COURTS LEGISLATION AMENDMENT (MAGISTRATES) BILL 2021

Second Reading

Resumed from 4 August 2021.

HON NICK GOIRAN (South Metropolitan) [8.27 pm]: I rise on behalf of the opposition to speak on the second reading of the Courts Legislation Amendment (Magistrates) Bill 2021. This 12-clause bill that covers some 11 pages will make very significant changes to the way that the Children's Court in our state is administered. I note that this is a very important bill for the government, and I draw Mr Acting President's attention to the state of the house.

[Quorum formed.]

Hon NICK GOIRAN: I can well understand why government members do not want to be here during the consideration of this bill, because this bill stinks. It will make very significant changes to the way the Children's Court is administered and these changes are highly controversial, a point that is well known to members opposite, who are frankly and understandably embarrassed about this bill. What makes it worse is that the bill before the house cannot possibly be described as urgent. If we take a moment to look at the program that has been proposed by the government for this week, six bills have been listed. Two of those bills are being dealt with in a cognate fashion, so we could say that, in a sense, there are five bills, but technically there are six bills. Of those six bills, four fall under the Attorney General's portfolio. The list of priorities starts with the bill that is before us—the Courts Legislation Amendment (Magistrates) Bill 2021—and then goes to the cognate debate on the two legal profession uniform law bills, and finishes with the Administration Amendment Bill 2021. If government members understood what these bills were doing, they would reverse that order. Of the bills that are under the Attorney General's portfolio, this is the least urgent of the lot, yet the government has brought it on first. When the government replies and explains its position on this bill, it has a duty to explain exactly how this could possibly be considered a priority over the other two bills. For those members who will not necessarily be interested in what I have to say about this, I draw to their attention what the Law Society of Western Australia has to say about this. On1 December last year, the Law Society issued an open letter to members of the Legislative Council—not the one members will have received over the course of this week, but we will get to that—that says —

> Dear Honourable Member
>
> If the following Bills do not pass this year, there are only 4 parliamentary sitting weeks next year prior to 1 April. Therefore I ask why with the support of both the Government and the Opposition can't these two pieces of uncontroversial but important legislation be dealt with and passed this year?

In this letter of 1 December last year, the Law Society goes on to list the Administration Amendment Bill 2021, the Legal Profession Uniform Law Application Bill 2021 and the Legal Profession Uniform Law Application (Levy) Bill 2021. I am not going to take members through what the Law Society had to say on those two matters because we will deal with that when we get to those bills, hopefully in the not-too-distant future. On 1 December, the Law Society wrote an open letter to every member of the Legislative Council indicating that those were the two priority bills. What did the government do? On the first sitting day back after the long summer recess, it buried those two bills. Instead, unbelievably, it brought on this bill, which, as I said, is highly controversial and absolutely not urgent. If the government disagrees and thinks there is some genuine, authentic explanation for how this bill could be a greater priority than those other two I have mentioned or that package of three bills, I look forward to that explanation in due course.

Members might not be aware that this bill, which is apparently the second-highest priority bill for the McGowan Labor government to consider as we return in 2022, had its genesis in a highly contentious public stoush between the President of the Children's Court and one of the magistrates who exercises jurisdiction in the Children's Court. I think it is fair to describe that case as unprecedented. Again, I invite government members to indicate to me whether there have been other Western Australian cases in which a magistrate has effectively taken her boss, the President of the Children's Court, to court to sue him, as I understand it, over bullying allegations and the like. We will get into that a little bit later. If the government does not think that is unprecedented and that there have been other cases of judicial officers suing each other and alleging bullying and the like, then I welcome an indication of that, but I think it is fair to describe this as unprecedented. That is the genesis of this particular bill. Serious allegations were made by the parties in the litigation. This case settled last year part-way through the trial. It appears that now, in February 2022, the government is seeking to somehow resuscitate or revive its stalled legislation that will give power to the President of the Children's Court to achieve what it appears he was unable to achieve by way of negotiation or through the litigation process. One of the consequences of the bill before us could be to retrospectively trigger the magistrate's resignation. I will get into that in due course.

As I said, this 12-clause bill, which I think is really by far the most controversial of the bills before us this week, will amend the Children's Court of Western Australia Act 1988 and the Magistrates Court Act 2004. As I understand

it, there are currently six full-time magistrates in the Children's Court and I think there is also one casual magistrate who operates in that court. During the briefing that was provided to the opposition quite some time ago now, before the government decided to stall this legislation last year, no doubt because of the fiasco that was occurring at the time with the spectacle of judicial officers involved in a civil trial—I will try to unpack how that came about and the role of the Attorney General in due course—I seem to recall that it was indicated that all magistrates in Western Australia receive dual commissions. That is to say that they are able to hear Children's Court matters but, in practice, most of the magistrates, other than those who have been specifically allocated to the Children's Court, hear only what could be described as general Magistrates Court cases—I think some have referred to them as adult cases—unless they are on circuit in the regions. It would appear that a Children's Court was established as far back as 1907 by the State Children Act. That came somewhat as a surprise to me during my research into this matter. I note the second reading by the then Minister for Community Services on 15 June 1988 on the Children's Court of Western Australia Bill. For the benefit of Hansard, this was the second reading in this chamber and is found at page 1091 of *Hansard*. The minister states —

> Children's Courts in Western Australia were first established under the Children's Act 1907. This was consistent with a trend which began in the United States in Illinois in 1899, and spread throughout Western countries around the turn of the century.
>
> The philosophy underlying the establishment of Children's Courts, particularly in the United States, was based on a belief that offending children were victims of undesirable environments and therefore should be treated in a similar manner to neglected children. This meant that, under the new regime of Children's Courts, it was seen as more important to inquire into the background of the offender rather than deal with the offence itself, and to plan appropriate treatment on that basis.

The Children's Court is presided over by what can be described as special magistrates or special judges. Again, I turn to the second reading debate that occurred on 23 October 1907 when the Colonial Secretary said —

> Part IV. refers to the establishment of children's courts, and to State children generally. So far as this portion of the Bill is concerned it is an entirely new departure, and one which I am sure will be approved by everybody. It is provided that these courts shall be presided over by special magistrates. They shall be held in a separate building from the usual courthouse, and if it is not possible to obtain a separate building, such as will be the case in the country districts, the children must be tried in the magistrate's room. The special justices who are appointed to sit will have all the powers conferred under the Justices Act, 1892. The benefit that will be derived from having these special courts rather than bringing the children in any way into contact with criminals will be apparent to members. It is farther provided that neglected children not be confined in a lockup, but in the policeman's house or be sent to some respectable person to be taken care of until they have to appear before the court, and thence be hoarded out or sent to an institution.

That was all said in 1907 about the then State Children Bill. I note in the second reading speech for this bill that the Parliamentary Secretary to the Attorney General, and, indeed, supported in the speech given by the Attorney General in the other place, recognises that the Children's Court is a specialist court. I take that to mean that the court is dealing with vulnerable people and matters with far-reaching consequences, including the criminal offending of children, but also the care and protection matters with regard to children. I think it is fair to say that it has been well recognised that there is a need for the specialisation and expertise of Children's Court magistrates. I think that has been recognised around the nation; it has not simply been recognised here in Western Australia.

I draw to members' attention and to the attention of the parliamentary secretary, a study of the Children's Court of New South Wales. This was conducted as part of a national assessment of Australia's children's courts in 2014. This particular study, at page 19, has this to say —

> The specialised and expert staff of the Children's Court, especially specialist magistrates, were identified as central to the role and effectiveness of the Court. Specialist Children's Court magistrates claimed they possess the knowledge and skills to manage highly complex cases, understanding and addressing the vulnerabilities and needs of children and young people with due consideration of the research evidence on child development and child psychology.

It goes on to say on the following page —

> In both jurisdictions a perceived strength was a sense that the calibre of practitioners is high, and that the specialism the court afforded, allowed for this. For example, one magistrate explained:
>
> > *There is a reasonable degree of expertise amongst specialist children's court magistrates and that gets applied …….a number of experienced practitioners, which mean that things are conducted well.*

This particular review of the New South Wales Children's Court concluded with some recommendations. I specifically draw two of them to members' attention. It concludes at page 46 by saying —

> A number of recommendations have been devised to further support and strengthen the operation of the NSW Children's Court.

The first of which was to maintain the specialisation of court-affiliated staff, and, secondly, to strengthen specialist knowledge by the consistent, continual provision of training and professional development relevant to understanding children and young people for non-specialist magistrates. That is the situation in New South Wales with regard to the recognition for the specialisation and expertise of Children's Courts magistrates.

I will turn to the situation in Victoria. The Children's Court of Victoria has a statement of priorities. This document covers the period from 2019 to 2021. At page 5 under the heading "Our unique role", the Victorian Children's Courts says —

> Our judicial and administrative offcers are passionate and dedicated to the work of the Children's Court and possess distinctive skills and qualities demanded by our specialisation, including:
>
> - court craft
> - interpersonal skills
> - knowledge of child development
> - awareness of family dynamics, including family violence
> - knowledge of associated services, and capacity to access these on behalf of our users

Again, if I turn to the experience in Queensland, the Queensland government, in a document prepared by the Strategic Policy Department of Justice and Attorney General from February 17 titled "Improving child protection matters in Queensland courts", had this to say at page 16 —

> Overall, respondents were very positive about the appointment of dedicated Childrens Court Magistrates.

It goes on to assess the benefits of dedicated Children's Courts magistrates. This is found in table 5 on page 16. I will highlight a couple of portions of those benefits about appointing dedicated children's magistrates. The experience in Queensland is the benefit is increased specialist knowledge of dedicated Children's Courts magistrates.

The comments were —

> A benefit of appointing dedicated Childrens Court Magistrates is their knowledge of child protection proceedings, and appreciation of the types of issues this jurisdiction commonly involves. Magistrates themselves acknowledge that their expertise in child protection had grown and other stakeholders also noted the benefits of having Magistrates that understood the issues facing parties.

It goes on to list another benefit —

> **Ensuring orders are the least intrusive**

Also —

> This active case management approach helps ensure the orders made were the least intrusive possible

The third benefit listed is the familiarity with parties and a respectful approach. Part of those comments included —

> The respectful and open approach of Magistrates (whether specialist or not) was also highlighted as a key enabling factor for participation by parents and young people

The fourth benefit provided was —

> **Holding DCCSDS to account for actions taken between mentions**

It goes on to say —

> The active case management and more inquisitorial approach of some dedicated Childrens Court Magistrates has increased the level of accountability of DCCSDS —

That is the Department of Communities, Child Safety and Disability in Queensland —

> as the Department is increasingly held to account for ensuring that action is taken between court appearances.

The last benefit listed in Queensland for this specialisation is the efficiency due to the knowledge of material the prior to court offence. It goes on to say —

> Several dedicated Childrens Court Magistrates noted that, as they are familiar with matters and have time to read material, there are fewer adjournments.

That seems to be the recognised position across at least three of those substantial jurisdictions in Australia—New South Wales, Victoria and Queensland—about the need for and benefit of dedicated Children's Court's magistrates and the recognition of that. I read into all of that that none of those dedicated Children's Court's magistrates should then be the subject to whims of the President of the Children's Court. Over the journey, there have been reforms to the

Children's Court and, in particular, reforms made by the Children's Court of Western Australia Act 1988. This followed some criticism that the juvenile justice system was too permissive, gave too much discretion and was unable to rehabilitate offenders. If I can quote from the debate from 1988. Again, this is a continuation of that second reading speech I referred to earlier given on 15 June 1988 in this chamber. The then minister had this to say —

> There are a number of fundamental aims in this legislation. The first is to provide for the establishment of a Children's Court with sufficient status and power to fulfil its social mandate. Secondly, there is a need to provide adequate safeguards for the rights of individuals who appear before the court. In a number of areas this involves reducing the administrative discretion currently available to officers of the Department for Community Services and to provide far greater accountability through the court system. Thirdly, there is a need to provide an adequate range of options to the court in dealing with the very significant problem of juvenile crime, but at the same time to reduce the very high rate of juvenile incarceration in Western Australia.

Later, the second reading speech goes on to say —

> The court will be headed by a judge, with the title of President …

Later again it says —

> A number of recent reports have expressed concern that the Children's Court does not have sufficient status to deal with the important issues of custody and guardianship of children which are dealt with in care and protection applications. The changes in the constitution of the court will allow the more complex and contentious of these cases to be to be dealt with by a judge, and thus receive adjudication at a level consistent with their seriousness. In a significant departure from the current system, the Children's Court will have exclusive jurisdiction to deal with all criminal offences committed by children, except where a child elects for trial by jury or in certain circumstances where a child is co-accused with adult offenders.

They are some of the reforms that were undertaken in 1988 to strengthen the Children's Court and the creation of the role of the President—as I say, the ability to deal with these care and protection applications and the more complex and contentious matters to be dealt with by the President and the exclusive jurisdiction with regard to these criminal offences.

I note that in all of that, again, in the 1988 debate, this time in the debate the transpired on 23 August 1988, Hon Phil Pendal had this to say —

> The transfer to the Crown Law Department, coupled with the reconstitution of the court with provision for a judge in charge with the title of president, will at the very least ensure that the court becomes a far more professional tribunal than in the past … First, the appointment of a president and, secondly, the appointment of legally qualified Children's Court magistrates.

He went on to say —

> I recall a few years ago researching some major changes that occurred in the Children's Court jurisdiction in the 1930s. The Government of the day considered a major and radical departure from the norm in that a person with legal qualifications was not to be appointed as a Children's Court magistrate. Instead the Government of the day opted for a person who was a minister of religion in order that the workings of the Children's Court could be not only humanised but be seen to be humanised. Some 50-odd years later we have, in this case, turned a semicircle because that is no longer the flavour of the month; it is no longer appropriate to have people in charge of a Children's Court at magisterial level who are not qualified magistrates or legal practitioners.

These types of reforms have certainly occurred over the journey. In this case, the President of the Children's Court, as a judge, gives them the ability in that same court to deliver or hand down longer periods of detention or imprisonment. Again, I refer to that early debate of 15 June 1988 in which the minister in charge of the bill had this to say —

> A judge in the Children's Court will have all the powers of a Supreme or District Court judge in passing sentence on young offenders …

He later went on to say —

> Therefore a judge in the Children's Court will have unrestricted power to order periods of detention or imprisonment up to the maximum prescribed penalty for the offence in the adult criminal system. However, magistrates will be limited to orders of six months' detention or three months' imprisonment …

He went on to say —

> To deal with varying workloads in relation to the more serious offences, it will be possible for a judge of the Supreme Court or District Court to also sit in the Children's Court as required. In addition, it will be possible for the president to give extended powers to a magistrate in relation to a particular case …

He further went on to say —

> However, in an exceptional case, where a magistrate considers this to be inadequate, it will be possible to adjourn the case for sentencing by a judge.

He later concluded his remarks by saying —

> An important new provision, to provide for consistency of sentencing in the Children's Court, is a power for the president to review sentences of magistrates or members. This will provide a speedy, accessible and relatively inexpensive alternative to appeals to the Supreme Court against sentences in the Children's Court.

He finally went on to say that this "will mean that the more complex and contentious cases will in future be dealt with by a judge in the Children's Court in the first instance".

For the benefit of the parliamentary secretary, the author indicates that over the journey the reforms that have been made provide a massive amount of work for the President of the Children's Court. They have got heaps to do with all of these things that Parliament asked him or her to do at that time. There is certainly no spare capacity to be involved in these side skirmishes with a magistrate from the Children's Court, which certainly appears to be what happened last year. As I say, the President's role, as I understand it when I look at all of that reform over that time, was enacted to improve the public perception of the Children's Court to allow it to deal with all offences committed by children and provide for tougher penalties. It strikes me that the bill currently before us is now shifting from that role of the President in terms of what was intended—that being from one that had extended power and improved the professionalism of the Children's Court to one that will now interfere with the independent administration of justice. I seek, and I think numerous members of the legal profession would seek the same, an assurance from the Attorney General that the President's decisions once this bill passes will be grounded in the workload of the Children's Court and will be unrelated to personality clashes between the President and the Children's Court magistrate. We would want an assurance that it will be confined to objective factors such as numbers and locations of cases and not subjective considerations about the suitability of a Children's Court magistrate, as determined in the opinion of the President.

The parliamentary secretary will certainly be aware that under the Magistrates Court Act 2004 and the Children's Court of Western Australia Act 1988, the Governor appoints magistrates by way of a commission. The Magistrates Court Act states —

> Unless the acting magistrate has consented, the Governor must not determine that an acting magistrate working full time is to work other than full time, or vice versa.

It cannot be done without the consent of the magistrate. That is the position at the moment according to Western Australian law. I refer there to schedule 1, clause 9(7). In contrast, as I understand it, the government is proposing to amend the Children's Court of WA Act so that the President of the Children's Court can decide whether a magistrate performs Children's Court functions on a full-time or part-time basis. I refer there to proposed section 11 in the bill. The Chief Magistrate may or may not consent to the president's decision, but provided that the Chief Magistrate initially consents, the president will have the power to determine that a magistrate is not required at all or is required to undertake work on a reduced, part-time basis. I refer there to proposed section 11(4). It seems to me that the government is proposing that the president will have absolute discretion in making such decisions, which evidently does not exist at the moment, and specifically will not have to consider the seniority or length of service of a magistrate or any other matter. I refer there to proposed section 11(6). I have to say that this will not be done without controversy.

In the absence of any other information that the government would like to provide us, it is very difficult to avoid the conclusion that this is all being done in response to the Crawford v Quail litigation. It is very difficult to avoid that conclusion. More to the point, it is simply because the president did not get what he wanted—that being the removal of Magistrate Crawford from the Children's Court. It is very difficult to avoid that conclusion. If I have got that wrong, I ask the government explain it. Why was this bill put on hold in the middle of that case and has now suddenly emerged? This litigation, this stoush between these two judicial officers, has cost the taxpayers of Western Australia more than $274 000. That is the information that the Standing Committee on Estimates and Financial Operations received during the most recent budget estimates. Would you believe, Acting President, that that $274 000 was just the legal fees paid by the taxpayers of Western Australia for President Quail? I do not how much other money has been expended by the government on this stoush, but it is more than a quarter of a million dollars. I would like to know how much the final amount was. We found out during estimates that the negotiation—the side deal that occurred—that led to the litigation ending and the settlement of the case has resulted in annual costs to the taxpayer of between $70 000 and $80 000 per year. Why is that? It is to cover an additional support officer. Again, that information was provided during the estimates hearings.

When members take the time to familiarise themselves with the stoush that occurred between Magistrate Crawford and President Quail, it becomes obvious that the President of the Children's Court obviously had an issue with

Magistrate Crawford. Substantial allegations were made against a magistrate in Western Australia, yet the President of the Children's Court came to the conclusion that that position would not justify bringing her position before Parliament to determine whether to terminate her position. That is how these people get removed—matters are brought to the Parliament and the Parliament makes a decision. But apparently the allegations against Magistrate Crawford were not so serious as to justify that. It appears, from everything that I can discover in this matter, that Magistrate Crawford would not agree to transfer out of the Children's Court, which was what the President of the Children's Court, Mr Quail, wanted. He wanted her to transfer out of the Children's Court into the general Magistrates Court but she would not agree. The president then tried to get the Chief Magistrate to transfer her. But guess what? He would not agree to it either. President Quail was saying that he wanted the supposedly troublesome Magistrate Crawford out of the Children's Court. Mind you, members, quite apart from the fact that she has been there a heck of a lot longer than he has—I do not know whether that was an issue—he wanted her moved out, but she would not agree so he went to the Chief Magistrate. Guess what? He would not agree either. The Chief Magistrate, incidentally, has also been there a heck of a lot longer than the President of the Children's Court.

What happened next in this saga? The President of the Children's Court knocked on the door of the Attorney General—that is a figure of speech, for the benefit of *Hansard.* More accurately, he communicated with the Attorney General. He then sought to—I use the phrase carefully and intentionally—orchestrate a situation. He wanted the Attorney General to appoint an additional magistrate to the Children's Court. This all happened in January last year. This way, if Hon John Quigley, the Attorney General, were to appoint an extra magistrate, President Quail could say to Mr Quigley, "Look, I've now got too many magistrates. Magistrate Crawford is surplus to our requirements", and he could direct her to return to the Magistrates Court. If members think that I am making up any element of this, I draw to their attention that this was all revealed in the transcript of the trial between Catherine Patricia Crawford and His Honour Judge Hylton Quail in the Supreme Court of Western Australia. There were effectively, if members like, three days to this trial. Day 1 was Monday, 11 October 2021. Day 2 was the following day, Tuesday, 12 October 2021. For a very short period, there was a bit of action on Wednesday, 13 October 2021, and that is because the parties then settled. They had this almighty stoush for the first two days, which was reported in the media and the like—it was very unseemly—and then they came to a settlement and that was reported to Justice Allanson. This was all in October last year.

I want to take a moment to substantiate all the things that I have just said about these two judicial officers by reading directly from the court transcript. I will start with part of the transcript from Monday, 11 October 2021. It is truly astonishing stuff. There are pages and pages of it, but I will just read some portions because I note that, regrettably, this is a time-bound debate. On that day, the following is said by Mr Donaldson. For the benefit of members, Mr Grant Donaldson, Senior Counsel—from recollection, a former Solicitor-General for Western Australia—represented Magistrate Crawford during this trial. He said to Justice Allanson —

> Now, there was around this time correspondence also between Judge Quail and the Attorney General.

He goes on to say that it was a letter of 7 September. The transcript continues —

> … on 7 September—and, again, your Honour, it is common cause—without notice, to Magistrate Crawford before this letter was sent or a copy of it being sent to Magistrate Crawford. But Judge Quail wrote to the Attorney General …

He quotes Judge Quail's letter to Attorney General Quigley, which states —

> I have recently concluded an inquiry in relation to the conduct of Magistrate Crawford. It is not necessary for me to go into the detail of what occurred but I have determined that her misconduct does not require a referral to you. However, her misconduct was serious and she no longer has my confidence. While she is fit to continue sitting as a magistrate, I do not regard her as a suitable person to continue sitting as Children's Court magistrate.

In his submission, Mr Donaldson, the barrister representing Magistrate Crawford, went on to say —

> So just pausing there, as your Honour will come to see, one of the great mysteries in this matter is that Judge Quail thought that her Honour perfectly adequately—seemingly continue to sit as a magistrate and that the findings that he made not reflect on her capacity to do that, but that her Honour was not a suitable person to continue sitting in the Children's Court.

He then went back and quoted this famous letter between President Quail and Attorney General Quigley, and stated —

> As you know, Ms Crawford has been the subject of a number of substantiated complaints over the years.

I will revert to Mr Donaldson's submission to the Supreme Court judge in which he states —

> Now, when Magistrate Crawford saw this letter, your Honour, she was—and will give evidence that she was horrified because her Honour was not aware that she had ever been the subject of a substantiated complaint of any matter concerning Wager P while she was the president of the Children's Court —

For the benefit of members, President Wager is the Chief Judge of the District Court. Mr Donaldson continues —

> and that Judge—her Honour will give evidence that they had never been stated to her by Judge Wager, nor by Judge Quail. And likewise, her Honour will give evidence that she … was not aware, prior to seeing this document in discovery, that Judge Reynolds had ever had any conversation with the Attorney General about her conduct. And in any event … Judge Quail knows that—seems to know that the Attorney General knows certain matters about her.

Mr Donaldson, barrister representing Magistrate Crawford, goes back to this famous letter to the Attorney General, and the next sentence states —

> She is also difficult to manage. Consumes an inordinate of time as head of jurisdiction. And her poor relations with staff of the Children's Court creates considerable disharmony. Because the Children's Court is a small court and she represents 20 per cent of our magistrates, the effect of her behaviour is disproportionate.

Mr Donaldson again refers to the Supreme Court judge and continues —

> Now, can I pause there, your Honour, to make this observation. This is the president of the Children's Court writing to the Attorney General about a magistrate. And saying that she is difficult to manage, which was a matter that never had been—evidence will show, had never been stated to Magistrate Crawford by Judge Quail:

Mr Donaldson goes back to quote from this letter —

> That she consumes an inordinate time of Judge Quail's time as head of jurisdiction.

He goes on to say —

> The evidence will be from her Honour that that had never been stated to her.

Again, quoting the letter —

> And had poor relations with staff of the Children's Court creates considerable disharmony.

I go back to the submission. He states —

> Again, your Honour, there will be evidence that that had never been stated to her by Judge Quail or anybody else. And your Honour, this letter will be relevant to the characterisation of his Honour's conduct. But for a letter such as this, your Honour, to be written to an Attorney General about a judicial colleague without notice to the colleague or to that colleague and to express it in the terms that it has—the terms that Judge Quail did, your Honour, we will—we say reflect upon the finding that your Honour has to make as to the purpose that his Honour had in making the directions that he did.

Then, at the bottom of this first page, he goes on to quote this famous letter —

> I am firmly of the view that Ms Crawford should now be moved back to the Magistrate Court where, if her behaviour continues, it would be more easily managed and the effect of it ameliorated by reason that it is but one of 27 magistrates. The Chief Magistrate also has greater magistrate management powers than I do.

Mr Donaldson's submission continues —

> Again, no doubt, his Honour will be giving evidence about that paragraph.

Tabling of Paper

Hon MATTHEW SWINBOURN: The member is reading copiously from a transcript, which I presume is a document. I ask that the member table the document from which he is reading.

Hon NICK GOIRAN: I thank the parliamentary secretary for his invitation, but I most certainly am not going to be doing that, if for no other reason than I am still quoting from it at the moment. If he would like to make a request at the conclusion of my speech, I will be happy to give it consideration.

A member interjected.

Hon NICK GOIRAN: That is how the system works, unless the member thinks I can somehow continue to quote —

A member interjected.

The ACTING PRESIDENT (Hon Jackie Jarvis): Member! Member! I ask Hon Nick Goiran to resume his seat while I take advice.

Under standing order 59, a member must identify a document quoted from during debate. I believe Hon Nick Goiran has done that. Standing order 59 states that at the conclusion of a speech, the member can be asked to table the document.

Parliamentary secretary, I recommend that you call for the document to be tabled or I can request the document to be tabled at the end of the speech.

Debate Resumed

Hon NICK GOIRAN: Thank you, Madam Acting President. I did say all that earlier, much to the disturbance of the Leader of the House, for reasons unknown to me.

I am still reading from the transcript that I identified earlier as the transcript of proceedings at Perth on Monday, 11 October 2021. For the benefit of the parliamentary secretary I am referring to page 184. To repeat what Mr Donaldson had said —

> Again, no doubt, his Honour will be giving evidence about that paragraph.

Over the page, the famous letter is again quoted in the transcript, which obviously the Attorney General has access to. It reads —

> If the Chief Magistrate will not agree to a swap of Ms Crawford with another magistrate as I expect he will not —

Mr Donaldson continues his submission to the Supreme Court judge and states —

> and can I pause there, your Honour. That proved to be true and, with respect, Judge Quail always knew, the evidence will show, that the Chief Magistrate would not make a direction for her Honour to go back to the Magistrates Court.

Mr Donaldson again refers to the letter and states —

> If the Chief Magistrate will not agree to a swap, I recommend that the next magisterial appointment be an appointment to the Children's Court. Ms Crawford will then be surplus to my requirements and you could direct that she return to the Magistrates Court.

That is all set out in a letter from President Quail to Attorney General Quigley. That is why I said earlier that President Quail has orchestrated this whole situation. How else can anyone read that particular sequence of events? Certainly it exercised Mr Donaldson very much as the barrister for Magistrate Crawford.

Mr Donaldson continues with his submission and states —

> So therein, your Honour, is the basis of the plan as to how to deal with Magistrate Crawford and therein is perhaps the best evidence that your Honour will see, other than the evidence that will be given about this, as to the purpose of Judge Quail in making the directions that he purported to do in December and in February.

The plan was to just appoint an extra magistrate to the Children's Court and Magistrate Crawford will then be surplus to requirements and the Attorney General can direct her to go to the Magistrates Court because the Chief Magistrate will not do it. It pains me to say it, but time is rapidly running out. The transcript contains stacks more. If time permits, I will come back to it. It is astonishing that this was the genesis of the matter before us. The government has brought this bill in effectively to give President Quail what he wanted all along.

This is serious interference with the independence of the judiciary and our justice system. That is why all members got a letter from the Law Society of Western Australia advocating very strongly about this matter. These reforms are going to create a situation in which the management of the magistrate is now going to involve the President of the Children's Court. Meanwhile, while all this is happening, including the debate on this bill, my question to the government and to the parliamentary secretary, if he could pass this on to the Attorney General, is: what on earth is the Attorney General doing about these explosive revelations from the trial? It would appear that the answer is nothing.

The reason I have come to that conclusion is that on 17 November last year, the parliamentary secretary responded, in his capacity as the representative for the Attorney General, to a question from me about some of these things. Members should keep in mind that in all of this there are some allegations in court of tampering of evidence. Tampering of evidence is what has been alleged at certain stages in this trial. It was not in some other country or jurisdiction; it was in our state—tampering of evidence. When I asked the Attorney General what he is doing about that, the response from his hardworking, long-suffering parliamentary secretary was —

> I thank the member for some notice of the question. I provide the following answer on behalf of the Attorney General.
>
> (1)–(5) It is not appropriate for the Attorney to address matters involving individual judicial officers.

If it is not appropriate for the Attorney General, who is it appropriate for? Who is going to get to the bottom of this tampering of evidence? I cannot believe it. We are talking about allegations of evidence tampering in

Western Australia. One judicial officer has accused another of this, and the Attorney General of Western Australia has said that it is not appropriate for him to address these matters. Not appropriate! Who is going to raise it? In the meantime, as the government's second priority on the first day back after the long summer recess, it is going to try to ram this bill through, despite the fact that the Law Society is saying, "No, these other bills are far more important; we told you about that last year."

This bill stinks. Something is not right with all of this and I expect some explanation from the government about it. It should not think it is going to get away with it. After all of that, $274 000 of taxpayers' money was used to fund President Quail defending himself against bullying allegations by Magistrate Crawford, and seemingly the Attorney General's fingerprints are on certain elements of this, according to the transcript. Meanwhile, the Attorney General says that it is not appropriate for him to address matters. Why not? I still ask the question: if it is not him, by all means tell us who? Who in Western Australia is going to deal with these allegations? Are we going to try to pretend that we are going to forget about it and move on to the next bill?

It is not that the Law Society and the opposition are the only ones to have expressed concerns about this controversial bill. I note that in August last year, an article in *The Australian* of 6 August last year titled "Magistrate bill 'a risk to judicial integrity'" written by Victoria Laurie states —

> The Magistrates Society said the proposed changes would make the chief magistrate subservient to the wishes of the Children's Court president.
>
> A letter sent to the Attorney-General and seen by The Australian noted Mr Quigley's explanation to parliament.
>
> "Despite your comments … there might be a lingering perception that the bill has been introduced to resolve some of the issues raised in the Supreme Court litigation in the matter of Crawford v Quail.
>
> "In our view, legislative intervention is not warranted nor desirable," the letter said.
>
> "We are concerned that it potentially sets a precedent for future governments to follow when faced with unpalatable litigation."

I quickly draw to members' attention that of course the Law Society has also had plenty to say about this. Members will be very familiar with the letter they received in the last week, so I ask them to re-read it, or to read it for the first time if they have not already, to familiarise themselves with the matter. I want to draw to members' attention this letter that the Law Society wrote on 9 August last year.

Again, members should have received it, but to refresh their memory, in the second paragraph, the Law Society says —

> The Executive remains concerned about particular provisions in the Bill which give the President of the Children's Court ***an unfettered, non-reviewable discretion*** to direct that a particular Magistrate shall no longer perform duties under their Commission in that Court.

On clause 7, it says —

> This provision, and related supporting provisions, potentially imperil judicial independence of decision making …

It also says that there does not appear to be any similar unfettered, non-reviewable discretion in other acts that govern the position of magistrate and that it does not reflect current community standards. It goes on to say —

> … the Bill as drafted **will** affect more than "*the administration of the Court*".

It finally says —

> New legislation that may impact the independent administration of justice in our community is the business of every Law Society. The Executive is disappointed there has still been **no** consultation with the Law Society of Western Australia.
>
> …
>
> We urge that the Bill be deferred for further consultation and consideration.

That was in August last year. Conveniently, the government decided to shelve this bill. It decided to bury it because it was getting quite embarrassing with the Law Society starting to fire up on it. Now, all of a sudden, it has re-emerged. Of course, it is no surprise that every member received that letter from the Law Society the other day. If members have a copy of it in front of them, they will recall that once again it said that there had still been no consultation. In August, the Law Society alerted us all, including the government and the Attorney General, to the fact that there had been no consultation with it. Here we are now in February and the position is the same, such is the arrogance of the McGowan government. Surprise, surprise!

We want to know what the heads of jurisdiction have to say about this. Does the President of the Children's Court agree with this bill? I bet he does. What about the magistrates? What about the Chief Magistrate, the Chief Justice

and the Chief Judge? Have any of them been consulted? When I asked the parliamentary secretary about this in August last year, guess what the response was? I quote from 31 August 2021 —

> All communications between the Attorney General and his staff and the heads of jurisdiction concerning the allocation of judicial resources are strictly confidential and the subject of public interest immunity.

I am going to conclude on this point for the benefit of members: Parliament is being asked to make a decision about the judiciary and the government is covering up what the judiciary has to say about this. It is covering it up. I have asked for information on multiple occasions: what do the heads of jurisdiction think about this bill? The government will not provide it. This is why the government is constantly being referred to as the most secretive since the WA Inc government. There is no good reason why it cannot provide this information to Parliament. It cannot expect members of Parliament to make a decision that is going to affect the judiciary, especially after this almighty stoush that cost the taxpayers of Western Australia more than a quarter of a million dollars, with unresolved allegations of evidence tampering. It cannot expect us to provide wholehearted, full-throated support for this bill. The Law Society and the Magistrates Society are firing up and, in the meantime, the government is hiding information from Parliament. Which judicial officers have been consulted about this and what have they had to say about it? Has anyone raised any concerns; and, if they have, what did they say? The government should not hide it behind this garbage of "All communications between the Attorney General and his staff and the heads of jurisdiction concerning the allocation of judicial resources are strictly confidential". Parliament deserves to know before it makes a decision that is going to affect the judiciary. If there are judicial officers who do not agree with it, we need to know.

The only way we are going to get to the bottom of this is by referring this matter to the Standing Committee on Legislation. Do not groan, Leader of the House. If you have something intelligent to say, get up and say it, because this is a serious matter! I told you before that there are allegations of tampering with evidence. That is no small matter. It might be for you, but any fair-minded individual will say that if a judicial officer is alleging that there has been tampering with evidence, we need to get to the bottom of it. At the very least the Attorney General should or he should tell us who is going to do it. But this business about trying to keep everything secret is disgraceful. As I said at the start of my contribution, this bill stinks. There is something wrong with this bill. That is why it has been quickly escalated and expedited to the top of the list.

Discharge of Order and Referral to Standing Committee on Legislation — Motion

HON NICK GOIRAN (South Metropolitan) [9.29 pm] — without notice: I move —

> That the Courts Legislation Amendment (Magistrates) Bill 2021 be discharged and referred to the Standing Committee on Legislation for consideration and report by not later than 23 June 2022.

Tabling of Paper

The ACTING PRESIDENT (Hon Jackie Jarvis): Member, while we are waiting for copies of that motion, would you like to table the documents as previously requested?

Hon NICK GOIRAN: Thank you, Acting President. I decline the request on the basis that it is a confidential document. It was provided to me in confidence. I do not have the consent of the people who provided it to me.

Hon Sue Ellery: Was it a transcript or not?

Hon NICK GOIRAN: I will not be tabling it and it is a confidential document. If government members have a problem with that, they need only to knock on the Attorney General's door, because he has access to this information.

The ACTING PRESIDENT: Members, I know that the member has stated the document is confidential.

Hon MATTHEW SWINBOURN: The member cannot just invoke confidentiality and then expect that we are going to accept that on face value after he stood here and accused the government of being the most secretive in the world. He identified the document at the beginning of his contribution as a transcript of court proceedings; there is no confidence in that document and the member should be required to table it.

The ACTING PRESIDENT (Hon Jackie Jarvis): Members, there is no point of order. The member has identified the document as confidential.

Debate Resumed

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [9.32 pm]: Thank you, Acting President. I can put the government's position quite shortly: we will not be supporting the referral of the motion. We do not think there are any grounds for it to be referred to the Standing Committee on Legislation. I am sure we will cop a lot of abuse for that along the way, but we have had no previous notice from the member that he intended to do this, so I intend to keep my contribution short.

Division

Question put and a division taken, the Acting President (Hon Jackie Jarvis) casting her vote with the noes, with the following result —

Ayes (8)

Hon Martin Aldridge	Hon Steve Martin	Hon Dr Steve Thomas	Hon Dr Brian Walker
Hon Donna Faragher	Hon Tjorn Sibma	Hon Neil Thomson	Hon Nick Goiran *(Teller)*

Noes (19)

Hon Dan Caddy	Hon Lorna Harper	Hon Shelley Payne	Hon Matthew Swinbourn
Hon Sandra Carr	Hon Jackie Jarvis	Hon Stephen Pratt	Hon Dr Sally Talbot
Hon Kate Doust	Hon Alannah MacTiernan	Hon Martin Pritchard	Hon Darren West
Hon Sue Ellery	Hon Ayor Makur Chuot	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*
Hon Peter Foster	Hon Kyle McGinn	Hon Rosie Sahanna	

Pairs

Hon Peter Collier	Hon Klara Andric
Hon Colin de Grussa	Hon Stephen Dawson

Question thus negatived.

Second Reading Resumed

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [9.38 pm] — in reply: I stand to give the government's reply to the second reading debate on the Courts Legislation Amendment (Magistrates) Bill 2021. I thank Hon Nick Goiran for his contribution, as colourful as it was at times. Some parts of it were informative. Other parts of it were—what is the word?—hyperbolic. To some degree, I will take some of the questions that he put, although I am sure he put them earnestly, as rhetorical in nature and perhaps let a couple of them through to the keeper.

We do not accept Hon Nick Goiran's contention about the government's motive for this bill at all. There were proceedings on foot that involved Magistrate Crawford and President Quail of the Children's Court. That had a bearing on identifying an issue with the structure of the Children's Court and the powers of the president. This bill has not been brought on urgently. We have dealt with urgent bills before. The process for dealing with urgent bills is now set out in the standing orders. We have not sought to exercise any of those urgent requirements. The bill will progress as any other bill does. It is also worth noting that the bill was originally introduced to the Legislative Assembly in June last year and this bill was read a second time in August last year, a time at which the proceedings that have been referred to between Crawford and Quail were on foot. The government did not progress with the bill during that time because it would have perhaps been a little bit inappropriate for us to have done that while those matters were being litigated. There is no issue with that. This Parliament could have dealt with those issues if we had chosen to do so, but we thought it was prudent to step back. As I said, a bill introduced in August can hardly be described as one that has been treated urgently. Those of us who have been around the house for a few years know the argument about how the bill we are currently dealing with today is the government's number one priority and how dare that be the case! There are always more important things to deal with! This is a constant refrain from the other side and you can take it or leave it as you like. I take it as rhetoric and as hyperbole. As we say, the government of the day has the privilege and responsibility to determine the order of bills. If members opposite do not like that, when the next election comes around they can be more attractive to the people of Western Australia and get themselves elected. They will then get to decide the order of the bills in this place. I think it is important that we do not get caught up in that rhetoric about the urgency or otherwise of this bill. The bill is important, as is every bill that is brought before this Parliament. There is no question about the importance of the bills that we bring before the Parliament. This bill is not urgent in the sense that we have not sought a motion under the standing orders to make it urgent, and we will deal with it accordingly.

I am conscious that we have only a few more minutes left and am not going to be able to get through my reply in great detail, hence perhaps the reason for some of my waffling, for want of better word, a little bit, but I will try to get a little bit more focused and make a couple of other points.

On what the Law Society of Western Australia said on 1 December last year about the priorities of this chamber, I note with some disappointment, as I am a member of the Law Society, its lack of insight into the parliamentary processes that occur here for the bills that we deal with. The Law Society was advocating for us to deal with the Administration Amendment Bill, an extremely important bill, and the uniform legal profession bills, which are also important. What it did not really appreciate was that Hon Nick Goiran has amendments on the notice paper for the Administration Amendment Act. As I recall, back in December last year, the Legislative Assembly had arisen for the year and was not sitting. We were sitting and the Law Society was pushing us to deal with those bills. If we

had dealt with those bills and the amendments put forward by Hon Nick Goiran that the Law Society supported were agreed to, the bill would have had to have gone back to the Assembly, which was not going to sit again until today.

Several members interjected.

Hon MATTHEW SWINBOURN: We are not supporting your amendments, member.

The PRESIDENT: Order! Order! Third time lucky. Hon Matthew Swinbourn has one or two minutes.

Hon MATTHEW SWINBOURN: Thank you, President.

The other issue with the uniform legal practice bills was a report from the Standing Committee on Uniform Legislation and Statutes Review that we had to deal with, which we have just dealt with today at the very first opportunity this year. That was order of business 1—not this bill, but the uniform legislation committee's recommendations. We have dealt with that. We have now adopted the recommendations to change standing orders. The uniform legal profession bills are listed on the notice paper for us to deal with at a later date. The Law Society might need to go back and do a bit of its own homework about parliamentary procedures before it starts lecturing members about the priorities of this chamber.

Hon Alannah MacTiernan interjected.

Hon MATTHEW SWINBOURN: I will leave that one to the Minister for Regional Development to pursue in another matter, because I am not quite sure what she is referring to there.

Several members interjected.

The PRESIDENT: Order! One minute!

Hon MATTHEW SWINBOURN: Thank you. Just for the member's sake, I want to speak very briefly about the legal proceedings so that members understand what happened with the legal proceedings and what it got up to. There was a trial. The trial had three days, as the member pointed out. A number of aspects happened in that trial, but—perhaps not unusually—in this case, as can happen, the trial was stopped and discontinued, as I understand it, under the actions of the plaintiff Miss Crawford, who was the instigator of those legal proceedings, not the President of the Children's Court, who was the respondent in those proceedings.

Debate adjourned, pursuant to standing orders.