Children and Community Services Amendment Bill 2019

Frequently asked questions (FAQ) - June 2020

On 28 November 2019 the Minister for Child Protection, the Hon Simone McGurk MLA, tabled the Children and Community Services Amendment Bill 2019 (the Bill) in the Western Australian (WA) Parliament. The Bill implements recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and the 2017 Statutory Review of the *Children and Community Services Act 2004* (the Review).

The amendments in the Bill strengthen the Act to better protect WA's children from harm and improve outcomes for children who are in out-of-home care (OOHC) under the care of the Chief Executive Officer (CEO) of the Department of Communities (Communities).

These FAQs provide information on changes being made to the *Children and Community Services Act 2004* (the Act).[1]

Introduction

1. Why is the Act being amended?

- A statutory review of the Act must occur every five years. The Bill implements 40 of the Review's 53 recommendations for changes to legislation[2]. Amendments are also being made to introduce ministers of religion as mandatory reporters of child sexual abuse as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission).

2. When will the law change?

- The law won't change until the amendments have been passed by both Houses of Parliament and the 'Amendment Act' is proclaimed to come into operation.

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[1] A copy of the Children and Community Services Act 2004 marked-up with the amendments in the Bill is on the WA Parliament website at: www.parliament.wa.gov.au/Parliament/Bills.nsf/B283F888C69DAC85482584C0001481AA/$File/Children%2Band%2BCommunity%2BServices%2BAct%2B2004%2B-%2BBar%2B2.pdf

[2] A copy of the Review report is available on the WA Parliament website at: www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/4010991ac1b94f27cef79237482581e7001d5deb/$file/991.pdf

- The bill passed the Legislative Assembly on 20 May 2020 and debate will continue in the Legislative Council.
- The amendments regarding approved Aboriginal representative organisations (AROs) will not be proclaimed to come into operation until Communities and potential approved AROs are ready to implement the amendments.

3. Who did the Review?

- The former Department for Child Protection and Family Support commenced the Review on behalf of the Minister for Child Protection. It was completed by Communities, which was formed in July 2017.
- An 11 member Reference Committee addressed terms of reference 1 to 4. External membership comprised: Glenn Pearson, Head Aboriginal Health Telethon Kids Institute; Ross Wortham, CEO of Youth Affairs Council WA; and Ian Carter CEO of Anglicare.
- A legal working group with legal expertise in family law and child protection addressed term of reference 5. External membership comprised: Legal Aid WA; Aboriginal Family Law Association; Djinda Services; Aboriginal Legal Service WA; Family Law Practitioners Association; Women's Law Centre of WA; Department of Justice.

4. Who was consulted?

- Thirty-seven (37) written submissions were received from community sector organisations; government departments; Aboriginal community-controlled organisations; legal services; and interested professionals and individuals. A list of who made submissions is in Appendix A of the Review report.
- Consultation also occurred with Aboriginal community members, service providers and Aboriginal community-controlled organisations in Perth and regional areas early 2017 to feed into the Review Committee's deliberations.
- Forty-one (41) submissions from a 2015 Consultation on Out of Home Care Reform legislation were also considered by the Review due to the change of Government.

5. Why expand mandatory reporting?

- The Western Australian Government is committed to implementing recommendations from the Royal Commission. Recommendation 7.3 recommended that the following occupation groups should be included as mandatory reporters in all jurisdictions to achieve minimum national consistency:
    - out of home care workers (excluding foster and kinship/relative carers)
    - youth justice workers
    - early childhood workers
    - registered psychologists and school counsellors
    - persons in religious ministry.

- The State Government is taking a staged and targeted approach to implementing this recommendation. The Royal Commission provided clear evidence of a history of consistently inadequate responses from religious institutions to child sexual abuse. This supported the need for prioritising implementation of mandatory reporting for ministers of religion.
- Communities is currently working towards the further expansion of mandatory reporting to the other groups identified by the Royal Commission.

6. Who is included as a minister of religion?

- The Bill defines a minister of religion as a person who is recognised in accordance with the practices of a faith or religion and who is authorised to conduct services or ceremonies in accordance with the tenets of the faith or religion regardless of how the persons position or title is described (for example, a member of the clergy, priest, minister, imam, rabbi or pastor).
- This includes people who are ordained and officially recognised as ministers of religion by members of the faith or religion. It is not intended to include brothers, sisters, nuns or others who could be considered “lay” teachers or elders of churches and religious organisations.

7. Will a minister’s reporting obligation apply to religious confessions?

- The Bill also implements Royal Commission recommendation 7.4 that persons in religious ministry should not be exempt “from being required to report knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession.”
- Ministers of religion will also need to report child sexual abuse if they believe that a child is being or has been abused on the basis of information they receive during a religious confession, or if their disclosure would otherwise be contrary to the tenets of their faith or religion.

8. Will ministers have to report concerns they had before the new laws?

- Reporting requirements will apply to ministers of religion if they form a belief on or after the day the new law comes into effect that a child has or is being sexually abused.
- Anyone can and should notify Communities about any concern for a child’s wellbeing. This enables authorities to assess the circumstances and take action to protect the child and other children where necessary.
- Just like mandatory reporters, if people voluntarily notify Communities in good faith about concerns for a child they are protected under the legislation.

Aboriginal children, families and communities

At 31 March 2020, 55.7 per cent of the 5,497 children in care in WA were Aboriginal children. Reducing the overrepresentation of Aboriginal children in care is a major driver of Communities' reforms in OOHC and a strong focus of the Review's recommendations.

The amendments in the Bill are intended to build stronger connections to family, culture and country for Aboriginal children in care through working more closely with Aboriginal people and Aboriginal community-controlled organisations to achieve better outcomes for Aboriginal children, families and communities.

9. What is changing?

Aboriginal and Torres Strait Islander child placement principle

- The Aboriginal and Torres Strait Islander child placement principle in section 12 of the Act is being amended to prioritise placement arrangements for Aboriginal children closer to their communities.
- A **placement arrangement** is an arrangement about who a child should live with when they are in the care of the CEO.
- The Aboriginal and Torres Strait Islander child placement principle sets out an order of priority for the placement of all Aboriginal children in care. The intent of the principle is to enhance and preserve connection to family and culture for Aboriginal children in care.
- The current order of placement priority for an Aboriginal child's placement is with:
    (a) a member of the child's family;
    (b) an Aboriginal person in the child's community;
    (c) an Aboriginal person (who could be anywhere in WA); or finally,
    (d) a non-Aboriginal person (who could also be anywhere in WA).
- Under the Bill the new order of placement priority will be placement with:
    (a) a member of the child's family;
    (b) an Aboriginal person in the child's community;
    (c) an Aboriginal person in close proximity to the child's community;
    (d) a non-Aboriginal person in close proximity to the child's community;
    (e) an Aboriginal person (who could be anywhere in WA); or finally,
    (f) a non-Aboriginal person (who could also be anywhere in WA).
- Placements with non-Aboriginal carer(s) will have to be with people who are responsive to the child's cultural support needs, and willing and able to encourage and support the child to develop and maintain a connection with the culture and traditions of the child's family or community.

Placement arrangements and cultural support planning

- The Review looked at the operation and effectiveness of section 81. This section currently says that before making a placement for an Aboriginal child in care, consultation must occur with **at least one** of the following:
    - an Aboriginal officer of the Department;
    - an Aboriginal person with relevant knowledge about the child, the child's family or the child's community; or
    - an Aboriginal agency that in the opinion of the CEO has relevant knowledge about the child, the child's family or the child's community.
- After considering the written submissions on section 81 and feedback from community consultations, the Review recommended strengthening the section by making consultation with the Aboriginal family and an Aboriginal organisation compulsory.
- The Bill says that before placing a child with a carer once an Aboriginal child is in the CEO's care, the CEO must consult with **all three** of the following:
    - an Aboriginal member of the child's family; and
    - an Aboriginal representative organisation approved by the CEO in accordance with regulations (an approved ARO); and
    - an Aboriginal officer of the Department with relevant knowledge of the child, the child's family or the child's community (section 81).
- In practice, family consultations regarding the child's placement should involve a number of members of the child's family.
- It is envisaged that approved AROs will be Aboriginal community-controlled organisations that are recognised by the local community.
- Subject to regulations, an approved ARO must also be given an opportunity to participate in the development of an Aboriginal child's cultural support plan and annual reviews of the plan.

Care Plan Review Panel

- If an application for the review of a care planning decision concerns an Aboriginal child, membership of the Care Plan Review Panel dealing with the application must include at least one Aboriginal person.

10. How will these changes help improve outcomes for Aboriginal children?

- The greater consultation that must happen in relation to who an Aboriginal child in the CEO's care should be placed with will help to better implement the Aboriginal and Torres Strait Islander child placement principle.
- Working more closely with place-based approved AROs will:
    a) help to find suitable placements for children with family or placement options that are closer to a child's community; and

b) provide Aboriginal children with stronger cultural support plans based on the cultural knowledge of the AROs.

- Providing the Children's Court with information on how the Aboriginal and Torres Strait Islander child placement principle has been applied and the placement consultation Communities has undertaken will give greater prominence to and accountability for how Communities is applying the principle. The child's cultural support plan must also be provided to the Court.
- In time, these amendments will help to strengthen the cultural identity and connections to family, culture, community and country that are so important to Aboriginal children when they are in out-of-home care.

11. Who was consulted about the idea of approved AROs?

- The Review considered the feedback and many recommendations it received in written submissions about the need for stronger Aboriginal consultation and participation when making placement arrangements and cultural support planning.
- The term 'representative organisation' was recommended to reinforce the need for the Aboriginal bodies consulted about placement arrangements to be 'place-based' and therefore to hold knowledge of the child, the child's family or the child's community rather than the current 'Aboriginal agency' that was previously and is currently referred to in section 81.
- In 2018, Communities consulted with Aboriginal stakeholders on who these organisations might be and how they might be defined in the legislation. Those consulted were: Aarnja (Kimberly Aboriginal Children in Care Committee), WA Aboriginal Advisory Council, the then Noongar Child Protection Council, and Family Matters WA.

12. Why should an ARO have to be 'approved' by the CEO?

- The CEO of Communities has a duty of care towards children in care whether the CEO has full parental responsibility for the child under a protection order, or whether the child's case is still before the Children's Court waiting for a final decision on the child's need for protection.
- Because the new laws would mean Communities must consult with an approved ARO before making a placement for an Aboriginal child, the CEO has a duty to make sure the organisations consulted meet certain criteria and standards, including the need to comply with the information sharing powers under the Act and the confidentiality that is required.
- The criteria for the CEO's approval will be developed in consultation with Aboriginal stakeholders through a planned consultation and codesign process.

13. When will approved Aboriginal representative organisations (AROs) be starting?

- The provisions about approved AROs won't come into operation until potential AROs and Communities are ready to implement the requirements statewide.

- Communities and Aboriginal stakeholders need to work in partnership to co-design an appropriate model or models throughout WA for implementing place-based approved AROs.
- This work will involve identifying the criteria that the CEO will need to be satisfied of before approving an organisation as an ARO for placement consultations under section 81 and cultural support planning.

'Written proposal' for the wellbeing of a child

14. How are Communities 'written proposals' to the Court changing?

- A 'written proposal' is a report Communities must provide to the Court when the Court has found that a child is need of protection. Written proposals must outline proposed arrangements for the wellbeing of a child if a protection order (time limited) or extension, or a protection order (until 18) for the child has been applied for.
- In the new s.143A, these reports will have to outline proposed arrangements for safeguarding and promoting the wellbeing of the child, including:
    - arrangements for promoting, where appropriate, the child's relationships with family or other people significant to the child;
    - for Aboriginal or culturally and linguistically diverse (CALD) children, arrangements for placement in accordance with the Aboriginal and Torres Strait Islander child placement principle or CALD placement guidelines.
- The child's cultural support plan must also be attached to the report and the proposal for an Aboriginal child must outline the placement consultation that has or will occur under section 81.
- For protection orders (time limited), the report must outline proposed arrangements for working towards the child's reunification with parents or a brief explanation as to why this would be contrary to the child's best interests or not practicable; and for extensions of a protection order (time-limited), the report must outline plans for securing long-term stability, security and safety in the child's relationships and living arrangements.

Special guardianship orders

15. What is a special guardianship order?

- A protection order (special guardianship) (SGO) is an order that appoints one person or two people jointly, to be a child's 'special guardian'. The order gives parental responsibility for the child to the special guardian, to the exclusion of any other person, until the child reaches 18 years of age or the order is revoked under the Act. As the child is no longer in the CEO's care, the special guardian does not have to consult with Communities.
- Communities must provide the Court with a report that addresses the suitability of the person to be the child's long-term carer and the person's willingness and ability to. The

report also has to outline the proposed arrangements for the child's wellbeing if an SGO were to be made (s.61).

16. How are SGOs changing?

- For Aboriginal and CALD children Communities' report must:
    - address the Aboriginal and Torres Strait Islander child placement principle or the guidelines for the placement of a CALD child; and
    - include a copy of the child's cultural support plan.
- Before making an SGO for an Aboriginal child in favour of a non-Aboriginal person or persons, the Court will also have to consider a written report from an Aboriginal agency or suitably experienced individual.
- An SGO may include conditions to be complied with by the special guardian/s about cultural support for the child.
- It will be a condition of an SGO that the special guardian must not apply to the Registry of Births, Deaths and Marriages to have the child's name changed without the permission of the Court. The Court may only grant permission if exceptional circumstances exist and, if the child has sufficient maturity and understanding, the child consents.
- If the CEO learns about the death of a child's sole or joint special guardian/s, the Children's Court must be notified and from the date of notification the SGO will be revoked and replaced with a two-year time limited protection order. Notice of the new protection order must be given to the parties to the initial SGO and to other people with a significant interest in the child's wellbeing.

Services for children in care and care leavers

17. What is changing for care leavers?

- Amendments regarding children and young people once they leave care include:
    - a leaving care plan must be prepared once a child reaches 15;
    - leaving care plans should include the social services proposed to be provided for the child post-care;
    - children leaving care must be provided with the social services the CEO considers appropriate having regard to the child's needs, regardless of whether those needs were specifically identified in the child's last care plan;
    - children leaving care are to receive written information on their entitlements post-care.
- Public authorities named in regulations must prioritise CEO[3] requests for assistance to a child in care, a child under an SGO or a care leaver who qualifies for assistance until they reach 25, provided it would be consistent with and not unduly prejudice the performance of

[3] Chief Executive Officer of the Department of Communities

the public authority's functions. The CEO may ask for written reasons about why a public authority decides it is not able to prioritise a request.

Miscellaneous

18. What other changes are included in the Bill?

New powers of investigation

- The Act contains offences in relation to the employment of children, mandatory reporting and a number of other offences. Authorised officers of the Department and industrial inspectors currently have investigation powers regarding employment of children offences only.
- New Part 10A will give Communities broader powers to investigate possible breaches of the employment of children laws and also enables them to be used for investigating the other offences under the Act.
- The broader powers are also given to industrial inspectors for the purposes of employment of children offences.
- The powers are consistent with the powers that licensing officers have under the *Child Care Services Act 2007.*
- The new powers relate to powers of entry and after entry, directions regarding information or documents, procedure on seizing things.

Urgent placements – The Bill enables regulations to be made under section 79(2) of the Act to prescribe new types of arrangement for the placement of a child. It is intended the regulations provide for a short-term placement to be made with a person(s) not yet approved by the CEO in accordance with regulation 4 of the *Children and Community Services Regulations 2006.* The regulations will also provide timeframes within which carer approvals should occur.

Protection orders (supervision) – The Bill clarifies that a protection order (supervision) may include a condition as to the parent with whom a child is to reside for the duration of the protection order.

Failure to protect child from harm – If a charge for this offence involves conduct that may result in harm to a child resulting from emotional abuse involving the exposure of a child to family violence, it is a defence if the accused can prove she (or he) was a victim that family violence.

Grounds for protection - Changes to the grounds for a child being found in need of protection are included to address situations in which parents are found to be able but unwilling to care for their child.