



Western Australia

Courts Legislation Amendment (Magistrates) Act 2022

As at 28 Feb 2022

No. 2 of 2022

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Courts Legislation Amendment (Magistrates) Act 2022

Contents

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Children’s Court of Western Australia Act 1988</i> amended		
3.	Act amended	3
4.	Section 3 amended	3
5.	Part 2 Division 2 heading replaced	3
Division 2 — Judges and magistrates		
6.	Section 10 amended	3
7.	Section 11 inserted	4
	11. Work of magistrates appointed to both Magistrates Court and Children’s Court	4
8.	Section 12A inserted	7
	12A. President may assign duties to magistrates	7
9.	Part 8 inserted	8
Part 8 — Transitional provisions for <i>Courts Legislation Amendment (Magistrates) Act 2022</i>		
54.	Magistrates performing Children’s Court functions before commencement of <i>Courts Legislation Amendment (Magistrates) Act 2022</i>	8

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

10.	Act amended	10
11.	Section 25 amended	10
12.	Schedule 1 clause 12 amended	10



Western Australia

Courts Legislation Amendment (Magistrates) Act 2022

No. 2 of 2022

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

[Assented to 28 February 2022]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Courts Legislation Amendment (Magistrates) Act 2022*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

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

3. Act amended

This Part amends the *Children's Court of Western Australia Act 1988*.

4. Section 3 amended

In section 3(1) insert in alphabetical order:

Chief Magistrate means the Chief Magistrate of the
Magistrates Court;

5. Part 2 Division 2 heading replaced

Delete the heading to Part 2 Division 2 and insert:

Division 2 — Judges and magistrates

6. Section 10 amended

In section 10(5):

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

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

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

this Act; and

s. 7

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

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

Appointment of magistrates

7. Section 11 inserted

After section 10 insert:

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

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

- (3) If the President gives a notice under subsection (2) in relation to a dually appointed magistrate —
- (a) the Chief Magistrate may consent, or refuse to consent, to the magistrate for the time being performing Children's Court functions on the basis specified in the notice; and
 - (b) if the Chief Magistrate consents — the Chief Magistrate must, in giving any directions to the magistrate under the *Magistrates Court Act 2004* section 25, take into account that for the time being the magistrate is required to perform Children's Court functions on the basis specified in the notice.
- (4) If a particular dually appointed magistrate has performed Children's Court functions on a full-time or part-time basis or has been the subject of a notice under subsection (2), the President may, by written notice, inform the Chief Magistrate —
- (a) that the President considers that, to deal with the workload of the Court, it is not necessary or desirable for the magistrate for the time being to perform Children's Court functions at all; or
 - (b) that the President considers that, to deal with the workload of the Court —
 - (i) it is not necessary or desirable for the magistrate for the time being to perform Children's Court functions on the basis that previously applied; and
 - (ii) it is necessary or desirable that the magistrate should instead for the time being perform Children's Court functions on a part-time basis as specified in the notice (which must, in the case of a magistrate who previously

s. 7

performed those functions on a part-time basis or was the subject of a notice under subsection (2)(b), be a reduced part-time basis).

- (5) If the President gives a notice under subsection (4) in relation to a dually appointed magistrate, the Chief Magistrate must, in giving directions to the magistrate under the *Magistrates Court Act 2004* section 25, take into account —
- (a) in the case of a notice under subsection (4)(a) — that for the time being the magistrate is not required to perform Children's Court functions; or
 - (b) in the case of a notice under subsection (4)(b) — that for the time being the magistrate is required to perform Children's Court functions on the specified part-time basis and not otherwise.
- (6) In determining whether to give a notice under subsection (2) or (4) in relation to a dually appointed magistrate, the President has absolute discretion and is not required to take into account the seniority or length of service of the magistrate or any other matter.
- (7) A notice under this section in relation to a magistrate is subject to any subsequent notice under this section in relation to the magistrate.

8. Section 12A inserted

At the end of Part 2 Division 2 insert:

12A. President may assign duties to magistrates

- (1) The President, by directions given from time to time to a person who is a magistrate, may —
 - (a) specify which case or cases, or class or classes of case, the person is to deal with; and
 - (b) specify which administrative duties the person is to perform for the time being; and
 - (c) specify where, when and at what times to deal with those cases or perform those duties.
- (2) A direction given under subsection (1) must relate only to the person's functions as a magistrate of the Court.
- (3) A direction given to a magistrate under subsection (1) does not limit the functions of the magistrate.
- (4) A magistrate must comply with a direction given under subsection (1).
- (5) A contravention of subsection (4) is not an offence.
- (6) The Chief Magistrate is not entitled, under the *Magistrates Court Act 2004* or any other law, to direct a person to perform functions as a magistrate of the Court or in relation to the performance of those functions.

9. Part 8 inserted

After section 53 insert:

Part 8 — Transitional provisions for *Courts Legislation Amendment (Magistrates) Act 2022*

54. Magistrates performing Children's Court functions before commencement of *Courts Legislation Amendment (Magistrates) Act 2022*

- (1) In this section —
Children's Court functions and ***dually appointed magistrate*** have the meanings given in section 11(1).
- (2) This section applies to a dually appointed magistrate who has performed Children's Court functions on a full-time or part-time basis before the day (***commencement day***) on which the *Courts Legislation Amendment (Magistrates) Act 2022* Part 2 comes into operation.
- (3) Without limiting section 11, the President may give the Chief Magistrate a notice under section 11(2) or (4) in relation to the magistrate.
- (4) If no notice has been given under section 11(2) or (4) in relation to the magistrate, section 11 applies in relation to the magistrate as if on commencement day —
 - (a) the President, by notice under section 11(2), informed the Chief Magistrate that the President considers that, to deal with the workload of the Court, it is necessary or desirable for the magistrate for the time being to perform Children's Court functions on the

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

Part 3 — *Magistrates Court Act 2004* amended

10. Act amended

This Part amends the *Magistrates Court Act 2004*.

11. Section 25 amended

After section 25(5) insert:

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

12. Schedule 1 clause 12 amended

After Schedule 1 clause 12(5) insert:

- (6) If a person holds office both as a magistrate of the Court and as a magistrate of the Children’s Court, and the person resigns from only one of those offices, the resignation is taken to be a resignation from both of those offices.
- (7) If, before the day (***commencement day***) on which the *Courts Legislation Amendment (Magistrates) Act 2022* Part 3 came into operation, a person held office both as a magistrate of the Court and as a magistrate of the Children’s Court and resigned from only one of those offices (the ***first office***) —
- (a) the resignation is taken to have been a resignation from both the first office and the other office; and
 - (b) the resignation from the other office is taken to take effect on the later of —
 - (i) commencement day; and

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

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