his therapeutic court is going, who should be where. He worked it out. He worked out the limit of his powers. With all the rooms full, he could not give a direction to any of the judges to go and sit in Fremantle, so, humble man that he is, the boss went and sat in Fremantle. We had the President of the Children's Court not sitting in the Children's Court, but sitting in Fremantle. He cannot say, "Well, this is the way we're going to organise it, you're going to go and sit in Fremantle", so instead of trying to bully or stand over the other judges, he said that he would go and sit in Fremantle. Problem solved. It did not seem to me like the best solution.

Now, as I said, we will be opening up courts in Armadale. Who is going to go and sit in Armadale? Should the president have to go and discuss and negotiate with the Chief Magistrate which magistrates are sitting in the Perth Children's Court? No; the President of the Children's Court should be able to say, "This week, you'll be in Armadale." We are not seeking in any way at all to interfere with the independence of the judiciary. We are trying to facilitate the administration of the Children's Court by the head of the jurisdiction. That seemed to make sense to us.

I do not know how many questions the Leader of the Opposition raised in her contribution to the second reading debate, for which I thank her. This is my reply. I am happy to go into the consideration in detail stage and answer further questions.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

Consideration in Detail

Clause 1: Short title —

Ms M.J. DAVIES: I refer to the short title of the bill. I know this was alluded to in the Attorney General's second reading speech and again in his response to the second reading debate, but —

Mr J.R. Quigley: Which clause?

Ms M.J. DAVIES: The short title, clause 1. Does the bill need to be passed within any set time frame? Is there any urgency with timing? I think the Attorney General may have alluded briefly in his response to urgency in bringing it forward, but perhaps he can explain whether there is any requirement for it to be passed by a particular time.

Mr J.R. QUIGLEY: Clause 1?

Ms M.J. Davies: In terms of the passage of the bill, do we need to pass it by a particular time?

Mr J.R. QUIGLEY: Today! It is a short bill!

Ms M.J. DAVIES: I note that the Attorney General spoke about this in his response to the second reading debate, but could he reiterate it? In relation to the reason for bringing this bill on, it was in fact a conversation with the President of the Children's Court around the limitations in their management of their bench that brought this legislation on in 2017. We have now had further consultation. Can the Attorney General just give us a potted history of the journey?

Mr J.R. QUIGLEY: It was evolutionary. I do not have notes of the conversation I had with His Honour Judge Reynolds or with Judge Wager, but it was evolutionary, with both of them indicating to me the limitations on their administrative powers within the court that they were responsible for.

Ms M.J. DAVIES: Can the Attorney General confirm that there has not, outside those conversations, been any lobbying from third parties or stakeholders for those changes to be brought about?

Mr J.R. QUIGLEY: Parties? Does the member mean parties to litigation?

Ms M.J. Davies: Third parties—any stakeholders that you deal with in your world.

Mr J.R. QUIGLEY: Oh, I see; stakeholders. Well, the Solicitor-General; but no, it has been within the bubble of the court administration.

Ms M.J. DAVIES: Can the Attorney General perhaps just explain why he does not feel it is necessary for us to understand his decision to have the Solicitor-General do that consultation? Can he explain why we cannot have any knowledge of who he consulted with or what the outcome of those consultations were?

Mr J.R. QUIGLEY: The Solicitor-General often conducts consultations with heads of jurisdictions for me or, rather, for the Attorney General. I like to do that just to keep things at arm's length, so that the executive is not leaning on the judiciary. I find that for formal matters, having the Solicitor-General between the executive and the judiciary protects that independent relationship. I am not above sharing a glass of red and talking about the Dockers or something like that with their honours at a welcoming ceremony, but this was formal—to do with the administration of the courts—and it was important that the Solicitor-General went to see these high office holders to discuss that formally. But I did have conversations with the heads of the Children's Court, and ultimately with Judge Quayle, as I already explained in my second reading speech.

Ms M.J. DAVIES: Perhaps, then, if the Attorney General was not privy to the discussions that the Solicitor-General had in determining whether or not this is required, how does the Attorney General lend his assessment, as the chief law officer of the state, to the necessity or urgency of that matter? Is he simply taking the advice of the Solicitor-General without understanding the context of the information he has received or conversations that he has had? How does that interplay? At the end of the day, the Attorney General is making a recommendation to the Parliament to change the way that the Children's Court operates and has operated for some time under the current methodology.

Mr J.R. QUIGLEY: I listen very closely —

The ACTING SPEAKER (Ms K.E. Giddens): Attorney General, can I just remind you to please seek the call through the chair. Thank you.

Mr J.R. QUIGLEY: Sorry. I listen very closely to our Solicitor-General—very closely. After he has done all the consultation, he sits down and says, "Here's the problem we're faced with, Attorney. Here's my recommended solution." In my experience thus far, he has never let me down on either consultation or advice. Today—this even made *The Jerusalem Post*!—I was congratulated on my appointment of Marcus Solomon, SC, the first Orthodox rabbi of the Jewish faith appointed to the Supreme Court. I get these accolades, and how I get these accolades is by sitting down, having a cup of tea in my office, and listening to the sage advice of my Solicitor-General, who says, "This would be an excellent appointment." I listened to him and made the appointment, and I do the same here.

Ms M.J. DAVIES: Can the Attorney General confirm that this has no retrospective application in terms of the case we were referring to previously, and that there are no clauses that include —

Mr J.R. QUIGLEY: It does not have retrospective application; it has only forward application, into the future. I want to add nuance to that answer. The only retrospectivity is to be found in clause 12, "Schedule 1 clause 12 amended". If a magistrate of the court resigns prior to the commencement of the legislation, clause 12 will still have effect. If he resigns from one commission prior to the starting date, it will be retrospective in that respect. If the resignation from one commission has taken place before royal assent, then the deeming provision will apply.

Clause put and passed.

Clauses 2 to 5 put and passed.

Clause 6: Section 10 amended —

Ms M.J. DAVIES: I understand that this is one of the clauses that the Aboriginal Family Legal Services queried. In the first instance, could the Attorney General explain what it will mean to amend section 10, and I will go from there?

Mr J.R. QUIGLEY: Clause 6 will amend the deeming provision in section 10(5) of the Children's Court of Western Australia Act. Section 10(5) of the Children's Court act has the effect of applying certain sections of the Magistrates Court Act with modifications to the Children's Court act and magistrates performing functions in the Children's Court. In summary, the amendments in clause 6 provide that the deeming effect of section 10(5) will not apply to proposed clause 12(6) and (7) of schedule 1 of the Magistrates Court Act, which will be inserted by clause 12 of this bill and which concerns a resignation. The proposed clauses intentionally distinguish between the Magistrates Court and the Children's Court. A magistrate will face the same possible consequences for contravening a direction of the President of the Children's Court that they could face for contravening a direction of the Chief Magistrate; namely, the magistrate may face suspension. Under the Magistrates Court Act, if they are told to go to Kununurra and they do not go to Kununurra, as a consequence they can be suspended. This will provide the same consequence to a magistrate not complying with a direction of the president. If a magistrate is appointed to the Children's Court, the Attorney General must consult with the President of the Children's Court and the

Chief Magistrate prior to issuing a show-cause notice in respect of a proposed suspension. That is because they have dual commissions.

Ms M.J. Davies: It will have an impact on the other jurisdiction.

Mr J.R. QUIGLEY: Yes. For example, if a magistrate misbehaves and they want an inquiry into the magistrate and during the inquiry they think that the magistrate should be suspended, the Attorney General has to consult with both the president and the Chief Magistrate. This is the consequence we want to avoid: the Chief Magistrate might say, "I want to consult with the Attorney General because I'm going to suspend the magistrate for something he did on a drink-driving charge." But it will also affect the commission in the Children's Court because they have that dual commission, which I explained. Before there can be a suspension, the Attorney has to consult with both heads of jurisdiction.

Ms M.J. DAVIES: The Attorney General gave an outline of the Chief Justice, was it?

Mr J.R. Quigley: Sorry?

Ms M.J. DAVIES: I need to get the name right. The Attorney General was saying that the Chief Justice operates on goodwill, essentially, and this is, essentially, what the President of the Children's Court has to do at the moment —

Mr J.R. Quigley: The Chief Magistrate.

Ms M.J. DAVIES: — in terms of shifting the magistrates around. The Attorney General is trying to remedy the fact that at the moment, the President of the Children's Court does not have the power to shift people on their bench. Am I right that they have been doing that on the basis of goodwill and management for the last 17 years or since the reform package was brought through or forever? It seems that people have been able to manage it and I wonder why it has become such an issue now and why we are not still relying on that goodwill. Is it just neater or tidier? The Chief Justice has to still operate like that. We will be giving the president powers that the Chief Justice does not have.

Mr J.R. QUIGLEY: Under section 25 of the Magistrates Court Act, the Chief Magistrate already has powers that the Chief Justice does not have. It seems that the higher we go up the totem pole, the more we are acting on authority. As the Leader of the Opposition knows, we do not have provision in our Constitution for a federal cabinet. The higher we go up the totem pole, there is reliance on convention and goodwill. As we go down through the public service, we rely upon more rules and regulations. As I said, the history of the magistracy was in the public service until the Magistrates Court Act. However, at the time of the Magistrates Court Act proclamation, the Chief Magistrate was vested, under section 25, with the powers to issue direction, and failure to obey a direction could result in, amongst other things, suspension. I am saying that if a magistrate is sitting on that bench, give both heads of jurisdiction the same power.

Ms M.J. DAVIES: Essentially, two different entities will have charge of the same people. Will that not create confusion? I think that will create more confusion. Who will have the final say in that? Will it be the Attorney General in terms of the consultation? Is this saying that the Attorney General will preside over that or will they have to consult and then they will make the final decision as the President of the Children's Court or the Chief Magistrate?

Mr J.R. QUIGLEY: The head of the jurisdiction will get to make the final decision—we will get to that in proposed section 11. The head of the jurisdiction can issue a direction: "You go and sit in the Magistrates Court." He will be able to give that direction. Recruiting a magistrate to the Children's Court will be done in consultation with the Chief Magistrate of the Magistrates Court. There has to be cooperation and comity. They have to be able to consult together, but someone has to be able to make the call. It will not be the Attorney General; we do not want any part of that. That is the independent role of the judiciary. We will just set up a framework for them.

Clause put and passed.

Clause 7: Section 11 inserted —

Ms M.J. DAVIES: Can the Attorney General explain exactly what this clause is seeking to achieve? It is rather lengthy. Can the Attorney General explain the changes that will be brought about as a result of this clause?

Mr J.R. QUIGLEY: Clause 7 inserts new section 11 in the Children's Court of Western Australia Act. The question was about this new section and its workings.

Ms M.J. Davies: Correct. Thank you, for the clarification, Attorney General.

Mr J.R. QUIGLEY: Proposed section 11 prescribes a process whereby the President of the Children's Court 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. If the president needs a magistrate, has identified a magistrate and needs them on a part-time or full-time basis, the Chief Magistrate may consent or refuse to release the magistrate resource. If there is consent, the Chief Magistrate must take into account that a magistrate will be performing Children's Court functions when giving directions to the magistrate in respect of their Magistrates Court functions. Therefore, when

the Chief Magistrate consents to the person going to the Children's Court, they must take into account when giving any directions to that magistrate that they can only do so in respect of their performance of Magistrates Court functions.

Proposed section 11 also sets out the process by which the president can return the magistrate resource when he or she considers that it is no longer necessary or desirable for the magistrate to continue to perform the Children's Court functions on the basis that previously applied. This is to reflect that the appointment of magistrates to the Children's Court is for the purpose of dealing with the workload of the court. A two-way function is provided for there. The president can inform the Chief Magistrate that they need a particular magistrate to deal with the workload of the court either on a part-time or full-time basis. It is up to the Chief Magistrate to consent or refuse to release them. But if there is consent, the Chief Magistrate must take into account the fact that the magistrate will be performing Children's Court functions when giving directions to the magistrate in respect of the residual Magistrates Court's functions—that is, if he consents to a magistrate going. They do not have to. The reverse, as I said, sets out the process by which the president can then return the magistrate resource when he or she considers it is no longer necessary or desirable for the magistrate to continue to perform Children's Court functions on the basis that previously applied. This is to reflect that the appointment of magistrates to the Children's Court is for the purposes of dealing with the court's workload.

Ms M.J. DAVIES: Are there any limitations on how many requests the President of the Children's Court can make? Obviously, there is a limited pool. I wonder what that methodology is and that if there is a limitation, what will they have to take into consideration when making the request, and those types of issues?

Mr J.R. QUIGLEY: There is no limitation. He can keep on knocking on the chief's door until his knuckles bleed. There is no limitation on it. If the Chief Magistrate says, "No, you are not having that particular magistrate", it would be silly to go back and keep on asking again. But he or she might come back and say, "You won't give me that one; can I have that one?" There is no statutory limitation. We are trying to do it in a minimalist way. We are trying to give them the authority so that they will still work together. We are trying to vest the head of jurisdiction authority, the sufficient authority, to manage the workload of their court at the same time as promoting comity between the two to say, "Yes. That's a good choice; you can have him or her." But if that person goes to the Children's Court, whilst they are at the Children's Court, the Chief Magistrate can only give directions in relation to their functions as an adult magistrate and not in relation to a Children's Court magistrate.

Ms M.J. DAVIES: Out of curiosity, if the president asks for a magistrate under this and the Chief Magistrate says no, does the president have any recourse? Who would he go to if he is unhappy with the response?

Mr J.R. QUIGLEY: It will come back to the Chief Magistrate and a request for a different magistrate. If the Chief Magistrate says, "I haven't enough magistrates here to facilitate your request. It doesn't matter who you are asking for. We are so busy; our list has blown out. I cannot give you a magistrate", the president, through the Solicitor-General, will come to executive government for the appointment of a new magistrate, who, when appointed, will be given a dual appointment.

Ms M.J. DAVIES: I have learnt something. The Attorney General mentioned that there is a process for returning the magistrate. I think the Attorney General's words were "no longer needed or desirable". Is that because it is driven by a workload issue? What happens if there is a personality conflict between people? Do they have to have grounds; does a Chief Magistrate have to have grounds to say no or are they limited by virtue of the workload, the request and whether it is reasonable?

Mr J.R. QUIGLEY: If the Leader of the Opposition looks at proposed section 11(4)(a), she will see that the decision is always grounded in the workload of the court. Proposed section 11(4) states in part —

> … by written notice, inform the Chief Magistrate —
>
> (a) that the President considers that, to deal with the workload of the Court, —

That is the predicator —

> it is not necessary or desirable …

If I can interpolate there, for the workload of the court —

> for the time being to perform Children's Court functions at all; or
>
> (b) that the President considers that, to deal with the workload of the Court —
>
> (i) it is not necessary or desirable for the magistrate for the time being to perform Children's Court functions on the basis that previously applied …

The decision is always grounded in the workload of the court. I think the Leader of the Opposition asked me before about personality clashes.

Ms M.J. DAVIES: I am just trying to determine that the decision has to be based on workload, as opposed to the president having taken either a like or a dislike to someone and has sent them to outer Siberia. There are no grounds to do that. The government is giving the president a power that the president does not have currently, although

I accept that there are similar powers in other areas. Does the process for sending back, or requesting, come from a workload issue?

Mr J.R. QUIGLEY: I would not call a direction given under proposed section 11(4) to go and sit in Northam as being sent to Siberia.

Ms M.J. Davies: I never suggested Northam was Siberia!

Mr J.R. QUIGLEY: I would not suggest that. Actually, it could be a bit of a win.

It is grounded, as I have said, in workload, but I draw the Leader of the Opposition's attention to proposed subsection (6). Maybe I am getting ahead and should wait until the Leader of the Opposition gets there.

Ms M.J. Davies: That is all right.

Mr J.R. QUIGLEY: In determining whether to give a notice under proposed subsections (2) or (4) in relation to a dually appointed magistrate, the president has absolute discretion and is not required to take into account seniority, length of service of a magistrate or any other matter. The president has absolute discretion about who to transfer out in relation to the workload if the magistrate is not required for the workload of the court. There is no pecking order like the unions have of last on, first off. The Leader of the Opposition must have heard of that. There is not that sort of a pecking order. Proposed subsection (6) gives the president the discretion of having regard to the workload of the court when deciding who is not required.

Ms M.J. DAVIES: Let us stay on proposed subsection (6). The president will have absolute discretion and will not be required to take into account the seniority or length of service of the magistrate or any other matter. One of the issues that the Aboriginal Family Legal Services raised and that I spoke about during the second reading debate was the specialist skill set of people who serve on the Children's Court, or the necessity to have that skill set. Does the Attorney General see it as a risk that we are potentially enabling a dilution or a change? Is it a benefit or will there be a negative outcome of potentially losing some of that expertise? What sort of expertise, if any, is a person required to have? I know the Attorney General said that everyone is given a dual commission and that everyone can sit on the Children's Court, but I would assume that it comes with some specialist skills, and there are those whom have a particular interest, history and experience that would be of benefit in that jurisdiction. Perhaps the Attorney General could explain to me whether or not a person has to have a particular skill set to be brought into, or considered for, that circuit.

Mr J.R. QUIGLEY: That is always subjective and it is not based just on seniority. I can remember that a judge was appointed to Western Australia's Supreme Court whose appointment took the judiciary's breath away when he was appointed. That decision took its breath away because he was only about 36 or 37 when he was appointed. I am referring to Mr Justice James Edelman. Actually, it took everyone's breath away when he was appointed the first fully tenured Professor of Law of Oxford University at about the age of 34—the first in 425 or so years. It took everyone's breath away. A few years later, he was appointed to the Federal Court and now he sits on the High Court. So it is not a question of seniority; it is a question of subjectively judging aptitude. Attorney-General Christian Porter saw a superstar and called it right.

If I can just turn now to the lower level jurisdiction. I invite the Leader of the Opposition to go over to the Children's Court where I saw one of the newest magistrates, Her Honour Wendy Hughes. Her children are very young, so she is quite young. Her children would be well and truly in grade 4 or 5, so she is relatively young. A very interesting backstory is that she was a Korean orphan. An Australian couple went to Korea and adopted her. As life's lottery would have it, the couple enrolled her in St Mary's Anglican Girls' School in Karrinyup, where she was a superstar. She was then a superstar at law school and as a young mother. She was the one who was sitting down, not on the bench but at a table, with all these Indigenous families sitting around with the biggest lamingtons that I have ever seen. There were crumbs and coconut everywhere. Everyone was totally relaxed. The way she dealt with a young mother and the state carers of a young Indigenous baby was marvellous to behold, Leader of the Opposition. I invite the member to go to her court and have a look. It is a two-year trial. She was new. So an appointment is based on something more subjective than just seniority. We have to look at the human who is sitting there. It is not always the most intellectual judge who in all cases deals the most humanely or relates best to the person in front of them. Often those judges end up on the Court of Appeal interpreting the law, and marvellously. Although, Justice Edelman also dealt incredibly with people. Some judges just have the knack of relating to people in stress.

The president must make a subjective judgement at his discretion, but it is always grounded in the court's workload. It is not a case of, "I like this person", or, "I don't like that person." The president is there to manage the workload of the court. That is the president's administrative responsibility. In doing that, he will then choose the personnel to go hither or thither to discharge that workload at his or her discretion.

Ms M.J. DAVIES: I thank the Attorney General. Noting the time, I will round out the last proposed subsection, which states —

> A notice under this section in relation to a magistrate is subject to any subsequent notice under this section in relation to the magistrate.

I am afraid that I do not follow that. Can the Attorney General please explain it?

Mr J.R. QUIGLEY: Proposed section 11(7) is a provision to this effect: the president informs the Chief Magistrate under proposed section 11(2) that the president wants a magistrate on a full-time basis, but then as the year goes on, the president realises that he is now over-resourced and that the magistrate is needed on a part-time basis.

Sitting suspended from 6.00 to 7.00 pm

Mr J.R. QUIGLEY: I was addressing proposed section 11(7). I think I got the nuance slightly wrong, Leader of the Opposition. It states —

> A notice under this section in relation to a magistrate is subject to any subsequent notice under this section in relation to the magistrate.

The president issues a notice that he would like that magistrate to workload. He enters discussions with the Chief Magistrate as required. During those discussions, they come to an agreement. He only needs the magistrate part time after all, not full time, but issues a notice for a full-time magistrate. It gets complicated, does it not? He can withdraw that notice and issue on the spot a new notice for a part-time magistrate. It was to cover the situation in which a notice had been issued for a magistrate required full time but during the consultations, it is worked out that he needs the magistrate for only part of the time, not the full time. In that case, he can issue a new notice requiring part-time attendance at the Children's Court, or vice versa.

Ms M.J. DAVIES: I have a further question. It has been put to me that narrowing that concentration of the line of responsibility on a Children's Court magistrate in human resource management leaves experience and skill to duly appointed Children's Court magistrates vulnerable to the whims and interests of the president. Would the Attorney General have a comment?

Mr J.R. QUIGLEY: This is to do with working out the workload of the court. Saying that it is up to "the whims" of the president is a bit light on. After all, the president is a superior judicial officer, a District Court judge, exercising judgement and proper discretion in relation to the necessities for the workload of the court. If someone thinks that the judge is making the wrong calls, let them go back to the judge and make their representation. It is not for me as the Attorney or for the government as the executive to say who should be where doing what; it is up to the president and the Chief Magistrate to work out the proper workload arrangements for the Children's Court.

Clause put and passed.

Clause 8: Section 12A inserted —

Ms M.J. DAVIES: I think the Attorney General has anticipated this question. If he could explain what this clause does and the effect that it brings to the bill, that would be appreciated.

Mr J.R. QUIGLEY: It was part of my reply to the second reading debate. Clause 8 includes a new section 12A to the Children's Court Act, which 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. The power is consistent with the powers available to the Chief Magistrate in directing magistrates in his court and reflect that the Children's Court is a separate court from the Magistrates Court and the president is the head of the jurisdiction of the Children's Court. The provisions in clause 8 will provide a clear delineation between the powers of the president and the Chief Magistrate to direct the extent to which they are performing functions in their respective courts. The president will be able to say, "I direct you to do Armadale this week" or "I direct you to do care and protection cases this week".

Ms M.J. DAVIES: I understand that the Solicitor-General's consultations, although we are not privy to them, resulted in a bill of this nature, which would suggest that there has been some suggestion it is needed. Is there any risk that the government is simply making the President of the Children's Court a human resources manager rather having them play the role they have now and potentially changing the nature of that function by giving them different powers? Can the Attorney General, with his experience, foresee any unintended consequences as a result?

Mr J.R. QUIGLEY: I think if we had present here in this chamber this evening the head of every jurisdiction—that is, the President of the Children's Court, the Chief Judge of the District Court and the Chief Justice of the Supreme Court—they would all say, "We're human resources managers. We're first amongst equals." They would say that the administration of the court is a responsibility that they take on when they become the president or the Chief Magistrate. I know that the Chief Magistrate of the Magistrates Court has the heavy responsibilities of administration. It goes with the job of being the head of jurisdiction. I know for sure that the Chief Justice does. Therefore, I do not think there are any unintended consequences. It does away with the frustration of being the head of jurisdiction but not having any warrant to exercise the power of the head of jurisdiction.

Ms M.J. DAVIES: Proposed section 12A(6) states —

> The Chief Magistrate is not entitled, under the *Magistrates Court Act 2004* or any other law, to direct a person to perform functions as a magistrate of the Court or in relation to the performance of those functions.

I presume that relates to the previous new subsections. I do not quite follow it.

Mr J.R. QUIGLEY: When sitting as a Children's Court magistrate in the Children's Court, the Chief Magistrate cannot give them directions; that is up to the President of the Children's Court. The previous new subsections will give the president the authority to give directions to a Children's Court magistrate. This new subsection will make it clear because they have dual commissions. This will make clear that when they are sitting as magistrates in the Children's Court, they are under the direction of the President of the Children's Court.

Clause put and passed.

Clauses 9 to 11 put and passed.

Clause 12: Schedule 1 clause 12 amended —

Ms M.J. DAVIES: I am coming back to this because there has been some discussion around retrospectivity and the Attorney General referred to this clause. Perhaps if the Attorney General could explain again the purpose of "Schedule 1 clause 12 amended". I think this is the clause on which we were talking about an element of retrospectivity earlier in the bill.

Mr J.R. QUIGLEY: Certainly. As I explained in my reply to the second reading debate, people are often given dual commissions—a dual commission to the District Court and to the Supreme Court. If they resign one commission, they are not left with the other commission; they are appointed as a magistrate of the Children's Court and a magistrate of the Magistrates Court. Proposed subclause (6) provides that when a person dually appointed as a magistrate resigns from one office, they are taken to have resigned from both. Proposed subclause (7) will apply retrospectively to the resignation event but only has effect from the commencement of the provision. If a magistrate who holds office in both the Magistrates Court and Children's Court resigns from the Magistrates Court prior to the legislation coming into effect, their resignation from the Children's Court will apply only from the date the legislation commenced. If a person is a magistrate of both courts, and prior to the legislation coming into effect they resign from one court, once the legislation comes into effect they are deemed to have resigned from the other court. To do otherwise would mean that there would be some decisions made between the date of resignation from one court and the proclamation of this legislation that could then be called into question, because they would be retrospectively deemed to have resigned from the court. If, on 1 June, a person resigns from the Magistrates Court but the act does not come into effect until 30 June, they are deemed as at 30 June to have resigned from that other court but not retrospectively for that month that they were there, because they would have made decisions that affected people's lives, and they have to be preserved. But if a person resigned from one court on 1 June, and then this legislation comes into effect on 30 June, then as of 30 June they are deemed, by reason of that first resignation, to have resigned their commission as soon as this legislation comes into effect.

Ms M.J. DAVIES: I have one final question, Attorney General. This information has just come in. Before we move to the third reading of the bill, it has been drawn to my attention that the Law Society of Western Australia has released a media statement this afternoon. It states that it has reviewed the legislation briefly and considers that it might have potential significant ramifications for the independence of the judiciary in WA. The media statement reads —

> The Society considers the Bill may have consequences that are not immediately appreciated, and it is not clear whether the Bill will be subjected to scrutiny by any Parliamentary Committee.

I mentioned that in my contribution to the second reading debate. I do not know whether the government is considering sending this bill to the Legislative Council's Standing Committee on Legislation when it is in the other house. The Law Society says that it neither supports nor opposes the bill. It appears that it has reviewed it only briefly, but it is asking the government to reconsider the proposed introduction of the bill so that it can consult more broadly. I raised concerns earlier about the consultation process. We have now arrived at a whole different process, and the Attorney General has not been a part of that consultation, other than with the Solicitor-General, and that certainly raises concerns in my mind. Previously, I asked about any unintended consequences, which are hard to anticipate because they are unintended and we do not necessarily know what we will end up with, but I am not sure how often the Law Society would issue a media statement like that. I have been a member of Parliament since 2008 and I am not sure that I have seen too many of that nature. I wonder whether the Attorney General could make any comments on that before we move to the third reading.

Mr J.R. QUIGLEY: Certainly; I will make a couple. Firstly, this bill was read in five or six weeks ago. In that time, I met with the Law Society and it never raised this with me. Secondly, the Law Society represents lawyers; it does not represent the judiciary. The consultation was with the judiciary and its views on the administration of the court. As to the Leader of the Opposition's comment that she has never read —

Ms M.J. Davies interjected.

Mr J.R. QUIGLEY: I can remember that the Law Society went off its top when the Liberal–National government introduced mandatory sentencing. It issued more than just a benign statement like that; there were meetings and everything. Someone said, "Can you give this more consideration?" I wish to assure the Leader of the Opposition that this legislation is not to do with the exercise of the independence of the judiciary; this is to do with the management of the court's workload by the president of the court. The government has every intention of proceeding with the legislation.

Clause put and passed.

Title put and passed.

[Leave granted to proceed forthwith to third reading.]

Third Reading

MR J.R. QUIGLEY (Butler — Attorney General) [7.21 pm]: I move —

> That the bill be now read a third time.

MS M.J. DAVIES (Central Wheatbelt — Leader of the Opposition) [7.21 pm]: Thank you, Attorney General. The Attorney General can understand why I raised some questions during the second reading debate about the urgency and why this bill was the first cab off the rank when we came back from the winter break. It is also slightly concerning that we have not been able to access the feedback from the people with whom the Solicitor-General consulted so that their feedback could be reflected in the Parliament as we were dealing with this issue. This is an issue that I think the courts have managed for some time. We have been seeking to try to understand what has driven this bill. The Attorney General's explanation that the President of the Children's Court needs to be able to manage the workload goes partway to explaining it, but it does not explain to me why this was not raised previously or certainly why it was not dealt with in the 2004 reforms that were brought about. We have dealt with a number of stakeholders. Most recently, as the Attorney General has heard, the Law Society of Western Australia has today issued a media statement about its concern about the potential ramifications for the independence of the judiciary. The court action that is the occurring at the moment between the President of the Children's Court and one of its magistrates—which the Attorney General described as extraordinary, or unusual at the very least—certainly raises questions for the opposition and those who are involved in the courts.

I do not think this is just an administrative process; it cannot possibly be. I do not accept that the Attorney General consults with those who manage those processes only when he is seeking to make changes. The Attorney General should be talking to the people who will be impacted—the Law Society, and those who are in the Children's Court and certainly using it on a daily basis. That would be a reasonable proposition from the opposition's perspective. I expect that the shadow Attorney General will further interrogate this bill when it gets to the Legislative Council. I expect also, as we have discussed in our joint party room, that there will be a request for the bill to be referred to the Standing Committee on Legislation. I say that noting that the Legislative Council has made changes to its standing orders with regard to the length of time for which members can speak, which some may say is an improvement, and others will say that they dislike it intensely. I note that the President of the Legislative Council said at the time the debate was held that there is an opportunity to use the committee system to interrogate bills that require it. Organisations like the Law Society of Western Australia and Aboriginal Family Legal Services, and a number of others, have raised concerns. Therefore, the bill probably warrants at least a referral for a period of time to ensure that those individuals can bring their expertise to the committee and that the chamber can understand exactly what those concerns are.

I am reading what has been written to me. As I have said before, I am not a lawyer. I cannot distil all of that. It is a complex area and it will undoubtedly have an impact on how the Children's Court is managed and run, and potentially on the innovations that the Attorney General spoke to and how future presidents will choose to utilise the power that is being afforded to them. We want the very best members to sit on the Children's Court because we are dealing with a very vulnerable and complex area. I again put on record our concern and say that although I appreciate the explanation that the Attorney General has provided, I am quite sure that the shadow Attorney General will have further questions for the Attorney General's advisers and the parliamentary secretary in the Legislative Council as this bill progresses through the other house.

MR J.R. QUIGLEY (Butler — Attorney General) [7.26 pm] — in reply: When we have an urgent law reform agenda, where do we start? There is a whole list. We have another bill coming up. People will say why is the Legal Profession Uniform Law Application Bill coming on now? It is because it is coming on now. The Leader of the Opposition says that she is not entirely satisfied with the explanation that I gave on this bill—that this bill is to do with the management of the workload of the court. In conclusion in my third reading reply, I turn once again to proposed new section 11(4) in clause 7 of the bill, which states —

> If a particular dually appointed magistrate has performed Children's Court functions on a full-time or part-time basis or has been the subject of a notice under subsection (2), the President may, by written notice, inform the Chief Magistrate —

I stress that this is the only circumstance under which he can do it —

(a) that the President considers that, to deal with the workload of the Court, —

I emphasise "to deal with the workload of the Court" —

it is not necessary or desirable for the magistrate for the time being to perform Children's Court functions at all; or

(b) that the President considers that, to deal with the workload of the Court —

(i) it is not necessary or desirable for the magistrate for the time being to perform Children's Court functions on the basis that previously applied; and

(ii) it is necessary or desirable that the magistrate should instead for the time being perform Children's Court functions on a part-time basis as specified in the notice …

The legislation itself will require, by statutory authority, the president to address the workload of the court as the consideration for him issuing a notice. He has the authority to do it only if he considers that in order to deal with the workload of the court, it is appropriate to issue a notice. As I said, this requirement is nothing to do with the Law Society of Western Australia; this requirement is to do with the administration of the court. This bill has been out for six weeks. No-one knows whether the Law Society has even met to consider this. Someone pops out a press release at five to midnight that says that this has to happen or that has to happen. It is a free world; they are entitled to pop out any press release they like at five to midnight. This bill, which deals with the administration of the court, has been around for six weeks, and the government intends to proceed expeditiously with it. I thank the Leader of the Opposition for her interrogation of the bill on behalf of the opposition.

I commend the bill to the chamber.

Question put and passed.

Bill read a third time and transmitted to the Council.