



Inquiry into the Children and Community Services Amendment Bill 2019 (WA)

The Children and Community Services Amendment Bill 2019 (WA) has been referred to the Standing Committee on Legislation in Western Australia for an inquiry and report by 15 September 2020, with submissions open until 24 July 2020. SNAICC and the Noongar Family Safety and Wellbeing Council have high concerns about the Bill in its current form and are calling for amendments and encouraging organisations and individuals to make submissions.

Over the past three years SNAICC and the NFSWC have provided consistent input to the reform of child protection legislation, calling for a range of vital reforms including stronger recognition of the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle (ATICPP) and the rights of families and communities to self-determination and participation in decisions about the care and protection of their children. Key points of input have included:

- **April 2017:** A [joint submission](#) to the review of the Children and Community Services Act 2004 (WA);
- **June 2018:** A roundtable on legislative reform between the WA Department of Communities and Family Matters Campaign leaders, focusing on issues including the participation of families and representative organisations in child protection decisions;
- **January 2019:** A [baseline analysis](#) of the alignment of WA legislation, policy and practice with the five elements of the ATICPP;
- **May 2020:** A [Statement of Concern](#) regarding the failure to include requirements for Aboriginal Family-led Decision Making in the Bill.

Despite our consistent input, the Bill in its current form falls well short of what is needed to protect the rights of, and improve outcomes for, Aboriginal and Torres Strait Islander children in contact with the Western Australian child protection system. Key concerns regarding the Bill include:

- The Bill **does not recognise the best practice process of Aboriginal Family-led Decision Making** that seeks participation of a child's extended family network in an independently facilitated process to make decisions about a child's care and protection;
- **The way family is defined is misaligned to an Aboriginal cultural understanding of family.** For example, section 81 requires consultation with just one family member prior to placement of a child in out-of-home care, rather than recognising the important role of extended family and kin in a child's life;
- The Bill **lacks a requirement to comply with each of the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle** (prevention, placement, partnership, participation, connection);

There are a number of important positive amendments provided by the Bill that will support improved practice for Aboriginal and Torres Strait Islander children and families. These include **requirements for cultural support plans** to be completed and for approved Aboriginal and Torres Strait Islander organisations to participate in their development (sections 89 and 89A), and

limitations and conditions on making permanent care orders (*special guardianship*) for Aboriginal and Torres Strait Islander children (sections 61 and 63). However, the proposed limitations on permanent care remain grossly inadequate to safeguard children’s ongoing connections to Aboriginal family, community and culture.

We encourage submissions to the current inquiry that call for increased self-determination for Aboriginal and Torres Strait Islander families and communities in child protection and increased alignment of the Bill with the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle. We are calling for key amendments, including:

- Remove the part of the amendment to Section 14 that directs that the requirements for family and community participation do not apply to decisions about placement and cultural support plans;
- Strengthen Section 14 participation requirements to specify that an opportunity and assistance must be given to each of a child’s family, a community of which the child is a member **and** an approved Aboriginal and Torres Strait Islander representative organisation, to participate in decision-making processes under the Act (Note that the current proposed amendment only requires that the child’s family, community **or** a representative organisation participates);
- Include additional provisions that require families to be given support to participate in child protection decisions by means of an independently facilitated Aboriginal Family-led Decision Making process;
- Amend the proposed section 81 to require consultation with a child’s extended family prior to placement rather than only with one family member; and
- Include additional principles requiring decisions under the Act to align with each of the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle.

Greg McIntyre SC has prepared a paper [outlining a range of proposed amendments](#). There are also strong precedents for these types of provisions in other jurisdictions. In particular, the following provisions from Victoria and Queensland that provide clear relevant examples. More information about the Inquiry can be accessed from the [Parliament of Western Australia website](#)

Sample provisions from other states

Children, Youth and Families Act 2005 (Vic)

s12 (1) (b) A decision in relation to the placement of an Aboriginal child or other significant decision in relation to an Aboriginal child, should involve a meeting convened by an Aboriginal convener who has been approved by an Aboriginal agency or by an Aboriginal organisation approved by the Secretary and, wherever possible, attended by—

- (i) the child; and
- (ii) the child's parent;
- (iii) members of the extended family of the child; and
- (iv) other appropriate members of the Aboriginal community as determined by the child's parent;

s12 (1) (c) In making a decision to place an Aboriginal child in out of home care, an Aboriginal agency must first be consulted and the Aboriginal Child Placement Principle must be applied.

Child Protection Act 1999 (Qld)

S6AA (2) When making a significant decision about an Aboriginal or Torres Strait Islander child, a relevant authority must—

- (a) have regard to the child placement principles in relation to the child; and
- (b) in consultation with the child and the child's family, arrange for an independent Aboriginal or Torres Strait Islander entity for the child to facilitate the participation of the child and the child's family in the decision-making process.

S6AA (5) As far as reasonably practicable, a relevant authority must, in performing a function under this Act involving an Aboriginal or Torres Strait Islander person (whether a child or not), perform the function—

- (a) in a way that allows the full participation of the person and the person's family group; and
- (b) in a place that is appropriate to Aboriginal tradition or Island custom.

s5C(2) The following principles (the child placement principles) also apply in relation to Aboriginal or Torres Strait Islander children—

- (a) the principle (the prevention principle) that a child has the right to be brought up within the child's own family and community;
- (b) the principle (the partnership principle) that Aboriginal or Torres Strait Islander persons have the right to participate in significant decisions under this Act about Aboriginal or Torres Strait Islander children;
- (c) the principle (the placement principle) that, if a child is to be placed in care, the child has a right to be placed with a member of the child's family group;

Note—See section 83 for provisions for placing Aboriginal and Torres Strait Islander children in care.

- (d) the principle (the participation principle) that a child and the child's parents and family members have a right to participate, and be enabled to participate, in an administrative or judicial process for making a significant decision about the child;
- (e) the principle (the connection principle) that a child has a right to be supported to develop and maintain a connection with the child's family, community, culture, traditions and language, particularly when the child is in the care of a person who is not an Aboriginal or Torres Strait Islander person.