CHILDREN AND COMMUNITY SERVICES AMENDMENT BILL 2021

Introduction and First Reading

Bill introduced, on motion by **Ms S.F. McGurk (Minister for Child Protection)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MS S.F. McGURK (Fremantle — Minister for Child Protection) [12.35 pm]: I move —

That the bill be now read a second time.

I am pleased to introduce the Children and Community Services Amendment Bill 2021 into the house today. The Children and Community Services Act 2004 provides Western Australia's legislative framework for the protection and care of children, the employment of children, the provision of social services, the provision of financial and other assistance and other matters concerning the wellbeing of children, other individuals, families and communities. Today's bill re-presents the Children and Community Services Amendment Bill 2019 that lapsed on 7 December last year with the proroguing of the Legislative Council. As then, the bill implements 40 recommendations of the *Statutory review of the Children and Community Services Act 2004* and now implements in full the expansion of mandatory reporter categories of the Royal Commission into Institutional Responses to Child Sexual Abuse recommended to achieve minimum national consistency. This continues the government's progress towards implementing all 310 recommendations of the royal commission's final report that have application in Western Australia.

I acknowledge the work of the Legislative Council's Standing Committee on Legislation last year, which inquired into the policy of the 2019 bill and tabled its report on 10 September 2020. The committee heard from a range of stakeholders. We have accepted all but one of the committee's recommended amendments in principle, which have been incorporated into the bill before the house today, making enhancements to this important legislation as it affects children and families in contact with the child protection system. In 2017, the then Department for Child Protection and Family Support reviewed the Children and Community Services Act with the assistance of two committees. The review received 37 written submissions in response to a consultation paper. During the four-month consultation period, regional consultations were held with Aboriginal community members, service providers and Aboriginal community–controlled organisations. The recommendations of a department consultation on out-of-home-care legislative reform conducted in 2015 were also considered in the review.

Mandatory reporting of child sexual abuse commenced in Western Australia in January 2009 under part 4 of the Children and Community Services Act. Recommendation 7.3 of the royal commission's final report requires a significant broadening of WA's mandatory reporter groups to achieve minimum national consistency and support early identification and reporting of child sexual abuse. In addition to doctors, nurses, midwives, police officers, teachers and boarding supervisors, the following people will be required to report child sexual abuse to the Department of Communities: early childhood workers, ministers of religion, out-of-home care workers, registered psychologists, school counsellors and youth justice workers. Further, the reporting requirements will be extended to assessors appointed under section 125A of the Children and Community Services Act and to staff of the Department of Communities. There will be a staged approach to expanding the WA scheme to enable a managed rollout of targeted training; different groups will commence as reporters at different times, starting with ministers of religion.

Consistent with the royal commission's recommendation 7.4, there will be no excuse for failing to make a mandatory report because a minister's belief was based on information disclosed to the minister during a religious confession, or because making the report would otherwise be contrary to the tenets of the minister's faith or religion. The royal commission noted that many religious institutions had institutional cultures that discouraged reporting of child sexual abuse, and that mandatory reporting obligations may help persons in religious ministry to overcome cultural, scriptural, hierarchical and other barriers to reporting.

Although I am confident that there is wide community support for this measure, I acknowledge the opposition to these amendments as they apply to religious confession that was presented to the Standing Committee on Legislation last year. For adult survivors who share these concerns, it is important to remember that the duty to report child sexual abuse is to protect children from sexual abuse. The laws are not designed to address historical abuse. The government remains resolute in its commitment to this measure, which makes both the government's and the community's expectations crystal clear—children's right to safety and protection from harm is absolutely paramount.

Planning for stability and continuity in a child's living arrangements and relationships is a priority when a child enters care, whether through reunification with parents or long-term arrangements elsewhere. The amendments to the principles in part 2 of the act reflect the importance of this and implement other recommendations of the review, including that a person, court or tribunal is to observe the principles when performing a function under the act; the relationships a child in care has with family and others of significance to the child should be promoted so far as is consistent with the child's best interests; planning for children's long-term stability should be considered in

accordance with an order of preference, as appropriate and in the child's best interest, starting with reunification with the child's parents, long-term care with other members of the child's family, or care with another appropriate person; that the principle in section 10 concerning children's participation in the decision-making process should be strengthened; and that the principle regarding the participation of family, community or a representative organisation of Aboriginal people in decision-making processes about a child should be strengthened.

In two new principles in section 9, children are acknowledged as valued members of society, as is the need for interpreters or other supports if language barriers or disability mean a person has difficulty understanding or participating in decision-making processes under the act.

As at 30 April this year, 5 349 children aged under 18 years were in the care of the chief executive officer of the department. Fifty-seven per cent of these children were Aboriginal, despite Aboriginal children forming only 6.7 per cent of Western Australia's child population. This is the troubling reality facing Aboriginal families and their communities, and government, despite all the goodwill and efforts undertaken to reduce these disproportionate figures.

The Royal Commission into Institutional Responses to Child Sexual Abuse noted that empirical data supports the idea that connection to culture is associated with better emotional, social and physical health for Aboriginal and Torres Strait Islander peoples. Positive cultural connection can also increase the protective factors available to Aboriginal and Torres Strait Islander children by helping them to develop their identities and fostering high self-esteem, emotional strength and resilience. Research commissioned by the royal commission also highlighted that positive cultural connection indirectly increases protective factors by supporting the social conditions necessary for all adults in a kinship placement to be available, responsive and protective of children in the community.

The bill introduces a number of interrelated amendments intended to build stronger connection to family, culture and country for Aboriginal children in care, including through working more closely with Aboriginal people and Aboriginal community–controlled organisations to better implement the Aboriginal child placement principle. The amendments to sections 9, 12, 13, 14, 61, 81, 89, new 89A and 143 are particularly relevant. Together they promote implementation of the Aboriginal and Torres Strait Islander child placement principle in section 12 of the act and a greater understanding of its intent, which, in broad terms, is to maintain a connection with family and culture for Aboriginal children in care. This amendment aligns with recommendation 12.20 of the royal commission and the 2017 Community Services Ministers' commitment to —

> … uphold all five domains of the Aboriginal and Torres Strait Islander Child Placement Principle to recognise the rights of Aboriginal and Torres Strait Islander children to be raised in their own culture and the importance and value of their family, extended family, kinship networks, culture and community.

The Secretariat of National Aboriginal and Islander Child Care—SNAICC—the national peak body for Aboriginal and Torres Strait Islander children, identifies the five cornerstone elements to the principle as prevention, partnership, placement, participation and connection.

Section 12(2) of the Aboriginal and Torres Strait Islander child placement principle contains a hierarchy of preferred placements for an Aboriginal child in care. The review noted Western Australia's size and diversity of Aboriginal culture and the importance of keeping Aboriginal children in proximity to their communities whenever possible. This is particularly relevant to better supporting reunification with parents, where appropriate, as well as closer connections to family, culture and country. Some members may recall that the placement hierarchy was amended accordingly in the previous bill.

Responding to feedback received through the legislation committee process that the amendments did not fully align with the placement principle, the bill now reflects that if an Aboriginal child's placement with family, an Aboriginal person in the child's community or an Aboriginal person in close proximity to the community is not possible, then subject to the child's best interests, placement with an Aboriginal person—who may reside anywhere in the state—will be considered on the same level in the hierarchy as placement with a non-Aboriginal person in close proximity to the child's community.

Under section 81, before making a placement arrangement for an Aboriginal child in care, the department must consult to help identify placement options at the higher end of the hierarchy. The bill significantly strengthens these requirements. Consultation must now occur with each of the following: members of the child's Aboriginal family; an Aboriginal representative organisation approved by the CEO for this purpose; and an Aboriginal officer of the department who has relevant knowledge of the child, the child's family or the child's community. It is envisaged that approved Aboriginal representative organisations may be existing Aboriginal community–controlled organisations recognised by the local community, with knowledge of the child, the child's family or the child's community. Enhancements to these amendments reflect the committee's recommendation to clarify their intended operation.

The department's cultural support planning is also being strengthened. Cultural support plans are already prepared in practice for Aboriginal children in care and those from culturally and linguistically diverse—CALD—backgrounds. However, under this bill, cultural support plans will become a legislative requirement and, subject to regulations,

the Aboriginal representative organisations previously referred to will be offered the opportunity to participate in cultural support planning for Aboriginal children.

Cultural support plans will also need to be provided to the court as part of the written proposal the department must provide under section 143 when it applies for a protection order, other than a special guardianship order. Written proposals outline proposed arrangements for the child's wellbeing under the order being sought. Other amendments regarding the content of proposals include requiring an outline of proposed arrangements: for working towards the child's reunification under a protection order—time-limited—or an explanation of why reunification would be contrary to the child's best interests; for promoting, where appropriate, the child's relationships with family or other people significant to the child; and for an Aboriginal or CALD child, the arrangement proposed for placing the child in accordance with the Aboriginal child placement principle or placement guidelines for CALD children.

Amendments to special guardianship orders, or SGOs, continue the theme of maintaining children's identity, cultural connections and family relationships when possible. Special guardians who wish to change the name of a child under an SGO will need to seek permission from the Children's Court. Permission will depend on there being exceptional circumstances and, if the child has sufficient maturity and understanding, the child's consent. In its report to the court about a person's suitability to become a special guardian, the department will have to outline the arrangements proposed for encouraging and supporting the child to develop and maintain contact with the child's family, subject to decisions regarding the child's contact with family. For Aboriginal children or those from a culturally and linguistically diverse background, the child's cultural support plan will need to be provided, as well as information on the Aboriginal child placement principle or the guidelines for the placement of a CALD child, and the court may include conditions in the order about matters that could be included in a cultural support plan. Finally, the court will not be able to make an SGO for an Aboriginal child in favour of a sole or joint non-Aboriginal carer or carers without first considering a written report from an Aboriginal person or agency.

I am pleased to report progress on the Aboriginal family–led decision-making pilot that I announced on 10 August 2020 to further strengthen Aboriginal self-determination. Reducing the number of Aboriginal children in care and advancing Aboriginal self-determination are key drivers for the pilot. It brings together the Aboriginal community and key stakeholders to co-design and trial a new approach in partnership with the department. Mirrabooka as the metropolitan site and the midwest–Gascoyne as the regional site have been identified. In addition, the following three cohorts have been identified: families undertaking pre-birth planning with the department to prevent the need for infants coming into care; families involved with intensive family support teams with children at risk of coming into care; and families with children in care who are working to be safely returned home. Aboriginal family–led decision-making is able to operate within the current framework of the act and is consistent with the amendments in this bill. The 2017 review considered that amendments to legislate for Aboriginal family–led decision-making could be re-examined following the implementation and evaluation of family-led decision-making, and the Standing Committee on Legislation shared this view. The bill will require the next review of the act to consider including Aboriginal family–led decision-making in legislation. In addition, the bill will require the next review to consider including a statutory definition of the Aboriginal and Torres Strait Islander child placement principle, including all five elements.

Other amendments in the bill clarify and strengthen the already comprehensive leaving care provisions in the act. Amendments include that a leaving care plan is to become part of a child's care plan once the child turns 15 and children or young people are to be provided with social services that the CEO considers appropriate having regard to their needs, regardless of whether they are specified in the child's last care plan. These changes will better support young people who have been in care, given that evidence shows they are at risk of experiencing poorer life outcomes, including inadequate housing or homelessness, poor education outcomes, long-term unemployment, difficulty with basic life skills, mental health issues, and drug and alcohol use. These amendments will support implementation of the royal commission's recommendation 12.22 that the assistance available to care leavers to safely and successfully transition to independent living and to access general post-care supports should include assistance for those who were sexually abused while in out-of-home care.

The bill will also strengthen provisions regarding the shared responsibility of government agencies for addressing the needs of children who are, or were, in care. Public authorities prescribed in regulations will need to prioritise requests for assistance to children in care and young people who qualify for leaving care assistance until they turn 25, provided doing so is consistent with and does not unduly prejudice their functions. In inserting new part 10A into the act, the bill will increase the powers of authorised officers of the department and industrial inspectors to investigate offences related to the employment of children under part 7 of the act. In addition, authorised officers of the department will be able to exercise those powers in relation to all the offences in the act. The additional powers will be consistent with those provided to licensing officers under the Child Care Services Act 2007, and do not limit the powers provided to industrial inspectors under the Industrial Relations Act 1979.

A number of other amendments will address oversights, clarify provisions or remedy concerns in the operation of the act. This includes providing a defence to a charge of failing to protect a child from harm in circumstances

involving the exposure of a child to family violence if the accused can prove that she or he was a victim of that family violence. The bill will amend the grounds for a child being found in need of protection to address situations in which parents are found to be able but unwilling to care for their child. It will limit the court's ability to adjourn proceedings for an interim order—secure care—or the continuation of a secure care arrangement unless there are exceptional reasons for doing so, and then for only two working days. It will also address the legal status of a child following the death of a sole special guardian or joint special guardians.

I am confident the amendments in this bill will support better outcomes for children, families and communities in contact with the child protection system, particularly for Aboriginal people. In closing, I would like again to acknowledge the work carried out under the Children and Community Services Act by Department of Communities frontline child protection workers, which is among the most difficult and challenging in the community. This extends to the tireless work of the foster carers and family carers who care for these vulnerable children, and of service providers in the community services sector and Aboriginal community–controlled organisations, who remain united in their drive to improve the safety and wellbeing of children and families in Western Australia.

I commend the bill to the house.

Debate adjourned, on motion by **Mr P.J. Rundle**.