



**Commissioner for Children and Young People**  
Western Australia

**All enquiries**

Our reference: 20/4520

Hon. Dr Sally Talbot MLC  
Chair  
Standing Committee on Legislation  
Parliament House  
4 Harvest Terrace  
WEST PERTH WA 6005

Dear Dr Talbot

**Inquiry into the Children and Community Services Amendment Bill 2019**

As Commissioner for Children and Young People in Western Australia I have a statutory responsibility under the *Commissioner for Children and Young People Act 2006* (WA) to monitor and review draft laws affecting the wellbeing of children and young people under the age of 18 years. In undertaking these responsibilities, I must give priority to Aboriginal and Torres Strait Islander children and young people and those who are vulnerable or disadvantaged for any reason. I must also have regard for the United Nations Convention on the Rights of the Child.

It is within the context of my role as an independent, statutory office and the functions outlined above that I provide the attached submission to the Standing Committee on Legislation's inquiry into the Children and Community Services Amendment Bill.

I would be happy to discuss any aspect of my comments with the Committee in further detail if required.

Yours sincerely

COLIN PETTIT

Commissioner for Children and Young People WA

22 July 2020

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

### **Submission from the Commissioner for Children and Young People**

#### **Review of the *Children and Community Services Act 2004***

In April 2017 I submitted 22 recommendations to the review of the *Children and Community Services Act 2004* (the CCS Act) conducted by the then Department of Child Protection and Family Support (the 2017 Review). Consistent with the breadth of the Act and the associated discussion paper, my recommendations covered a broad range of issues, including recommendations specifically related to legislative amendments.

A number of the proposed legislative amendments contained within the Children and Community Services Amendment Bill (the CCSA Bill) align with the recommendations I made to the 2017 Review. In particular, I was pleased to note that the CCSA Bill contains amendments that, if enacted, will:

- Recognise that children and young people are valued members of society and should be treated as such.
- Strengthen meaningful participation by Aboriginal children and young people, families and community members in protection and care decisions affecting them.
- Require children and young people to be given opportunities and assistance to participate in the preparation of their care plans, and that their views and wishes be documented in these plans.
- Enhance the provision of timely and comprehensive services to children and young people living in out of home care.
- Support young people to transition from out of home care to independent living.
- Reinforce the importance of preserving and enhancing children and young people's connection with family and others who are significant in their lives.
- Reinforce the importance of preserving and enhancing connection to culture and the traditions of families and communities for Aboriginal children and young people and for children and young people from culturally and linguistically diverse backgrounds.

#### **Royal Commission into Institutional Responses to Child Sexual Abuse**

##### Child Safe Standards

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) recommended in its Final Report that state and territory governments should require all institutions that engage in child related work to meet the 10 Child Safe Standards identified by the Royal Commission. The Child Safe Standards were subsequently codified through the National Principles for Child Safe Organisations (the National Principles)<sup>1</sup> agreed to by the Council of Australian Governments in February 2019. All governments bear responsibility

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<sup>1</sup> The National Principles for Child Safe Organisations are available at [https://childsafe.humanrights.gov.au/sites/default/files/2019-02/National Principles for Child Safe Organisations2019.pdf](https://childsafe.humanrights.gov.au/sites/default/files/2019-02/National%20Principles%20for%20Child%20Safe%20Organisations2019.pdf)



for implementing the National Principles and for determining compliance arrangements within their jurisdiction.

At this stage I remain of the view that the broad range of bodies that will be covered by the National Principles means a separate piece of legislation would be a more appropriate vehicle to enshrine the Child Safe Standards in Western Australian law. This may take the form of amendments to my own legislation and other relevant Acts, or a stand-alone Act of Parliament. It will be important to firstly focus on determining the key parameters that will underpin the implementation of the National Principles, including:

- The government body that will be charged with oversight of the National Principles in Western Australia.
- The implementation and compliance scope to be applied to relevant organisations.
- The role of any existing regulatory frameworks.
- The powers required to undertake compliance and, where necessary, enforcement actions.
- The capacity to access and share the information that will be required to identify and evidence actual performance of the National Principles.

Once these factors have been finalised it will then be possible to determine the most appropriate legislative instrument (or instruments) to support the roll-out of the National Principles in Western Australia. I therefore support the decision to not include local implementation, compliance and enforcement measures for the National Principles in the CCSA Bill while these matters are being worked through.

In the absence of State legislation mandating the adoption of the National Principles, I strongly encourage all organisations and professionals who work with children and young people to voluntarily align their practices with the National Principles. The National Principles, when implemented and monitored in conjunction with the associated key action areas and indicators, represent a comprehensive cultural change mechanism for improving the prevention, detection and disclosure of child abuse. Organisations should apply the Principles in a manner tailored to their specific environment, services and activities, with governance systems and management leadership supporting a culture where child safety is prioritised in both policy and practice. To this end, my office will continue to promote and support the adoption of child safe practices across all types of organisations through my Child Safe Organisations WA program.

#### Mandatory Reporting

The Royal Commission also recommended in its Final Report that state and territory governments, at a minimum, expand their mandatory reporting laws to include five new categories of workers, including ministers of religion. I have previously expressed the need for caution when expanding mandatory reporting schemes. Without appropriate implementation strategies it is possible for the volume of reports to overload the systems designed to process and act on them, and there may be confusion if a person's role does not clearly fall within an identified group of mandatory reporters. In expanding the State's current mandatory reporting scheme to ministers of religion, and in time the other professional groups recommended by the Royal Commission, it will therefore be critical to ensure relevant individuals and organisations, along with the Department of Communities, are appropriately trained and resourced to

effectively carry out their new legal obligations. Importantly, future legislative implementation and oversight of the National Principles would provide a mechanism for ensuring that organisations have appropriate processes in place to respond to complaints of child sexual abuse and that they are meeting any mandatory reporting obligations.

### **United Nations Convention on the Rights of the Child**

In reviewing the CCSA Bill I identified that the amendments proposed to the CCS Act will support a number of the State Government's obligations under the United Nations Convention on the Rights of the Child, including:

- To ensure children and young people such protection and care necessary for their wellbeing, taking into account the rights and duties of their parents, legal guardians or other individuals who are legally responsible for them (Article 3).
- To assure children and young people who are capable of forming their own views the right to express those views in all matters affecting them (Article 12).
- When considering out-of-home care options for children and young people, giving due regard to the desirability of continuity in a child's upbringing and the child's cultural background (Article 20).
- To ensure a child of indigenous origin is not denied the right to enjoy their culture (Article 30).
- To protect children and young people from economic exploitation and from performing any work that is likely to be hazardous, to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development (Article 34).
- To protect children and young people from all forms of sexual exploitation and abuse (Article 34).
- To take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation or abuse (Article 39).

### **Best interests of children and young people**

I was pleased to note that a number of the amendments proposed in the CCSA Bill support Aboriginal Family-led Decision Making (AFDM) and the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP). It is undoubtedly in the best interests of Aboriginal children and young people for AFDM and the ATSICPP to be fully implemented within the context of the Western Australian child protection system, with or without legislative backing. Regardless of whether the CCSA Bill is passed, I encourage the Department of Communities to work with Aboriginal children and young people, their families, carers and communities to ensure that the implementation of AFDM and ATSICPP in Western Australia reflects the needs of those families who will be affected by protection and care decisions and exemplifies evidence-based best practice.

Ultimately, I believe that passing the CCSA Bill is in the best interests of Western Australia's children and young people. If enacted, I will be closely monitor its implementation to ensure

these changes are delivered in a timely manner, that they bring about meaningful improvements for children and young people, and that relevant organisations and the Department of Communities successfully incorporate their expanded duties into their operations without negatively impacting the delivery of services and supports to vulnerable children and young people. In doing so my office will continue to consult directly with children and young people to seek their views on the policies, practices and services empowered by the CCS Act, and ensure that decision makers are aware of these views.