

# Courts Legislation Amendment (Magistrates) Bill 2021

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Western Australia

LEGISLATIVE ASSEMBLY

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

**A Bill for**

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

The Parliament of Western Australia enacts as follows:

1

## **Part 1 — Preliminary**

2

### **1. Short title**

3

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

4

5

### **2. Commencement**

6

This Act comes into operation as follows —

7

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

8

9

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

1           **Part 2 — Children’s Court of Western Australia**  
2                                    **Act 1988 amended**

3   **3. Act amended**

4           This Part amends the *Children’s Court of Western Australia*  
5           *Act 1988*.

6   **4. Section 3 amended**

7           In section 3(1) insert in alphabetical order:

8  
9                            **Chief Magistrate** means the Chief Magistrate of the  
10                           Magistrates Court;  
11

12   **5. Part 2 Division 2 heading replaced**

13           Delete the heading to Part 2 Division 2 and insert:

14  
15                            **Division 2 — Judges and magistrates**  
16

17   **6. Section 10 amended**

18           In section 10(5):

19           (a) in paragraphs (a) and (b) after “those provisions” insert:

20  
21                            (other than in Schedule 1 clause 12(6) and (7) of that  
22                            Act)

23  
24           (b) in paragraph (c) delete “this Act.” and insert:

25  
26                            this Act; and  
27

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

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

12 **Appointment of magistrates**

13 **7. Section 11 inserted**

14 After section 10 insert:  
15

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

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

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

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



1 **8. Section 12A inserted**

2 At the end of Part 2 Division 2 insert:

3

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

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

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

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

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

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

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

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

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

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

1 **9. Part 8 inserted**

2 After section 53 insert:

3

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

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

9 (1) In this section —

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

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

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

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

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

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

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

2 **10. Act amended**

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

4 **11. Section 25 amended**

5 After section 25(5) insert:

- 6
- 7 (6) If a person holds office both as a magistrate of the  
8 Court and as a magistrate of the Children’s Court, the  
9 Chief Magistrate must not give a direction under  
10 subsection (1) in relation to the person’s functions as a  
11 magistrate of the Children’s Court.  
12

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

14 After Schedule 1 clause 12(5) insert:

- 15
- 16 (6) If a person holds office both as a magistrate of the Court and  
17 as a magistrate of the Children’s Court, and the person  
18 resigns from only one of those offices, the resignation is  
19 taken to be a resignation from both of those offices.

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

- 25 (a) the resignation is taken to have been a resignation  
26 from both the first office and the other office; and  
27 (b) the resignation from the other office is taken to take  
28 effect on the later of —  
29 (i) commencement day; and

1  
2  
3

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

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