



## ***CHILDREN'S COURT OF WESTERN AUSTRALIA***

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The Honourable Dr Sally Talbot MLC  
Chairperson  
Standing Committee on Legislation  
Legislative Council  
18-32 Parliament Place  
WEST PERTH WA 6005

Dear Dr Talbot

### **INQUIRY INTO THE CHILDREN AND COMMUNITY SERVICES AMENDMENT BILL 2019**

Thank you for inviting the Children's Court of Western Australia to provide a written submission on the *Children and Community Services Amendment Bill 2019* currently before Parliament.

As you know, the Bill implements some of the recommendations of the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse. The Bill also implements many of the recommendations arising from four of the five terms of reference of the Statutory Review of the *Children and Community Services Act 2004* completed in 2017. Potential amendments relating to the fifth term of reference have the greatest potential to impact the operation of the Children's Court, but consideration of those matters has properly been delayed pending a statutory review of the *Children's Court of Western Australia Act 1988* and *Young Offenders Act 1994*.

As it is not appropriate for the Court to comment on legislative and executive policy, my submission is confined to those aspects of the Bill which have the potential to affect the operation of the Court. It should also be noted that the Court has been consulted during the drafting of the Bill and the Government has been receptive to amendments suggested by the Court. Further, many of the principles and practices which are given statutory recognition in the Bill reflect existing practices of the Court.

Overall, I expect the amendments proposed by the Bill will be workable in practice, but they will increase the work load of the Court because many protection and care proceedings will

take longer to hear and determine. The proposed amendments which will have this effect are identified below.

Amending s 10 of the Act, requiring that children 'must' be informed of their rights and be able to make submissions will mean that in most, if not all, protection and care proceedings it will be necessary for the Court to order a separate child legal representative. Children cannot pay for their lawyer and ensuring legal representation is a Government responsibility. Currently, children are only separately represented in 40% of matters. Government will need to increase resourcing to the Legal Aid Commission of Western Australia and the Aboriginal Legal Service so that representation is funded in all cases. Allowing time to hear and consider submissions from child representatives means that affected proceedings will take longer to hear and decide in court.

The effect of the proposed amendments to s 13, s 14 and s 147 of the Act will be that extended family members, kinship groups, community, Aboriginal and Torres Strait Islander organisations will have standing in relevant protection and care matters and may appear as parties before the Court. Again, this means that hearing and decision time in affected proceedings will increase because of the requirement to consider the views of, possibly multiple, additional parties. If those people, groups or organisations are not legally represented there will be a substantial additional burden on the Court, in time spent explaining, hearing and finalising the matter. I am also concerned about the potential, particularly where there is disagreement between the parties about child placement, for an increase in the number of matters proceeding to trial. By way of example, it is common in protection and care proceedings for grandparents and parents to disagree about what is in the best interests of the child. Trials where multiple such disputes have to be resolved are likely to be complex and lengthy.

The proposed amendment to s 132 of the Act, requiring that interim secure care applications not be adjourned, will impact on regional Children's Courts, particularly those where there is only one magistrate. Even in Perth, whilst these applications are currently dealt with on an urgent basis, they occasionally have to be adjourned to when a magistrate is available. In the future, it may be necessary for Perth Children's Court to list a duty magistrate to deal with all urgent applications across the State (sitting by video link to the regions). Currently, the Court does not have sufficient judicial and support resources to provide such a service.

Government will need to ensure that additional judicial and support resources are made available to the Children's Court if the increase in court work load as a result of the amendments is greater than the current capacity of the Court.

Yours sincerely,



Judge Hylton Quail  
President of the Children's Court of Western Australia