

9 August 2021

Dear Honourable Members

COURTS LEGISLATION AMENDMENT (MAGISTRATES) BILL 2021 (“THE BILL”)

The Executive of the Law Society of Western Australia (“the Executive”) has now considered the Bill and its potential impact.

The Executive is 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. This is because the newly introduced proposed section 11(6) provides for the President to have “...*absolute discretion and is not required to take into account the seniority or length of service of the Magistrate or any other matter*” in exercising the new power (emphasis added).

Clause 7 of the Bill will introduce s11(6) to the Children’s Court of Western Australia Act 1988. This provision, and related supporting provisions potentially imperil judicial independence of decision making, and there does not appear to be any similar unfettered non reviewable discretion in other Acts that govern the position of Magistrate. The Society urges you not to pass the Bill in its current form because this form of interference with judicial independence does not reflect current community standards.

The Executive has formed the view that the enactment of the Bill as drafted **will** affect more than “*the administration of the Court*” as the proposed s11 gives the President the power to strip a specific Magistrate of the power to sit in the Children’s Court and that decision is *an unfettered non-reviewable discretion*.

The Executive takes no issue with provisions that empower and enable the President of the Children’s Court to direct the efficient management and administration of the Court.

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 been no consultation with the Law Society of Western Australia. We urge that the Bill be deferred for further review.

Yours faithfully



Jocelyne Boujos
President

cc: Joshua Thompson SC, Solicitor-General,
Martin Cuerden SC, President, WA Bar Association