

COURTS LEGISLATION AMENDMENT (MAGISTRATES) BILL 2021

Second Reading

Resumed from an earlier stage of the sitting.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [5.05 pm] — in reply: I will try to pick up from where I left off, which was reinforcing how helpful it was that Hon Nick Goiran made the point that the President of the Children’s Court has a large amount of work to do as a judicial officer. This is the case for all principal judicial officers, who have a significant workload as both administrators and judicial officers.

The ultimate responsibility for allocating work in a court rests with the relevant head of a jurisdiction either as a specific statutory responsibility or as part of their general responsibility to manage the courts. Under section 37(1) of the Children’s Court of Western Australia Act 1988, the president is responsible for the administration of the court, the disposition of the business of the court and the practice and procedure of the court. As is the case for all heads of jurisdiction, this responsibility includes the allocation of workload by assignment of cases and directing locations in which a judicial officer will sit. As Hon Nick Goiran said—I do not doubt this—the president has “no spare capacity to be involved in these side skirmishes with a magistrate from the Children’s Court”. I thank the honourable member for that acknowledgement because it goes to the importance of the reforms of this bill, which will provide a clear framework for the management of judicial resources and resolve, for future purposes, issues about the scope of the powers of the President of the Children’s Court and the Chief Magistrate. As I indicated, the resolution of that issue will transcend the current president, magistrates and Chief Magistrate and, in all likelihood, all the members of this chamber.

Hon Nick Goiran raised issues about consultation with the heads of jurisdiction. I can confirm for members of the house that the following heads of jurisdiction were consulted on the bill: Hon Chief Justice Peter Quinlan, Chief Justice of the Supreme Court of Western Australia; Hon Julie Wager, Chief Judge of the District Court—I might add that Judge Wager was also the President of the Children’s Court prior to Hylton Quail, the current President of the Children’s Court; Hon Judge Hylton Quail, President of the Children’s Court of Western Australia; and the Chief Magistrate, Mr Steven Heath. The honourable member kindly quoted my response to a request that details of consultation conducted be provided. I again confirm that 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. This is a longstanding principle and has been respected by successive governments, including the last one. I also add that consultation processes are essential to the proper workings of government. Disclosure of any feedback provided by the heads of jurisdiction as part of that consultation process would be highly detrimental to the continued successful conduct of those consultation processes and thereby prejudice the proper workings of the government. With those considerations in mind, the government is not in a position to disclose any feedback provided by the heads of jurisdictions on the bill. This is an important note for members paying attention. It is of course open to members, including Hon Nick Goiran, to contact heads of jurisdiction directly to seek their views on any matters that are going before Parliament. That is connected with the independent nature of the judiciary. The government does not have the capacity to tell any member of the public not to make contact with the head of jurisdiction to seek their views. Whether a head of jurisdiction is willing to share their views with a member is a matter for the independent judiciary and not the government.

I take the opportunity now to clarify a few matters the member spoke to on the appointment of magistrates and the performance of their functions. Firstly, Hon Nick Goiran correctly pointed out that all magistrates in Western Australia receive dual commissions. That is generally correct with the exception that there is currently one magistrate commissioned in the Children’s Court on only a part-time basis. I think the member said “casual”, but nothing particularly turns on the distinction between those things.

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: Okay. The procedure outlined in proposed section 11 will, of course, have no application to a magistrate so appointed.

The member also traversed the history of amendments to the Children’s Court as far back as 1907. However, the member did not speak to the principal amendments to the structure of the Magistrates Court Act and the role of the magistracy that make the reforms in this bill absolutely necessary.

With the indulgence of the house and for the benefit of members, I will repeat some of what I said in the second reading speech, which states —

... prior to the commencement of the Magistrates Court in May 2005, there were multiple Courts of Petty Sessions and multiple local courts. Each individual court operated independently, meaning there was operational complexity in judicial officers moving between jurisdictions and no uniformity of procedures. This led to inefficiencies and dysfunction, which the establishment of the Magistrates Court —

Which happened in 2004 —

sought to address. A reform package of legislation was introduced to Parliament in 2004, consisting of some seven separate bills, which, in part, authorised magistrates to exercise certain functions without moving in or out of any particular jurisdiction. One of the key outcomes of the reforms was to enable magistrates of the Magistrates Court to be appointed to multiple commissions to exercise those jurisdictions anywhere in the state, ensuring the court was able to deal more efficiently and expeditiously with the cases that came before it.

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

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

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

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

As Hon Nick Goiran rightly pointed out, all magistrates are appointed to hold commissions as members of both the Magistrates Court and the Children's Court. However, he also stated that he had been advised —

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 unless they are on circuit in the regions.

I take the opportunity to clarify the functions of magistrates. The prospect of dual appointments is specifically contemplated by section 12(1a) of the Children's Court of Western Australia Act, which provides that a magistrate who has taken the oath or affirmation under the Magistrates Court Act does not need to take a further oath or affirmation under the Children's Court act when appointed to the Children's Court. As a consequence of their dual appointments, magistrates sitting in a regional or suburban court can dispose of the general business of the Magistrates Court—this is important—as well as cases that are in the Children's Court. In practice, that means all magistrates in outer metropolitan and regional court locations are able to, and routinely do, hear Children's Court matters. In the Perth CBD, there is a physical separation between the buildings in which the Magistrates Court and the Children's Court are located, and certain magistrates in the Perth CBD sit in the Children's Court of Western Australia building and deal exclusively with Children's Court cases and certain magistrates sit in the Central Law Courts building and do not deal with Children's Court matters. That is the only distinction within which that happens—within the CBD. However, all magistrates, with the odd exception, are still dually appointed. That is consistent with the 2004 reforms, which provide for a flexible magistracy that can respond to judicial resourcing requirements as they arise.

The honourable member spoke to the importance of magistrates of the Children's Courts having specialist skills or experience. The government agrees that that is important and it trusts that any person appointed as the President of the Children's Court—a specialist jurisdiction—is likely to be of the same view. What the bill will provide is discretion to the president to manage the workload of this specialist jurisdiction, consistent with his or her statutory obligation under the Children's Court act to do so.

Proposed section 11(2) of the Children's Court act will allow the president to identify a particular magistrate and make a request to the Chief Magistrate that the magistrate be available to perform Children's Court functions. The president is well placed to assess whether a magistrate is well suited to joining the Children's Court, having regard to, for example, their skills and experience. The bill harnesses the unique position of the president to make those

sorts of assessments by enabling the president to identify a particular magistrate who would be suitable to join the Children's Court.

Hon Nick Goiran also sought an undertaking that the discretion of the president will be exercised by reference to objective factors only. The government cannot and will not provide an undertaking on how a particular discretion will be exercised by a particular decision-maker, particularly one that will be exercised by an independent judicial officer in an entirely different branch of government. We have been accused of interfering with the independence of the judiciary, yet the member was inviting us to interfere with the independence of the judiciary, I think it would be fair to say. We will not do that. We will not direct the president on how to exercise any discretion. The allocation mechanism in section 11 depends on the president's consideration of what is necessary or desirable having regard to the workload of the Children's Court.

The exercise of the discretion by the president to issue a notice is clearly confined by statute to the workload of the court. I will repeat that—to the workload of the court. The decision of the president to seek to increase or decrease the duties of a magistrate in the Children's Court will be a matter of absolute discretion of the president. The president will not be required to take into account the seniority or length of service of a magistrate or any other matter. I digress from my written notes here to point out that there are not many places left in which the old "first on, last off" approach is still enforced. It used to be trade unions' bread and butter to enforce those arrangements in redundancy circumstances. But that is not a determining criteria within the Magistrates Court and the Children's Court for the president when dealing with magistrates and there are a range of good reasons for that. The reason for the breadth of the discretion is to enable the President of the Children's Court to operate the Children's Court in the manner that appears to be best to the president, with a view to ensuring that there is no wastage of scarce judicial resources. The express reference to the discretion being exercised without regard to seniority, or length of service, or any other matter is to ensure that the president can make the most beneficial decisions for the operation of the court without any person having an expectation that they will remain in the Children's Court on the basis of their past service or conventions relating to seniority. Again, proposed section 11 will apply only to those magistrates who have been appointed and have agreed to be appointed by the Governor to both the Children's Court and the Magistrates Court. The president may therefore make work allocation decisions on the basis of the needs of the Children's Court, having regard to its workload, its nature and the specialist skills of a particular magistrate.

The member also argued, as I understand it, that currently in the Magistrates Court only the Governor can determine that a magistrate work in a capacity other than full time with the consent of the magistrate. The member appeared to suggest that the Courts Legislation Amendment (Magistrates) Bill 2021 would enable the president to determine that a Children's Court magistrate work on a basis other than full time. With respect, that argument is a misconception of how magistrates are commissioned and work is allocated. This is not the effect of a notice being issued under proposed section 11 of the Children's Court of Western Australia Act. All magistrates are ordinarily commissioned on a full-time basis. They are commissioned to perform functions in a number of jurisdictions, including as magistrates of the Magistrates Court, as magistrates of the Children's Court, industrial magistrates under the Industrial Relations Act 1979 and wardens of mines under the Mining Act 1978. The effect of a notice under proposed sections 11(2) or (4) will not remove any commission held by a magistrate in any court nor will it result in them performing functions as a magistrate for which they are commissioned on anything other than full-time basis.

I should also reiterate to members that no magistrate has an absolute entitlement to sit in any one particular jurisdiction. When a notice is given by the president under proposed section 11(4) to reduce the duties of a magistrate in the Children's Court, this will increase the ability of the magistrate to undertake duties in the Magistrates Court. It is then a matter for the Chief Magistrate to give directions to that magistrate on full further duties in the Magistrates Court. The reduction in particular Magistrates Court duties is a matter that the Chief Magistrate is required to take into account in giving directions under section 25 of Magistrates Court Act. This is expressly set out in proposed section 11(5) of the Children's Court act.

As there may have been some confusion about the meaning of full time and part time in the bill, I might try to explain it another way. If a magistrate has been commissioned as a full-time magistrate—if I can adopt the expression of a one FTE—nothing in proposed section 11 could possibly change the fact that the magistrate has been appointed to a full-time capacity. Yes, the functions they may perform may change—for example, 0.5 FTE of their time at the Children's Court and 0.5 FTE of their time in the Magistrates Court—but they will always be a full-time magistrate. The same can be said if a magistrate were appointed on a part-time basis—for example, as a 0.5 FTE. That magistrate may perform all or some of their functions for the Children's Court, but that they are a 0.5 FTE will remain unchanged and the commission will remain exactly as it was when the Governor signed it. Members may also wish to know that the Chief Magistrate already has the power to unilaterally direct a magistrate to sit in a particular division of the Magistrates Court under section 25(1) of the Magistrates Court Act. The operation of proposed section 11 of the Children's Court act is consistent with this existing framework. For example, a full-time or part-time magistrate working in the Magistrates Court may be directed to work partly in the civil division and partly in the criminal division of the court, and also at different court locations, but that commission remains the same. The proposed provision

will simply provide a legislative framework for workload allocation; it will not impact the commission of magistrates or their full-time or part-time status as a magistrate.

Like me, members probably received a letter from the Law Society of Western Australia earlier this week, expressing some apparent concern, particularly with proposed section 11. Hon Nick Goiran referred to this letter in his contribution to the second reading debate, but I note that he did not table the letter.

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: I just note that the honourable member did not table the letter.

Acting President, I seek to table that letter.

[See paper [1065](#).]

Hon MATTHEW SWINBOURN: The letter was sent to all members of this place and to the Attorney General, the Solicitor-General and the Western Australian Bar Association. I note that the Attorney General has provided a response to the Law Society today. I am told—hopefully reliably—that a copy has been mailed to all members, which they should have received.

Hon Nick Goiran: Are you going to table that one, too?

Hon MATTHEW SWINBOURN: I will table that one, member, but I am just waiting for the other letter to be returned.

I seek to table this letter from the Attorney General to Ms Rebecca Lee, president of the Law Society of Western Australia, dated with today's date.

[See paper [1066](#).]

Hon MATTHEW SWINBOURN: I am sure members will have all sat down and studied the Attorney General's response in great detail, as I have. Members will note that the Attorney General's reply goes through the Law Society's concerns in some detail and explains just how incorrect its interpretation of the bill is. I might put on the record my support for the Attorney General's comments that it is entirely inappropriate for the Law Society to suggest that a senior judicial officer will abuse administrative powers to effectively punish magistrates who do not happen to make decisions in cases that he agrees with. I have a great deal of respect for the judiciary, as I am sure most members in this place do, and so I do not think it is appropriate for the Law Society—again, a society of which I am a member—to make such assertions about the potential actions of the current President of the Children's Court. I am sure, as the Attorney General has written in his letter, that the Law Society will give consideration to its position on that. For an organisation that purports to represent the WA legal profession, it shows a great deal of disrespect for the judiciary that it would make this type of suggestion. As the Attorney General's letter clarifies, the Chief Magistrate has extensive administrative powers to direct magistrates to sit in particular divisions of the court or work on particular cases. The Law Society makes no suggestion that this type of significant power will be used improperly, yet it suggests that that would be the case if that power were exercised by a more senior judge—the President of the Children's Court, the equivalent of a District Court judge. I have tabled both those letters.

One of the last paragraphs of the Law Society's correspondence states —

We also query whether the Parliament has had an opportunity to consider whether the Bill in its current form may be the subject of a legal challenge on the grounds that it interferes with the operation of Courts, contrary to Chapter III of the Commonwealth Constitution.

It was very late in the day for that concern to have been raised, knowing full well that this bill has been before the house for some time. It is also fair to say that that issue was raised earlier by the Magistrates Society of Western Australia. There was some issue about legal advice that the society had purportedly received. It is not usual for governments to table legal advice that they have received on a particular issue. I have been at the table and Hon Nick Goiran has extolled at great lengths about having the opportunity to have legal advice tabled, or passed over, but it has not been the normal practice for governments, as a general rule, to provide legal advice and to waive their legal professional privilege.

However, in this instance, exceptional circumstances have arisen whereby the Law Society of Western Australia has written to members of this place, raising questions about the constitutionality of the Court Legislation Amendment (Magistrates) Bill 2021; in particular, there has been correspondence from the Law Society querying whether the provisions of the bill impermissibly interfere with the independence of the judicial arm of government, contrary to chapter 3 of the commonwealth Constitution. As a result, the Attorney General considers there to be exceptional circumstances that warrant tabling the opinion provided by the government's most senior legal adviser, the Solicitor-General, Joshua Thomson, SC. In that opinion, the Solicitor-General confirms his view that the provision that the Law Society is concerned with, proposed section 11, will be constitutionally valid if enacted. This in no way should be taken as establishing a precedent for tabling legal advice in relation to other bills; I make that very clear.

I will repeat that: this should in no way be taken as establishing a precedent for tabling legal advice in relation to other bills or matters that may come before this Parliament; nor should it set any expectation that for any constitutional question raised publicly, the government will divulge any confidential legal advice it receives. I now table that legal advice.

[See paper [1067](#).]

Hon MATTHEW SWINBOURN: Members, that brings to a conclusion my reply to the second reading debate; I thank members for bearing through it. In this instance, the government sits on very strong ground for the reform that we are trying to achieve through this bill. I have said it once, and I will say it again: this reform, if passed by this Parliament, will survive all of us over time. It will survive the existing members of the judiciary and it will do no more, in real terms, than what any head of jurisdiction is entitled to do with regard to the jurisdictions that they are vested with administering. With those words, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Peter Foster) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Hon NICK GOIRAN: We have some 12 clauses to get through in the Courts Legislation Amendment (Magistrates) Bill 2021, and there has been a number of interesting developments even since I last rose to speak to this bill last night. I thank the hardworking parliamentary secretary for his reply to the second reading debate and for trying to tackle some of the issues that still remain. At the outset, I ask the parliamentary secretary to identify for the benefit of the house what the precise genesis of this bill was.

Hon MATTHEW SWINBOURN: Perhaps we can get some clarity on the mask arrangements for the table, because depending on how we go, it is going to be somewhat inconvenient to be up-and-down, up-and-down all the time.

The DEPUTY CHAIR: Let me just consult. When members are speaking, they do not have to wear their mask. However, when they are not speaking, it is a requirement that they wear it. If you are having a rapid interaction, it is understandable for you to leave your masks off.

Hon MATTHEW SWINBOURN: The genesis of it was referred to earlier in respect of the issues with Quail and Crawford. As I indicated in my reply, as is often the case, those sorts of things give impetus to the government to look at the issue more broadly. That was essentially the genesis, in the most general terms.

Hon NICK GOIRAN: That is certainly consistent with my understanding. The parliamentary secretary might recall that yesterday I described that litigation as unprecedented. I tried to pay as careful attention as I could during the parliamentary secretary's reply whilst also trying to conduct other urgent parliamentary business; the parliamentary secretary knows how it is in this profession in which we serve. There are always many, many things that need to be done all at the same time, but I do not recall at any time during the reply the government taking any issue with what I suggested at that time—that that litigation between those judicial officers, the judge and the magistrate, was anything other than unprecedented. The parliamentary secretary says that that is the genesis of the bill before us. Can I take it from that, then, that were it not for that dispute between those two highly qualified legal practitioners who now serve the people of Western Australia in the judicial capacities of judge and magistrate, we would not have this bill before us?

Hon MATTHEW SWINBOURN: The member has asked me to speculate to some degree on whether the bill would have come before us. I think it is fair to say that there was nothing on foot until those issues became apparent and were brought to the attention of the Attorney General.

Hon NICK GOIRAN: How does the government describe the dispute between those two individuals as a precursor for the bill that is before us? What was it that was in dispute between those two individuals that will now be rectified by the bill before us?

Hon MATTHEW SWINBOURN: I think the member has characterised the bill in some ways—I do not know whether it was intentional—as an effort to settle the dispute between Crawford and Quail. The government's position is not that this bill is designed to settle that dispute. From what is on the public record, I think it would be fair to say that the dispute goes beyond just the president's power to manage the workload.

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: Yes. I forget it is on and then I do not have it.

As I said, there is a general awareness about the gap in the powers of the Children's Court president to manage the workload, which this bill will try to address. The bill is not designed to resolve the dispute. As is often the case, a particular circumstance gives rise to an awareness of a deficiency that then leads the government to take action to rectify that, but I am not a party to all the nature of what goes on between Crawford and Quail. The bill will deliver what it is promising to do, which is to give the president the discretion to manage the workload issue.

Hon NICK GOIRAN: Is the parliamentary secretary saying that the dispute between Magistrate Crawford and Judge Quail identified a gap in the powers of the Children's Court president to manage the workload? If that dispute has identified that gap, which I have just described and tried to relay back to the parliamentary secretary, who identified the gap?

Hon MATTHEW SWINBOURN: I cannot tell the member when the first time it became an issue was. As the member knows, the relationship between the President of the Children's Court and the Chief Magistrate requires them to reach agreement on a number of things. I suspect that mostly there is comity, I think is the word. They get on with it and do certain things. What has brought this to the fore is the issue that arose with Crawford and the requirement of Quail wanting to remove Crawford from the Children's Court back to the Magistrates Court and the Chief Magistrate not agreeing to that. That has created the imperative, in some sense, for the government to assess the relationship between the Chief Magistrate and the President of the Children's Court and where that appropriately sits. I do not know whether I will be able to take the member any further than that. This bill was introduced last year. The member referred to a letter from the president to the Attorney General dated January 2021. If the president was raising it at that point with the Attorney General, I suspect that at that stage they had been having some issues. To drill right down into the detail is like trying to look behind the curtain of the judiciary and the government. Obviously, they talk all the time. Quail has been the president for just on two years. Judge Wager was the president before that. I think there was some awareness that there was an issue about the relationship then, but, as I said, I will not be able to take the member a lot further in that line of questioning.

Hon NICK GOIRAN: Is there no dispute from the government that President Quail wanted to move Magistrate Crawford out of the Children's Court?

Hon MATTHEW SWINBOURN: I might have been shortcutting it. The member referred to a letter that the Children's Court president wrote to the Attorney General in January 2021. I have not read that letter and do not have access to the full information before me. I do not have any more information here at the table to take that particular point any further. I was using it in the most general sense about the nature of the workload issue that is obviously there and how that was managed. Again, we are very cautious—understandably so, I think—about getting into the fine details of what has gone on between Crawford and Quail and the relationship between the Children's Court president and Magistrate Crawford. Those matters, as the member has raised with us, were the subject of litigation. There is a whole heap of material that is untested in any other area. They are serious things and I do not want to do a disservice, as the parliamentary secretary, to matters that I have only third or fourth-hand information on myself. Having not been involved in them, I can rely only on the advice at the table here and the member is pushing me for answers to those things that I am not going to be able to take the member much further on.

Hon NICK GOIRAN: To be clear, I was not pushing; I was just making sure that I understood the parliamentary secretary's earlier comments clearly. It is regrettable that we do not have instant access to *Hansard*, but if it was here right now, I think the parliamentary secretary indicated that Quail wanted to move on Crawford.

Hon Matthew Swinbourn: I used that term but, as I said to you, I qualified that in response to you by saying that it was just a general term, without going into that. We have not had access to that material.

Hon NICK GOIRAN: I was just seeking confirmation that the government does not dispute that that was at least part of the dispute. I certainly do not profess to know all the ins and outs of this dispute. All I know is what I have read, but it is very clear to me from what I have read that one element of this dispute is that President Quail wanted to move Magistrate Crawford out of the Children's Court. I was just clarifying that the government agrees that that is not in dispute. If that is in dispute, it is a little confusing to me how that particular dispute could possibly be the genesis of this bill. Is the parliamentary secretary in a position to confirm that that is not in dispute and that the government accepts—out of the myriad things that might have been occurring in this matter—that, at the genesis of it, one of the things was that President Quail wanted Magistrate Crawford to be moved out of the Children's Court?

Hon MATTHEW SWINBOURN: Member, at this time, and I do not want to make more of this than it actually is, I do not have the information at the table to tuck that one away. We are going to be back in committee tomorrow on this bill, so I will undertake to see whether an answer can be provided. On that particular point, as I said, it gives the impression that it is more contentious than it possibly is. Because I have been in here with the member many times, I know how his lines of inquiry go, but I am not trying to be difficult on that stuff; I just want to be more precise with the answer I give and I am not comfortable to give one now. I am certain that we can keep batting on with many other things, if the member is prepared to do that, and then come back to that particular point.

Hon NICK GOIRAN: I thank the parliamentary secretary. I have no problem with that. If the parliamentary secretary wants a little longer to make sure that the information provided to the house is accurate, he will always have my full support in that regard. One of the phrases he used is that these are “serious things”. That was a reference to, if you like, the dispute, the allegations, these matters that, as the parliamentary secretary quite rightly pointed out, remain untested. “These are serious things”, he said. The parliamentary secretary and I, and I imagine members of this place, want to treat that matter seriously. The parliamentary secretary in his reply was at some pains to underscore this point that these allegations are untested. That is the genesis of the bill before us. I agree with the parliamentary secretary that they are untested. Who is going to test them?

Hon MATTHEW SWINBOURN: I think some of those issues were going to be tested before the judge of the Supreme Court, but Magistrate Crawford discontinued her application, which I indicated in my reply, left some of those matters that were being raised untested. This will not quite answer the member’s question, because I think he was trying to get at the serious issues in relation to Magistrate Crawford and how they will be dealt with, which is not what we are dealing with in the bill, but the bill is about the relationship between the Chief Magistrate and the President of the Children’s Court and not simply about Crawford and Quail, which is an individual circumstance. But in his letter back to the Law Society, the Attorney General said —

Public confidence in the proper administration of justice is compromised by unseemly court proceedings between judicial officers. No doubt, if there is a legitimate grievance about the basis for the exercise of a discretion to allocate workload in a particular way, this may be raised with me (for the time being). In the future, it may be raised with a Judicial Commission which I propose to create.

As a matter of policy and not specifically in relation to those particular judges, because I cannot give credence to the allegations that have been aired through court proceedings, submissions made and all those sorts of things, in terms of policy, the Attorney General is indicating that his way of dealing with it currently is that any issues about that sort of stuff have to come to him. However, he is proposing to in the future create a judicial commission that would deal with those sorts of things and would remove politicians from the process.

Hon NICK GOIRAN: To be clear, we are now discussing these serious things, these allegations, that have been untested. I am asking who is testing them, partly in response to the parliamentary secretary indicating these concerns around Magistrate Crawford. I think it is important for the record to indicate, in fairness to both our esteemed learned friends in their new capacity or continuing capacity in the judiciary, that the allegations are not just one way. Some assertions are being made around Magistrate Crawford, supposedly, as I read into the record yesterday, doctoring reports and evidence. I also understand that there are allegations of bullying against the President of the Children’s Court. I consider both of these things, of which I know nothing other than what I have read here. It is not my job to be the judge and work out whose allegations are substantiated, whose are frivolous—that is not my job—but by the sounds of it, the parliamentary secretary is indicating that until such time as there is a judicial commission, that it is the job of the Attorney General. Is he intending to do anything about this and test these allegations?

Hon MATTHEW SWINBOURN: I am not going to get into those sorts of things. I am not in a position to answer them. I am not the Attorney General; I am the representative of the Attorney General. The member knows that very well. They are matters that the Attorney General, if they come to him, will consider, but I am not going to go into that. We have talked about the genesis of this bill. I appreciate that we are in the clause 1 debate and that it is quite wide, but the bill itself is dealing with the structural change to the relationship between the Children’s Court president and the Chief Magistrate. It is not seeking to resolve any dispute, whatever that may look like, between any particular magistrates and the Children’s Court president. If I could perhaps use as a counterpoint the Clive Palmer legislation that we dealt with. That legislation was specifically, for want of a better phrase, to resolve a dispute between the government and Mr Palmer. That was a very different kettle of fish back in the day, if the member recalls those particular proceedings. I am sure he does. But as I said to him, these changes will transcend any changes in who the Children’s Court president is, who is the magistrate acting in the Children’s Court area, who the Chief Magistrate is and, as I say for us, this is about the structure of the relationship between those courts. I cannot take that matter any further. I do not have advice in relation to those things and I am very unlikely to get any advice in relation to those things.

Hon NICK GOIRAN: I know that there are some very keen legal minds who are interested in these proceedings, and I and other observers will draw our own conclusions with regard to that of course, as we are entitled to do, about what the Attorney General intends to do about these things, which I think the parliamentary secretary has quite transparently, to his credit, described as serious things. I agree with the parliamentary secretary that these are serious things. We simply cannot have a situation in which serious things are swept under the carpet. That cannot happen. I have every confidence at this point, given the policy statement the parliamentary secretary made, that these matters will now be taken on by the Attorney General with enthusiasm and some expedition. The matters that were litigated were finalised, withdrawn or concluded quite some time ago now and there has been ample time to get to the bottom of these matters. The parliamentary secretary indicated at the very outset that this dispute between the President of the Children’s Court and Magistrate Crawford was the genesis of this matter. He indicated that it

identified a gap in the powers of the president to manage workload. Was there any dispute between the President of the Children's Court and the Chief Magistrate?

Hon MATTHEW SWINBOURN: The member referred to a dispute; I want to get an understanding of what the member means by a dispute between the Chief Magistrate and the President of the Children's Court. We have already indicated that this bill deals with who will have the authority to deal with workload issues within the Children's Court, and it will obviously deal with that particular matter. I just need Hon Nick Goiran to be more specific about what he means by a dispute.

Hon NICK GOIRAN: I asked the parliamentary secretary at the outset what was the genesis of this bill and he said that it was the Crawford and Quail matter. As I understand it, the dispute between Magistrate Crawford and President Quail was that Magistrate Crawford effectively said that President Quail was a bully and President Quail effectively said that Magistrate Crawford was a nuisance and he wanted her out of the Children's Court. That is a very broad paraphrasing on my part of what was obviously a complex dispute that ended up in the Supreme Court. That is the best I can try to summarise it in less than a paragraph. The parliamentary secretary may or may not agree with my characterisation of it, but that is probably not that important at this point. The point is that there was a dispute between the President of the Children's Court and a Children's Court magistrate. The bill before us will not provide some kind of dispute resolution mechanism between a magistrate and the President of the Children's Court, but it does seem to make clear whether it is the Chief Magistrate or the President of the Children's Court who will, if you like, direct traffic or direct workload or human resources—however one wishes to describe it. It will be that person who gets to determine that, whereas at the moment, the parliamentary secretary indicated that it requires some comity between the Chief Magistrate and the president. It seems to follow from all that that there must have been some kind of dispute between the Chief Magistrate and the President of the Children's Court; otherwise, why would we need the bill that is before us?

Hon MATTHEW SWINBOURN: I take the member to the Attorney General's letter of today, as I suspect he has not had his normal opportunity to forensically examine it.

Hon Nick Goiran: I will have some questions about the letter a little later.

Hon MATTHEW SWINBOURN: I am sure; I would be disappointed if there were not. I refer to the second page of the letter and the paragraph that reads —

Another difficulty is that, in the past, allocation of workload has required judicial comity between the Chief Magistrate and the President, and the acknowledgement of a magistrate that he or she will perform the work allocated to them. This mechanism can potentially break down. There is no difficulty in principle about providing a legislative framework for workload allocation. Indeed, the Chief Magistrate already has the power to unilaterally direct a magistrate to sit in particular divisions of the Magistrates Court (section 25(1)(a) of the *Magistrates Court Act 2004* (WA)), and there has been no complaint about this.

That was not the specific point the member asked about; he asked whether there was a dispute between the Chief Magistrate and the President of the Children's Court. There could have been a thousand disputes between the two of them; there could have been none. The issue that has been identified and we are trying to deal with is where the authority should sit in terms of those particular things. The policy of the bill is to ensure that it rests with the President of the Children's Court, rather than the Chief Magistrate being in a position to simply not agree, which we could contemplate happening. How many times that may have happened, I just do not know. How many times the Children's Court president has gone to the Chief Magistrate and asked such a thing could be nil or it could be many. We do not know, but it is not the kind of thing that is typically disclosed to government because it is an internal relationship between two judicial officers, of whom comity is normally expected. Overwhelmingly, I am sure that is how it has been dealt with. I am not in a position to get down to the nitty-gritty of a dispute between the two of them.

Hon NICK GOIRAN: The thing I find a little hard to believe is that the government would not be aware whether there has ever been a dispute. The parliamentary secretary indicated in his response that it could be nil—that it has not occurred on any occasion. I find that very hard to believe. I know that the government has a large legislative agenda that it wants to get through. I know that the government understands that the opposition is not in the business of just rolling out the red carpet to legislation. We will scrutinise the legislation no matter what is put before us. It takes some time and some resources to change the law. I cannot imagine that the government is doing this whole bill on a whim, let alone when it is the second priority for 2022, after the bill that we passed yesterday. I think it is fair and reasonable to conclude that there must have been some kind of dispute between President Quail and Chief Magistrate Heath. Perhaps the parliamentary secretary takes issue with my use of the word “dispute”. Let us say there was a disagreement or lack of agreement between them. That must have happened on at least one occasion. Is that in fact the reason this bill is before us?

Hon MATTHEW SWINBOURN: We have talked about the genesis of this bill and how it has got here. The member is trying to drill down into more detail than that. We became more fully aware of the issue as a result of the issue

between Crawford and Quail. A decision was then made by cabinet to legislate to address that relationship issue between the Children's Court president and the Chief Magistrate, and that is why we are here today.

Hon NICK GOIRAN: That does not answer the question. Yes, we have discussed the genesis of this bill. My first question was: what was the genesis of this bill? The parliamentary secretary answered: Crawford and Quail. I said that I agreed with him. I am just asking whether an additional, supplementary or ancillary reason that this bill is before us is not so much the dispute between the President of the Children's Court and a magistrate, but a dispute between the president and the Chief Magistrate. That would seem to me what is being finalised here. There will not be a dispute or the possibility of a disagreement in the future. Once again, I am most impressed with the parliamentary secretary because he has already flagged the area that I was going to ask about in the Attorney General's letter of today; namely, the exact phrase that he used to write to the Law Society of Western Australia—"This mechanism can potentially break down." Has it broken down? It is implausible that it has not broken down and that the government would prioritise this bill on the possibility that the mechanism would break down. I forget how long Chief Magistrate Heath has been the Chief Magistrate. I know it has been a very substantial period. If I were to take a guess, parliamentary secretary, I would say that it is probably 20 years. I would have said a couple of decades. In that period of time, I imagine that Chief Magistrate Heath had to engage with the then President of the Children's Court, Denis Reynolds, and the president that followed, Julie Wager, and now, of course, the newest Children's Court President, Mr Quail. It seems that in that 20-plus years, it is only with the recent president that this breaking down of the mechanism seems to have emerged. We are not aware of any other information. The parliamentary secretary suggested that there have been nil breakdowns of these things. I find that difficult to believe. Certainly when one considers the information on the public record with regard to this matter, it does appear that there was very much some form of disagreement between Mr Quail and Mr Heath. As I understand the sequence of events, Mr Quail asked Mr Quigley to have this person moved on. I gather that Mr Quigley asked Mr Heath and he said no. I believe in the open court proceedings that took place in this matter. I gather that there was some reference to that and a note to that effect. It seems that the genesis of this matter is that there was disagreement between those two heads of jurisdiction and the government is now inclined to break through that iceberg and say, "Well, we're going to find in favour of the President of the Children's Court." The parliamentary secretary indicated earlier that there had been some consultation with the Chief Justice, the Chief Judge, the President of the Children's Court and the Chief Magistrate. Have any of them expressed any concerns to the government about the bill?

Hon MATTHEW SWINBOURN: I made it very clear in my second reading reply that we would not be getting into the nature of the consultation that happened between, and the opinions proffered by, independent judicial officers to the government. I think I explained those in great detail and I am not going to move from that at the committee table.

Hon NICK GOIRAN: That could be because the government wants to stand firm on the principle that the parliamentary secretary articulated. It could also be because the government knows full well that if this bill had been referred to the Standing Committee on Legislation yesterday, as was moved by the opposition, it would have been able to hear from those heads of jurisdiction to get to the bottom of this and find out whether Chief Magistrate Heath agrees with this, whether the Children's Court President Quail agrees with this, whether Chief Judge Wager, including in her experience as a former President of the Children's Court, agrees with this and whether the very learned Chief Justice of Western Australia has anything to add to this, including the substantial matters that have been brought to our attention by the Law Society, which the Attorney General has robustly replied to today. The Standing Committee on Legislation would have been able to find out all that information, but that is not going to happen and now, unfortunately, we have a situation in which the only mechanism for that information to be provided to the chamber is through the executive. In the parliamentary secretary's reply earlier, he indicated that the executive will not do that. How will the Legislative Council get this information when the executive wants to plead as a shield this principle that it cannot let us know what has happened with the consultation? Perhaps in order to break through this issue, parliamentary secretary—noting that we are getting close to the end of the time for Committee of the Whole tonight—might I ask: would the executive, the government and the Attorney General be so kind, for the benefit of the Legislative Council, to reach out to the Chief Justice, the Chief Judge and the Chief Magistrate and the President of the Children's Court to obtain their consent to release the consultation that was had with those four esteemed judicial officers?

Hon MATTHEW SWINBOURN: Member, noting that the time for members' statements is very close, I do not think we will, but I will pass on that request to the Attorney General. It may very well have been the case. I am only speculating here that that has already happened and that part of the arrangement is that we do not disclose whether we have made such a request. I will make the point that I made before; independent judicial officers' opinions can be sought by anybody because they are independent of government; they are not government officers under the direction of the Attorney General. I am sure that the Clerks will correct me, but I do not think even the Legislative Council has the power to subpoena a judge in their capacity as a judge to give opinions about laws before Parliament. I stand to be corrected on that particular point. Even if the house was clear about sending the bill to the Standing Committee on Legislation and it did convene, it is not necessarily the case—again, I stand to be corrected—that any of those heads of jurisdiction would have proffered their opinions about the government's legislation.

Hon NICK GOIRAN: I also note the time and realise, parliamentary secretary, that we are going to be finishing soon. I want to finish on this quick point. The parliamentary secretary made some representations about the fact that I declined to table the transcript. We can get into that a little bit more tomorrow, but I simply make this point.

Hon Matthew Swinbourn interjected.

Hon NICK GOIRAN: No. I simply make the point that I now have the consent to provide that, which I did not have yesterday, which was the only reason why I had not provided it. All I am waiting for is a clean copy that can be tabled rather than the one that has been scrawled on with my notes. The parliamentary secretary can be assured that tomorrow I will be making best endeavours to provide that document.

Hon MATTHEW SWINBOURN: I thank Hon Nick Goiran for making that point.

Progress reported and leave granted to sit again, pursuant to standing orders.