CHILDREN AND COMMUNITY SERVICES AMENDMENT BILL 2019

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [5.49 pm]: I move —

That the bill be now read a second time.

On behalf of the government, I am pleased to present the Children and Community Services Amendment Bill 2019 to the house today. The bill implements 40 recommendations of the "Statutory Review of the Children and Community Services Act 2004" and continues the government's progress towards implementing the 310 recommendations of the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse that have application to Western Australia. As part of this commitment, the bill introduces ministers of religion as mandatory reporters of child sexual abuse, consistent with recommendations 7.3 and 7.4 of the royal commission, and implements a further two recommendations made by the royal commission that have already been captured in the statutory review.

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. In 2017, the then Department for Child Protection and Family Support reviewed the act on the Minister for Child Protection's behalf with the assistance of a review committee and legal working group with external representation. 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 review also considered the recommendations of and submissions to a consultation on out-of-home care reform conducted in 2015.

The bill implements recommendations concerning four of the review's five terms of reference. Recommendations on the fifth term of reference—the intersection between protection proceedings in the Children's Court of Western Australia and family law proceedings—need to be considered within the context of broader reforms underway in the family law and Children's Court jurisdictions at a commonwealth and state level and are therefore not included in the bill.

Mandatory reporting of child sexual abuse commenced in Western Australia in January 2009 under part 4 of the act. Under this bill, ministers of religion will join doctors, nurses, midwives, police officers, teachers and boarding supervisors in being required to make a report to the Department of Communities if they form a reasonable belief that a child has been or is being sexually abused. "Minister of religion" is defined as a person who is recognised in accordance with the practices of a faith or religion who is authorised to conduct services or ceremonies in accordance with the tenets of that faith or religion. There will be no excuse for failing to make a mandatory report because a minister's belief was based on information disclosed to that minister during a religious confession, or because making the report would otherwise be contrary to the tenets of the minister's faith or religion. This gives effect to recommendation 7.4 of the royal commission's final report regarding religious confession and makes both the government and the community's expectation crystal clear: child safety is paramount.

The government believes there is wide community support for this measure. Despite some opposition to the requirement as it applies to religious confession, most Australian jurisdictions have already implemented these recommendations or are in the process of doing so, on the basis that children's right to safety and protection from harm is paramount. The department will work closely with a range of religious organisations to ensure the necessary training is provided to support implementation of the new requirements.

Western Australia's expansion of the scheme to ministers of religion has been expedited over the other reporter groups that were recommended to become mandated reporters to achieve minimum national consistency. 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. Consultation regarding the additional groups will occur in 2020.

Planning for stability and continuity in a child's living arrangements and relationships is a priority when a child enters the CEO's care. 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 the principles are to be applied by all persons performing a function under the act, including a court or a tribunal; the relationships a child in care has with his or her parents, siblings, other relatives and people of significance to the child should be promoted, and the child should be encouraged and supported in maintaining contact with these people; 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; strengthening the principle in section 10 concerning children's participation in decision-making processes; and strengthening the principle regarding the participation of a kinship group, community or Aboriginal representative organisation in decision-making processes about a child, having regard to the views of the child and the child's parent about such participation. The bill achieves this in its amendments to section 9 and in two new principles. Children are acknowledged as valued members of society, as is the need for interpreters or other supports if language barriers or disability means a person has difficulty understanding or participating in decision-making processes under the act.

As at 30 June this year, 5 379 children under the age of 18 were in the care of the chief executive officer of the department. Of those children, 55 per cent were Aboriginal, even though Aboriginal children form only 6.7 per cent of all children in Western Australia. This is the troubling reality facing Aboriginal families and their communities, as well as 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 improved emotional, social and physical health for Aboriginal and Torres Strait Islander peoples, and that positive cultural connection can increase the protective factors available to Aboriginal and Torres Strait Islander children by helping them to develop their identities, 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 amendments to build stronger connection to family, culture and country for Aboriginal children in care through working more closely with Aboriginal people and Aboriginal community–controlled organisations to better implement the Aboriginal child placement principle. These amendments align with recommendation 12.20 of the royal commission—that governments work towards full implementation of the Aboriginal child placement principle and a greater understanding of its intent, which, in broad terms, is to enhance and preserve Aboriginal children's connection to family and community and a sense of identity and culture. The amendments also accord with a commitment by community services ministers in 2017 to —

> … uphold all five domains of the Aboriginal … 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 cornerstone elements of the principle are prevention, partnership, placement, participation and connection.

The Aboriginal child placement principle in section 12 of the act sets out an order of priority for the placement of an Aboriginal child. The principle prioritises placement with a member of the child's family, an Aboriginal person in the child's community or an Aboriginal person anywhere in Western Australia over placement with non-Aboriginal carers.

Based on feedback particularly from regional communities, amendments to the Aboriginal child placement principle prioritise a child's placement with family or otherwise placements in close proximity to the child's community over placement with an Aboriginal person who may live anywhere in the state. Given its vast geographical size and the cultural diversity of Aboriginal Western Australia, the intention of these amendments is to keep Aboriginal children close to their communities where possible. This will better support reunification with parents where appropriate and, in any event, Aboriginal children's connection with family, culture and country. If an Aboriginal child is placed with non-Aboriginal carers, it must be with a person who is responsive to the child's cultural support needs and prepared to encourage and support the child to develop and maintain connection with the culture and traditions of the child's family.

Before making a placement for an Aboriginal child, consultation with an Aboriginal representative organisation approved by the CEO will be required. Drawing on the cultural knowledge of approved Aboriginal representative organisations will help to identify placement options that are higher in the placement hierarchy. To this end, it is envisaged that approved Aboriginal representative organisations may be existing native title bodies or other Aboriginal community–controlled organisations that are recognised by the local community with knowledge about the child, the child's family or the child's community. The placement of an Aboriginal child will also require consultation with the child's Aboriginal family and an officer of the department who has relevant knowledge of the child, the child's family or the child's community.

Cultural support planning is also being strengthened. Cultural support plans are already prepared for each Aboriginal and culturally and linguistically diverse child in care. However, they will become a legislative requirement and, subject to regulations, approved Aboriginal representative organisations will be offered the opportunity to participate in cultural support planning for Aboriginal children in care. Cultural support plans for Aboriginal and culturally and linguistically diverse children will also be provided to the court as part of the written proposal the department must provide in section 143 when applying for a protection order other than a special guardianship order. Written proposals outline proposed arrangements for the child's wellbeing.

Other amendments regarding the content of proposals require an outline of the arrangements proposed for working towards the child's reunification under a protection order, which is time limited, or a brief explanation as to why

this 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; for extensions of a time-limited protection order, plans for securing long-term stability, security and safety in the child's relationships and living arrangements; and, for an Aboriginal or culturally and linguistically diverse child, the arrangement proposed for placing the child in accordance with the Aboriginal child placement principle or placement guidelines for culturally and linguistically diverse children.

Amendments to the special guardianship provisions in the act continue the theme of maintaining children's identity, family relationships where possible and cultural connections. Special guardians will need to seek permission from the Children's Court to change the name of a child under a special guardianship order. 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 or culturally and linguistically diverse children, 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 culturally and linguistically diverse child. Special guardianship orders for Aboriginal or culturally and linguistically diverse children will also be able to include conditions about matters that could be included in a cultural support plan. Finally, the court will not be able to make a special guardianship order 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.

Turning to the bill's other amendments, there is clear evidence showing that young people who have been in state care are at risk of experiencing poorer life outcomes, including inadequate housing or homelessness, poor education outcomes, long-term unemployment and difficulty with life skills, mental health issues, and drug and alcohol use. The leaving care provisions already in the act are comprehensive. However, this bill strengthens and clarifies them by requiring a leaving care plan to be prepared when a child reaches the age of 15 years; providing that a leaving care plan includes the social services proposed for the child post care; requiring that children leaving care are given written information on their entitlements post care; and clarifying that a child who leaves care is to be provided with the social services the CEO considers appropriate having regard to the child's needs, regardless of whether the needs are specifically identified in the child's last care plan. These amendments will support the implementation of the royal commission's recommendation 12.22 that the assistance available to care leavers to safely and successfully transition to independent living should include assistance for those who were sexually abused while in out-of-home care to access general post-care supports.

The bill also strengthens provisions regarding the shared responsibility of government agencies for addressing the needs of children who are or were in state 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 years.

The bill increases the powers of authorised officers of the department and industrial inspectors to investigate offences related to the employment of children in 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 are consistent with those provided to licensing officers under the Child Care Services Act 2007, and do not derogate from the powers provided to industrial inspectors under the Industrial Relations Act 1979.

A number of amendments address oversights, clarify provisions or remedy concerns in relation to the operation of the act, including 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; clarifying that provisional care plans and care plans must be modified as soon as practicable after a decision recorded in the plan is varied, revoked or substituted or a further decision is made; amending the grounds for a child found in need of protection to address situations in which parents are found to be able but unwilling to care for their child; limiting 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; and addressing the legal status of a child following the death of a sole or joint special guardian or guardians. Upon the department's notification to the court, a special guardianship order will automatically be replaced with a time-limited two-year protection order; and, as soon as practicable, notice of the new order must be given to the child, each other party to the initial special guardianship order proceedings and each other person considered to have a significant interest in the child's wellbeing.

Finally, two minor amendments are made due to the removal of exemptions previously available to Western Australia under the commonwealth Sex Discrimination Act 1997, which prohibits discrimination on the grounds of intersex status, gender identity or sexual orientation. As elements of the search provisions and employment of children provisions may be noncompliant with the Sex Discrimination Act 1997, they are amended in the spirit of achieving the intent of that act.

In closing, the government looks forward to the implementation of the amendments in the bill to achieve the better outcomes for children, families and communities that they are intended to drive. The government would also like to acknowledge the work carried out under the Children and Community Services Act 2004 by the Department of Communities frontline protection workers, which is among the most difficult and challenging in the community. This extends to the tireless work of the foster carers and kinship carers who care for these vulnerable children, service providers in the community services sector and Aboriginal community–controlled organisations, which are united in their drive to improve the wellbeing of children and families in Western Australia. Thank you.

Pursuant to standing order 126(1), I confirm that this is not a uniform legislation bill, as it does not ratify or give effect to any intergovernmental or multilateral agreements to which the government of the state is a party. No uniform schemes or uniform laws throughout the commonwealth are introduced through this bill.

I commend the bill to the house and I table the explanatory memorandum.

[See paper 3892.]

Debate adjourned, pursuant to standing orders.

House adjourned at 6.06 pm