CHILDREN AND COMMUNITY SERVICES AMENDMENT BILL 2019

EXPLANATORY MEMORANDUM

Introduction

The *Children and Community Services Amendment Bill 2019* (the Bill) amends the *Children and Community Services Act 2004* (the Act). The Department of Communities (the Department) is the department of the State Government with responsibility for assisting the Minister for Child Protection in the administration of the Act.

The Bill implements recommendations 7.3 and 7.4 of the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) by introducing persons in religious ministry as mandated reporters of child sexual abuse (clauses 51 to 53 of the Bill).

Other amendments in the Bill align with Royal Commission recommendation 12.20 regarding full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle, and recommendation 12.22 for strengthened supports to assist care-leavers to safely and successfully transition to independent living.

The majority of the Bill implements recommendations of the *Statutory Review of the Children and Community Services Act 2004* (the Review), tabled in the Parliament of Western Australia on 28 November 2017 [Tabled Paper No.991]. The Review examined the operation and effectiveness of the Act against five terms of reference and other matters raised during the Review. The amendments in the Bill that were recommended by the Review include:

- the amendments to the principles in Part 2 of the Act that are to apply when performing functions under the Act;
- the amendments which give prominence to the application of the section 10 *Principle of child participation* in decision-making processes, including the recording of children's wishes and views in provisional care plans and care plans;
- the amendments to strengthen government service delivery to children in the CEO's care, children under a protection order (special guardianship) and young people who qualify for leaving care assistance;
- the amendments to the section 12 *Aboriginal and Torres Strait child placement principle*[1] to prioritise placement arrangements for Aboriginal children in the CEO's care that are in close proximity to the child's community;
- the amendments to better facilitate and give greater prominence to the application of the Aboriginal and Torres Strait Islander placement principle and the consultation that is required before making a placement arrangement for an Aboriginal child in the CEO's care, including the information that is to be provided in reports to the Children's Court of Western Australia (the Court);
- the amendments that require consultation with Aboriginal families and Aboriginal representative organisations approved by the CEO when making placement arrangements for Aboriginal children in the CEO's care; and
- the amendments regarding cultural support planning for children in the CEO's care.

[1] A reference to Aboriginal people in this Explanatory Memorandum includes a reference to Torres Strait Islander people

Provisions in the Bill

Clause 1: Short title

Once enacted, the short title of the Bill will be the *Children and Community Services Amendment Act 2019* (the Amendment Act).

Clause 2: Commencement

This clause provides that sections 1 and 2 come into operation on the day on which the Amendment Act receives the Royal Assent and the remainder of the Amendment Act on a day fixed by proclamation. Different days may be fixed for different provisions.

Clause 3: Act amended

This clause provides that the amendments are to the Act.

Clause 4: Section 3 amended

This clause amends section 3 – *Terms used.*

The following definitions are relocated to section 3 from other Parts of the Act without changing their substantive meaning: ***care plan***; ***industrial inspector***; ***provisional care plan***;***; remote communication; secure care decision; special guardian***. This amendment clarifies that these terms apply to the Act as a whole.

The term ***relative*** is replaced with the term ***family*** without altering the meaning of the term in the Act. 'Family' is a preferred term of use among many Aboriginal and Torres Strait Islander people.

Two new terms are inserted:

> ***Approved Aboriginal or Torres Strait Islander representative organisation*** is defined to mean an Aboriginal or Torres Strait Islander representative organisation provided for in section 22A(1) under clause 15 of the Bill.
>
> ***Leaving care plan*** has the meaning given in section 89A.

Clause 5: Part 2 Division 1A inserted

This clause inserts new Division 1A, section 5A, into the beginning of Part 2. Part 2 of the Act contains the objects and principles under which the Act is to operate.

Currently, the application of the principles in Part 2 of the Act varies: the 'best interests' principle in section 7 is to be applied by a person, the Court or the State Administrative Tribunal in performing a function or exercising a power under the Act, whereas the principles in sections 9, 13 and 14 of Part 2 are "to be observed in the administration of the Act".

New section 5A provides that, in performing a function under the Act, a person, court or tribunal is to be guided by the objects of the Act and to observe the principles set out in Part 2. These amendments are intended to remove any doubt as to whether the principles apply to the Department only, which is responsible for assisting the Minister in the administration of the Act, or also to a court or tribunal.

Clause 6: Section 6 amended

This clause amends section 6(da), which provides that one of the objects of the Act is to: "support and reinforce the role and responsibility of parents in exercising appropriate control over the behaviour of their children".

Paragraph (da) is amended by replacing the words "in exercising appropriate control over" the behaviour of their children with "to appropriately and safely manage" the behaviour of their children. This amendment better reflects the positive and constructive approach the Department uses to help parents guide and manage their children's behaviour.

Clause 7: Section 7 replaced

This clause replaces section 7, which currently provides: "In performing a function or exercising a power under the Act in relation to a child, a person, the Court or State Administrative Tribunal must have regard to the best interests of the child as the paramount consideration".

New section 7 provides that: "In performing a function under this Act in relation to a child, the paramount consideration is the best interests of the child".

This amendment arises from new section 5A concerning the application of the principles in Part 2 of the Act. In addition, the current reference to 'exercising a power' under the Act is removed because it is redundant. In section 5 of the *Interpretation Act 1984,* "***perform***, in relation to functions, includes the exercise of a power, responsibility, authority or jurisdiction."

Clause 8: Section 8 amended

This clause amends section 8, which sets out the matters that must be taken into account when determining what is in the best interests of a child. The following amendments are made:

- amendments to paragraphs (d) and (g) to replace the use of ***relative*** with ***family***, consistent with the amendment in clause 4, the first of a number of amendments in the Act;
- the removal of 'any' in paragraph (g) for drafting purposes;
- replacing paragraph (h) to include the need for the child to 'develop' and maintain contact with child's parents, siblings, other 'members of the child's family' (instead of reference to relatives) and other people who are significant in the child's life;
- replacing paragraph (j) regarding the child's cultural, ethnic and religious identity to include the need for cultural support to develop and maintain connection with the culture and traditions of the child's family or community.

Clause 9: Section 9 amended

This clause amends the principles in section 9 – *Principles to be observed.* Consistent with clause 5, the principles in section 9 are to be observed by a person, court, or tribunal in performing a function under the Act. This amendment is made to clarify that the principles in section 9 apply more broadly than to the Department only.

The effect of the amendments to section 9 is to reinforce the significance of the following matters to children who are the subject of decisions made under the Act and their families:

- achieving continuity and stability in living arrangements for children in the care of the Chief Executive Officer (CEO) of the Department (children in the CEO's care) as soon as possible, including consideration of whether it is appropriate to work towards returning the child to the child's parents – paragraphs (g), (ga)(i) and (h);

- preserving and enhancing children's connection with family and others who are significant in their lives when they are in the CEO's care or under a protection order (special guardianship) (subject to protecting the child from harm and meeting the child's needs), including through placement with a member of the child's family, and with the child's siblings – paragraphs (ga)(ii) and (gb); and
- for Aboriginal children and children from a culturally and linguistically diverse background, preserving and enhancing their connection to the culture and traditions of their families or communities – paragraphs (ga)(iii).

Specific reference is made to placing a child with the child's siblings, because sibling relationships have the potential to be the longest relationship across an individual's lifespan.

Two new principles are inserted:

- the principle that every child should be treated as a valued member of society in a manner that respects the child's dignity and privacy – paragraph (ea); and
- a principle that, as far as practicable, the services of interpreters or other appropriate persons are to be made available to assist people who: have difficulty understanding or communicating in English; or those whose disability prevents or restricts their understanding of, or participation in, a decision-making or other process or the person's expression of wishes or views – paragraph (l).

Paragraph (k)(ii) is amended for drafting consistency by inserting that the information to be given to parents and other people significant in the child's, on the outcome of 'any decision' about the child, relates to decisions that are likely to have a significant outcome on the child.

Clause 10: Section 10 amended

This clause amends the *Principle of child participation* in section 10.

Subsection (1) is strengthened by stating that a child 'must' instead of 'should' be given adequate information, opportunities and assistance to ensure the child is able to participate in the decision-making process if a decision under the Act is likely to have a significant impact on the child's life.

The subsection (2) amendments replace the use of the term ***relative*** with ***family*** consistent with clause 4.

Subsection (4) is deleted in consequence of placing the definitions of ***care plan*** and ***provisional care plan*** into section 3.

Clause 11: Section 12 amended

This clause amends the *Aboriginal and Torres Strait Islander principle* in section 12 of the Act. The intent of the Aboriginal and Torres Strait Islander principle in subsection (1) is to maintain a connection with family and culture for Aboriginal children who are the subject of placement arrangements.

Subsection (2) sets out an order of priority for the placement of an Aboriginal child, the first priority being placement with (a) a member of the child's family, followed by (b) placement with an Aboriginal person in the child's community in accordance with local customary practice.

This clause deletes the remaining preferences in the current placement hierarchy, being paragraph (c) placement with an Aboriginal person, and (d) placement with a person who is not

Aboriginal but who is sensitive to the child's needs and capable of promoting the child's ongoing affiliation with the child's' culture and, where possible, the child's family.

These paragraphs are replaced with new paragraphs (c) to (f) as follows:

(c) placement with an Aboriginal person who lives in close proximity to the child's community;

(d) placement with a non-Aboriginal person who lives in close proximity to the child's community;

(e) placement with an Aboriginal person;

(f) placement with a non-Aboriginal person.

The amendments are intended to keep Aboriginal children in care in closer proximity to family and community if the first two placement priorities are unable to be achieved. With the geographical size and cultural diversity of Western Australia, current paragraph (c) can result in an Aboriginal child being placed with an Aboriginal person with very different cultural traditions at opposite ends of the state and far from the child's family and community. This can impose barriers to maintaining the child's family and cultural connections and the possibility of reunification with parents where appropriate.

The clause further provides that if a child is placed with a non-Aboriginal person under (d) or (f), it must be with a person who is responsive to the child's cultural support needs and willing and able to support the child's cultural connections and traditions.

Consistent with the intention of the amendment in clause 5, this clause also clarifies that the Court is to apply the Aboriginal and Torres Strait Islander child placement principle when making an interim placement order for an Aboriginal child under section 133(2)(c) of the Act.

Clause 12: Section 13 amended

This clause strengthens and extends the application of section 13 – *Principle of self-determination* by:

- deleting that the principle is to be applied in the administration of the Act because clause 5 provides that a person, court or tribunal is to observe all the principles when performing a function under the Act; and
- stating that Aboriginal people have a right to participate in the protection and care of their children with as much self-determination as possible, rather than "should be allowed to".

Clause 13: Section 14 amended

This clause amends the section 14 – *Principle of community participation*.

Consistent with clause 5, section 14 is amended to remove the words that the principle is to be observed in the administration of the Act. Pursuant to new section 5A, this principle is now to be applied by a person, a court or a tribunal.

The amendment also strengthens the principle by providing that the relevant groups 'must' be given, where appropriate, opportunities and assistance to participate in decision-making processes that are likely to have a significant impact on the life of a child, rather than 'should' be given such opportunities and assistance.

New subsection (2) provides that consideration must be given to the wishes and views of the child and the child's parents when considering whether it is appropriate for a kinship group, community or Aboriginal representative organisation to participate under this principle.

New subsection (3) clarifies that the provision does not apply:

a) to the new requirement provided in section 81 (clause 32) for the Department to consult with an approved Aboriginal or Torres Strait Islander representative organisation (approved ARO) when making a placement arrangement for an Aboriginal child; or

b) to the new requirement provided in section 89A (clause 38) for the Department to offer an approved ARO an opportunity to participate in cultural support planning for an Aboriginal child.

This is because sections 81 and 89A specifically provide that approved Aboriginal representative organisations must be consulted or offered the opportunity to participate regarding placement arrangements or cultural supporting planning respectively.

Clause 14: Section 22 amended

This clause amends section 22 – *Cooperation and assistance.*

The term 'duties and responsibilities' in section 22(4) is replaced with 'functions' for consistency with clause 7 and the use of 'functions' elsewhere in the Act and the Bill.

New powers are inserted to strengthen the intent of section 22, which is to ensure that children who are or have been in the CEO's care and who qualify for assistance are provided with the government services they need until they turn 25. This amendment addresses evidence which shows that children who have been in state care are at greater risk of experiencing adverse life outcomes than other children.

New subsections (4AA) and (4AB) require public authorities (prescribed in regulations) to prioritise a request from the CEO to provide assistance to a child in the CEO's care, a young person who qualifies for assistance under section 96, and a child who is the subject of a protection order (special guardianship). If the relevant officer for a public authority to which this section applies forms the opinion that the public authority cannot comply with such a request consistently with its duties and responsibilities or so as to not unduly prejudice the performance of its functions, the officer must upon request of the CEO provide written reasons for that opinion.

New subsection (4AC) defines who a relevant officer is for a public authority to which these new provisions may apply.

Clause 15: Section 22A inserted

This clause inserts new section 22A – *Approval of Aboriginal or Torres Strait Islander representative organisations for consultation*.

Section 22A enables the CEO to approve, in accordance with regulations, an organisation as an Aboriginal or Torres Strait Islander representative organisation (an approved ARO) for the purposes of consultation about certain decisions made under the Act:

- the amendments in clause 32 of the Bill require the CEO to consult with an approved ARO before making a placement arrangement for an Aboriginal child; and
- the amendments in clause 38 of the Bill require an approved ARO to be given an opportunity to participate in the preparation of a cultural support plan for an Aboriginal child.

An approval for an ARO may be subject to conditions specified in the instrument of approval, and a list of approved AROs is to be made available free of charge for inspection by members of the public on the internet or otherwise.

Clause 16: Section 28 amended

This clause amends section 28 of the Act, which sets out the grounds for finding that a child is in need of protection, as follows:

- Section 28(2)(a) applies when a child has been abandoned and a parent or parents cannot be located. New paragraph (aa) provides for circumstances where the child's parent or parents may subsequently be found but no parent is willing and able to care for the child. This addresses an oversight identified in practice.

- Section 28(2)(d) is amended to address circumstances in which a child has suffered, or is likely to suffer, harm because the child's parents are unwilling to provide or arrange for adequate care or the provision of medical, therapeutic or other remedial treatment for the child. This also addresses an oversight identified in practice.

Additional amendments in this clause replace the following terms:

- ***relative*** with ***family*** where used in section 28, consistent with clause 4 of the Bill;
- 'Part' with 'Act', the first of several amendments in the Bill to clarify that the term being referred to, in this case when a child is ***in need of protection***, is defined in section 3 and therefore applies for the purposes of the Act rather than that Part only.
- 'his or her' with 'the child', consistent with the wording in the section.

Clause 17: Section 29 amended

Minor amendments are made to section 29 as follows:

- replacing 'Part' with 'Act', consistent with the amendments in clauses 17, 18 and 23; and
- replacing subsection (3)(c) with a redrafted subsection (3)(c) which describes the nature of the interim order rather than referring to it by section only.

Clause 18: Section 30 amended

Consistent with clauses 16, 17 and 23, this clause replaces 'Part' with 'Act'.

Clause 19: Section 32 amended

The amendments in this clause are a consequence of replacing the term ***relative*** with ***family*** throughout the Act.

Clause 20: Section 39 amended

Clause 20 amends section 39 – *Provisional care plan, preparation etc. of.*

Subsection (1) is deleted and subsection (2) amended for drafting reasons. The deleted provisions in subsection (1) are inserted into new subsections (2B)(a) to (d).

Subsections (3A) and (3B) are deleted and inserted into subsections (2) and new subsection (2A) respectively. Overall, the substantive amendments to section 39 have the following effect:

- The new provisions in subsection (2B)(e) require a child's provisional care plan to contain a summary of the child's participation in connection with the decisions recorded

in the plan and the child's wishes and views about them. This aligns with amendments in clause 10 which strengthen the principle of child participation. In applying this subsection, due regard must be had to the child's age and level of understanding in accordance with the principle of child participation.

- Subsection (2C) provides that the requirements above apply only after the commencement of this section of the Amendment Act.
- New subsections (2D) and (2E) clarify sections 39(3) and (4) regarding the modification of a child's provisional care plan. These sections enable the CEO to modify a provisional care plan, and as soon as practicable after modifying the plan a copy must be given to various parties. The new subsections provide that a provisional care plan must be modified if a decision in the plan is varied, revoked or substituted or a further decision is made, and that the modification is to be made as soon as practicable after any of those things occur.

Clause 21: Section 41 amended

This clause amends section 41 to replace the use of ***relative*** with ***family*** consistent with clause 4.

Clause 22: Section 42 amended

Clause 22 deletes the definitions of ***parent*** and ***special guardian*** because they are being inserted into section 3 of the Act consistent with clause 4.

Clause 23: Section 43 amended

Consistent with clauses 16, 17 and 18, this clause replaces 'Part' with 'Act'.

Clause 24: Section 44 amended

Section 44 deals with applications for protection orders. This clause amends subsection (2)(b) to provide that an application for a protection order must specify the type of order sought and proposed conditions on the order. This amendment is a consequence of new powers in clause 28 which enable the Court to impose conditions on a protection order (special guardianship).

A minor amendment to subsection (3) is made as a consequence of placing a definition of 'special guardian' in section 3 of the Act.

Clause 25: Section 45 amended

The amendment in this clause clarifies that the Court's power to make the protection order being sought or another protection order is also subject to Part 5 of the Act in addition to Part 4.

Clause 26: Section 50 amended

This clause amends section 50 - *Conditions of protection order (supervision).* Section 50(3) is deleted and new subsection (3) inserted. This amendment clarifies that a protection order (supervision) may include a condition requiring the child to live with a specified parent of the child but must not include a condition about any other person or persons with the whom the child is to live or who is to have day to day responsibility for the child's day to day care, welfare or development.

Clause 27: Section 61 amended

This clause amends section 61 – *Restriction on making protection order (special guardianship).* Section 61 places restrictions on when the Court may make a protection order (special guardianship) and identifies the information the CEO must provide to the Court to assist it in deciding whether long-term arrangements should be made for the child's wellbeing and assessing the suitability of the proposed special guardian.

The definition in section 61(1) is deleted, as clause 4 places a definition of ***special guardian*** in section 3 of the Act.

New subsection 61(2A) provides that, when the Court is assessing the suitability of the special guardian, it must have regard to the Aboriginal child placement principle and the guidelines established under section 80 of the Act for children from culturally and linguistically diverse backgrounds. In addition to those existing requirements, which are redrafted from deleted sections 61(4) and (5), the Court must have regard to other principles in Part 2 which affect the placement of a child. These include the principles in section 9(ga) and (gb).

New subsection 61(2B) provides that the Court must not make a protection order (special guardianship) for an Aboriginal child in favour of a non-Aboriginal person, unless the CEO has given the Court a written report from a person who meets criteria prescribed by regulations. The intention is that suitably qualified Aboriginal organisations or individuals prepare these written reports.

New provisions are inserted into subsection (3) about what must be included in the CEO's report to the Court, which are:

- information which addresses the matters in new subsection (2A); that is, the Aboriginal child placement principle, the guidelines established under section 80 for the placement of a child from a culturally and linguistically diverse, and other principles relevant to the placement of a child in care;
- proposed arrangements for encouraging and supporting the child to develop and maintain contact with the child's parents, siblings and other family members, subject to decisions made under the Act about that contact; and
- for Aboriginal children or children from a culturally and linguistically diverse background, a copy of their cultural support plan.

Three new subsections are inserted to provide that:

- a cultural support plan does not need to accompany the CEO's report if the application for a protection order (special guardian) is made under section 69A of the Act by a carer of the child;
- the Court must consider each of the reports it receives under section 61 before making an order; and
- each party to the proceedings must receive copies of the reports provided to the Court.

Clause 28: Section 63 replaced

This clause deletes section 63 – *Conditions of protection order (special guardianship)* and replaces it to include additional provisions regarding conditions on protection orders (special guardianship), which are to be complied with by the special guardian.

In addition to conditions about contact, new section 63(1) enables the Court to place conditions on the order about matters that could be included in the child's cultural support plan. Note that the Court must be given the child's cultural support plan under the amendments in clause 27.

New subsection (2) places a condition on all protection orders (special guardianship) to prohibit a special guardian from making an application under the *Births, Deaths and Marriages Registration Act 1998* (WA) to change the child's name without the permission of the Court. Under new subsection (3), upon the application of a special guardian the Court may permit a child's name to be changed if there are exceptional reasons for doing so and, if the child is of sufficient maturity and understanding to consent to the change of name, the child consents.

No other conditions can be included in protection orders (special guardianship).

Clause 29: Section 64 amended

The amendment made to section 64 – *Variation of conditions* in this clause has the effect of ensuring that a party to the initial proceedings for a protection order (special guardianship) may not apply to vary the condition about a change of the child's name.

Clause 30: Section 69B inserted

This clause inserts section 69B - *Replacement of protection order (special guardianship) on notification by CEO*

This amendment requires the CEO to give written notice to the Court, as soon as practicable, if the CEO becomes aware that each person who is a special guardian of a child under a protection order (special guardian) has died. On the day the CEO gives notice to the Court (notification day), the protection order (special guardianship) is revoked and replaced by a two-year protection order (time limited). As soon as practicable after notification day the CEO must give notice of the new order to: the child; each other party to the initial proceedings; and other persons who the CEO considers have a direct and significant interest in the child's wellbeing.

This amendment addresses a gap in the Act and is based on a similar provision in section 325A of the *Children, Youth and Families Act 2005* (Vic). Currently the Act is silent on who has parental responsibility for a child under a protection order (special guardianship) if the child's special guardian or joint special guardians die.

Clause 31: Section 79 amended

This clause amends section 79 - *CEO may make a placement arrangement for a child* by enabling regulations to be made to prescribe arrangements for the placement of a child which are additional to those already provided for in subsection (2). It is intended that the *Children and Community Services Regulations 2006* will provide for the CEO to make an urgent placement for a child and prescribe the timeframes within which the checks and approvals of the individual(s) caring for the child must occur.

Clause 32: Section 81 replaced

This clause deletes section 81 – *Consultation before placement of an Aboriginal or Torres Strait Islander child* and replaces it with new provisions.

The new provisions require greater consultation to occur before making a placement arrangement for an Aboriginal child. Consultation must occur with: an Aboriginal member of the child's family; subject to the regulations, an approved ARO (provided for in clause 15); and an Aboriginal officer of the Department who has relevant knowledge of the child, the child's family or the child's community.

These amendments are intended to achieve better application of the Aboriginal child placement principle by identifying a greater number of possible placements at the higher levels of the placement hierarchy.

If it is not practicable for the required consultation to occur before making a placement arrangement, due to urgency or for other reasons, it must occur as soon as practicable afterwards.

Clause 33: Section 88C amended

This clause amends section 88C – *Secure care arrangements for certain children* by clarifying, in new section 88C(6), that the removal of a child from a secure care facility on a temporary or emergency basis does not affect the secure care arrangement the child is subject to. This may include an emergency evacuation or the child's attendance at medical appointments or a funeral. The child's removal must be in accordance with procedures approved by the CEO.

Clause 34: Section 88I amended

This clause amends section 88I – *Requirements for care plan or provisional care plan.*

Section 88I(1) is deleted as the definitions are placed in section 3 consistent with clause 4.

Consistent with clauses 20 and 37, the amendments to this section require a child's care plan or provisional care plan to contain a summary of the child's participation in connection with the decisions recorded in the plan and the child's wishes and views about them. These requirements apply only after the commencement of this section of the Amendment Act.

Clause 35: Part 4 Division 5 Subdivision 3 heading replaced

This clause changes the title of Subdivision 3 from 'Care plans' to 'Plans' as a consequence of inserting new plans into the Subdivision: ***cultural support plans*** and ***leaving care plans***.

Clause 36: Section 88 deleted

Clause 36 deletes section 88 – *Terms used: parent.* The definition of ***parent*** is placed in section 3 consistent with clause 4.

Clause 37: Section 89 amended

This clause amends section 89 – *Care plans, preparation etc. of.*

The title of section 89 is changed to 'Care plan'; subsection (1) is deleted as a consequence of the other amendments to the section; and subsection (5) is deleted and its provisions are included in new section 89B in clause 38.

The substantive effects of the amendments are:

- New subsection (3A)(d) - For an Aboriginal child or child from a culturally and linguistically diverse background, the care plan must include a cultural support plan for the child.
- New subsection (3A)(e) - For a child who has reached 15 years, the care plan must include a leaving care plan for the child.
- New subsection (3A)(g) - Consistent with clauses 20 and 34, a child's care plan must contain a summary of the child's participation in connection with the decisions recorded in the plan and the child's wishes and views about them. This aligns with the amendment to section 10 which strengthens the principle of child participation.
- New subsection (3B) provides that for children who already have a care plan when this section of the Amendment Act commences, the new care plan requirements will need to

be included in the first review of the care plan under section 90 after this section commences.

- New subsections (3D) and (3E) – A care plan must be modified if a decision in the plan is varied, revoked or substituted or a further decision about the child's care is made by the CEO and the modification of the care plan must be made as soon practicable after the decision is varied, revoked, substituted or another decision is made.
- New subsection (3F) provides that a child's care plan must be modified to include a leaving care plan as soon as practicable after the child reaches 15 years of age.

Clause 38: Sections 89A and 89B inserted

This clause inserts sections 89A and 89B.

89A – Cultural support plan

This section provides that a ***cultural support plan*** is a plan that contains arrangements for developing and maintaining the child's connection with the culture and traditions of the child's family or community and that, subject to the regulations, an approved ARO is to be given an opportunity to participate in the preparation of a cultural support plan for an Aboriginal child.

89B – Leaving care plan

This section contains the provisions in section 89(5), deleted by clause 37, that a ***leaving care plan*** is a plan which identifies the needs of a child in preparing to leave the CEO's care and transitioning to other living arrangements, and outlines steps or measures to be taken to help the child meet those needs. A new provision is that the leaving care plan is to include the social services proposed to be provided to the child when the child leaves the CEO's care.

Clause 39: Section 90 amended

This clause amends section 90 – *Review of care plan.* Section 90 requires a review of a care plan to be carried out at regular intervals not exceeding 12 months. The amendment to this section provides that the CEO must, subject to the regulations, give an approved ARO an opportunity to participate in the review of the child's cultural support plan.

Clause 40: Section 91 amended

This clause deletes the definitions of ***care plan*** and ***parent***, which have been placed into section 3 of the Act by clause 4 of the Bill in order to clarify that they apply across the whole Act. The other minor amendment to the definition of ***care planning decision*** reflects current drafting practice.

Clause 41: Section 92 amended

This clause amends section 92 – *Care plan review panel.*

Section 92 requires the CEO to establish a care plan review panel (panel) and appoint at least three members to the panel. The panel's role is to consider applications to the CEO under section 93 of the Act for the review of a care planning decision and to report to the CEO on its recommendations in respect of the applications.

New subsection (3A) requires at least one member of the panel to be an Aboriginal person.

New subsection (9) provides that, if the CEO appoints more than three members to the panel, the panel that is hearing an application for the review of care planning decision must comprise 3 panel members. The panel currently consists of nine members; therefore, this amendment will enable the panel to consider review applications concurrently.

New subsection (10) provides that, if an application for a review concerns an Aboriginal child, one of the panel members must be an Aboriginal person.

Clause 42: Section 94 amended

The minor amendment made to section 94 under this clause is made for ease of reading.

Clause 43: Section 98 amended

This clause amends section 98 – Provision of social services. This is one of amendments being made to strengthen or clarify provisions in the Act that address the needs of children leaving the CEO's care. Related amendments are made in clauses 37, 38, 44 and 45.

Subsection (1) is replaced with a new subsection which no longer links the CEO's obligation to ensure that a child is provided with social services to meet the needs of the child as identified in the child's care plan.

Clause 44: Section 99 amended

This clause amends section 99 – *Provision of assistance to obtain accommodation etc.*

The amendment clarifies that, for the purposes of this section, a person who qualifies for assistance must also *seek* the assistance. The CEO is not otherwise in a position to ensure that every child or young person who qualifies for leaving care assistance under section 96 is provided with the assistance they qualify for.

Clause 45: Section 100A inserted

This clause inserts new section 100A into the Act – *Provision of explanation to child.*

The amendment requires the CEO to ensure that, before a child leaves the CEO's care, the child is given written information about the assistance he or she is entitled to or may receive from the Department after leaving care and before reaching 25 years of age.

Clause 46: Section 101 amended

This clause amends section 101 – *Failing to protect child from harm.* This amendment is intended to provide victims of family violence with a defence if prosecuted for failing to protect a child from harm resulting from emotional abuse through exposure to family violence. The possibility of such prosecutions became an unintended consequence of amendments in January 2016 which defined emotional abuse under section 28 to include being exposed to family violence.

Clause 47: Section 104 amended

This clause amends section 104 to replace the use of ***relative*** with ***family*** consistent with clause 4.

Clause 48: Section 105 amended

This clause amends section 105 – *Terms used.* Section 105 sets out what 'lawful authority' means for the purposes of Part 7, Division 7, Subdivision 2, which contains a number of offences under the Act in relation to a child who is the subject of a placement arrangement or secure care arrangement. The amendment is consequential to clause 33, which enables the CEO to remove a child from a secure care facility on a temporary basis in accordance with procedures approved by the CEO.

New subsection (2)(aa) provides that an act is lawful, for a child under a secure care arrangement, if the act is done in accordance with procedures approved by the CEO.

Clause 49: Section 115 amended

This clause amends section 115 – *Child may be searched.* This amendment is made to align with the requirements of the *Sex Discrimination Act 1984* (Cth) which prohibits discrimination on the grounds of sexual orientation, gender identity and intersex status.

Section 115(2)(a) currently requires that the search of a child must be done by an authorised person who is the same sex as the child.

New subsection (3A) enables a determination to be made of the appropriateness of a person to do, or assist with, the search based on whether there is any reason to suspect that the child is transgender or intersex. If there is no reason to believe so, the person conducting the search or assisting must be of the same sex as the child and, in any other case, consideration must be given to the following:

a) whether the child and the person identify as male, female, transgender or intersex;

b) the views of the child having regard to the child's maturity and understanding;

c) any known views of the child's family or other person significant in the child's life.

Clause 50: Section 120 amended

This clause deletes section 120(1) as a consequence of placing the definition of ***remote communication*** into section 3 of the Act consistent with clause 4 of the Bill.

Clause 51: Section 124A amended

This clause is the first of a number of amendments related to ministers of religion becoming mandated reporters of child sexual abuse as recommended by the Royal Commission.

Recommendation 7.3 of the Royal Commission's Final Report recommended that people in religious ministry be included as mandatory reporters in every Australian jurisdiction, along with other specified groups of individuals, to achieve national consistency in reporter groups.

The expansion of the mandatory reporting scheme in Western Australia to ministers of religion has been expedited ahead of other categories in recommendation 7.3. 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.

The amendments to section 124A are:

- ***minister of religion*** is defined to mean a person who is recognised in accordance with the practices of a faith or religion as a person who is authorised to conduct services or ceremonies in accordance with the tenets of the faith or religion and includes such

persons regardless of how their position or title is described; for example, member of the clergy, priest, minister, imam, rabbi or pastor.

- ***commencement day*** for the purposes of ministers of religion means the day on which this section of the Amendment Act comes into effect.

Clause 52: Section 124B amended

Section 124B requires specified classes of persons (doctors, teachers etc.) to make a report to the CEO if they form a belief on reasonable grounds, formed during the course of their work as that class of person, that a child has been the subject of sexual abuse that occurred on or after commencement day or is the subject of ongoing abuse.
The amendments to section 124B add ***minister of religion*** into the list of the classes of person who have a duty to make a report wherever that list appears in the section. A minor amendment to subsection (4) replaces 'requirement' with 'duty' and is made for drafting consistency.

Clause 53: Section 124BA inserted

This clause inserts section 124BA into the Act - *Provisions for ministers of religion* to implement recommendation 7.4 of the Royal Commission's Final Report:

> "Laws concerning mandatory reporting to child protection authorities should not exempt persons in religious ministry from being required to report knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession."

Subsection (1) defines ***religious confession*** to mean a confession made to a minister of religion in the minister's capacity as a minister of religion in accordance with the tenets of the minister's faith or religion.

Subsection (2) provides that a minister of religion who forms a belief on the basis of information disclosed to the minister in the minister's capacity as a minister of religion is taken to form the belief in the course of the minister's work.

Subsection (3) provides that a minister of religion is not excused from criminal responsibility for not carrying out the duty to make a report on the grounds that:

a) the belief is based on information disclosed to the minister during a religious confession; or

b) disclosure of the belief or information on which the belief is based is otherwise contrary to the tenets of the minister's faith or religion.

Clause 54: Section 125A amended

This clause amends section 125A to replace the use of ***relative*** with ***family*** consistent with clause 4.

Clause 55: Section 131B amended

Consistent with clause 6 of the Bill, this clause amends section 131B by replacing the words "exercising appropriate control over" the behaviour of the child with "appropriately and safely managing" the behaviour of the child.

Clause 56: Section 131D amended

Consistent with clauses 6 and 55, this clause amends section 131B by replacing the words "exercising appropriate control over" the behaviour of the child with "appropriately and safely managing" the behaviour of the child.

Clause 57: Section 131 amended

This clause amends section 131 as a consequence of clause 4, which places the definition of ***parent*** into section 3 of the Act.

Clause 58: Section 132 amended

This clause amends section 132 – *Adjournment of proceedings* by inserting two additional subsections.

The effect of the substantive amendments to section 132 is that, unless the Court is satisfied there are exceptional reasons for an adjournment, the Court must not adjourn protection proceedings if the proceedings are for:

- an interim order (secure care); or
- an interim order under section 133(2)(ca)(ii) that a secure care arrangement made for a child by the CEO is to continue,

and an adjournment for exceptional reasons under this section must not exceed 2 working days.

The intent of this amendment is to ensure that decisions on whether a child meets the threshold for a secure care arrangement are made at the earliest possible instance, given the nature and intent of secure care arrangements and their short duration.

Clause 59: Section 133 amended

This clause replaces use of the term ***relative*** with ***family*** consistent with clause 4.

Clause 60: Section 143 amended

This clause amends section 143 – *CEO to provide Court with proposal for child.*

Section 143 currently requires the CEO to provide the Court with a document outlining the proposed arrangements for the supervision of a child's wellbeing if a supervision order, protection order (time limited) or protection order (until 18) is made or extended for the child (a proposal for the child).

Subsection (3) currently provides that if the CEO made certain protection applications, the proposal for the child must be made at the same time as the application is made.

Subsection (4) is deleted and in clause 61 its provisions are incorporated into new section 143A(5).

Subsection (4) is replaced with an amendment to clarify that when an application for the replacement of a protection order (supervision) with a protection order (time limited) or protection order (until 18) is made under section 68, the proposal for the child must be provided to the Court as soon as practicable after the application.

Subsection (5) is redrafted without making any substantive change to the operation of the provision.

Clause 61: Section 143A inserted

This clause inserts section 143A – *Content of proposal,* which sets out the information that is to be addressed in proposals for particular protection orders.

Subsection (1) requires proposals for protection orders (supervision) to outline the arrangements for supervision of the child's wellbeing.

Subsection (2) requires proposals for a protection order (time-limited) or protection order (until 18) to outline proposed arrangements for safeguarding and promoting the wellbeing of the child including:

- arrangements for promoting, where appropriate, the child's relationship with family and or others who are significant in the child's life;
- for an Aboriginal child or child from a culturally and linguistically diverse background, arrangements for the child's placement in accordance with the Aboriginal child placement principle in section 12 or guidelines established under section 80, and a cultural support plan.

Subsection (3) requires proposals for a protection order (time-limited) or protection order (until 18) for an Aboriginal child to outline the consultation that has occurred or is proposed to occur under section 81.

Subsection (4) requires proposals for a protection order (time-limited) to outline proposed arrangements for working towards returning or placing the child with his or her parent(s), or a brief explanation of the reasons why the CEO considers that such arrangements would not be in the child's best interests or not practicable.

Subsection (5) provides that a proposal for the extension of a protection order (time-limited) is to include plans for securing long-term stability, security and safety in the child's relationships and living arrangements.

Clause 62: Section 144 amended

This clause makes a minor amendment to section 144 in consequence of the amendments made in clause 61.

Clause 63: Section 145 amended

This clause amends section 145 – *Conduct of protection proceedings generally.*

Section 145(3) currently provides that protection proceedings are to be concluded as expeditiously as possible to minimise the effect of the proceedings on the child and child's family.

Subsection (3) is deleted and replaced with a new subsection (3) which adds to the provision by clarifying that the intent is to minimise "the risk of detrimental effects arising from delays in decision-making". For example, protection proceedings can create uncertainty for the child and child's family until the child's future legal status and living arrangements are decided.

New subsection (3A) provides that subsection (3) does not prevent an adjournment of proceedings for the purposes of a trial period for particular arrangements or other appropriate reasons. This may include, for example, a trial placement arrangement for the child.

This amendment aligns with the amendment to section 9(h) in clause 9.

Clause 64: Section 147 amended

This clause makes a minor amendment to section 147 in consequence of clause 4 which places a definition of ***special guardian*** in section 3 of the Act.

Clause 65: Section 153 amended

This clause amends section 153 - *Court to facilitate participation in proceedings* to align with the new principle in inserted as section 9(l) by clause 9. The amendment to subsection 153(2) clarifies that, while all persons who have difficulty understanding or communicating in English will thereby be prevented or restricted from understanding or participating in the proceedings and therefore need the assistance of an interpreter, not all persons with disability will necessarily be affected in that way as a result of their disability.

Clause 66: Section 157 amended

This clause amends section 157 in consequence of placing a definition of ***parent*** in section 3 of the Act consistent with clause 4.

Clause 67: Section 188 amended

This clause amends section 188 – *Terms used,* as follows:

- by deleting the definition of ***industrial inspector*** in consequence of the amendments made under clause 71; and
- amendments throughout the Act to replace the use of ***relative*** with ***family***.

Clause 68: Section 192 amended

This clause amends section 192 – *Children not to be employed to perform in indecent manner etc.* Consistent with clause 49, the amendments to section 192 align with the requirements of the *Sex Discrimination Act 1984* (Cth) which prohibits discrimination on the grounds of sexual orientation, gender identity an intersex status.

Clause 69: Section 195 deleted

This clause deletes section 195 – *Powers of authorised officers* as a consequence of the amendments under clause 71 which insert greater enforcement powers into the Act.

Clause 70: Section 239 amended

Minor amendments to this clause are a consequence of replacing the term ***relative*** with ***family*** throughout the Act consistent with clause 4.

Clause 71: Part 10A inserted

This clause inserts Part 10A – *Enforcement* containing sections 241A to 241O.

The powers currently available to authorised officers and industrial inspectors under section 195 apply for the purposes of enforcing the employment of children provisions in Part 7 the Act only.

Section 195 is deleted by clause 69, and Part 10A is inserted to increase the powers of authorised officers and broaden them to apply for the purposes of investigating a suspected offence under the Act, including failure to make a mandatory report under section 124B and offences related to tattooing and body piercing. The increased powers also apply to industrial officers for the purposes of investigating a suspected offence under Part 7 of the Act.

The powers provided are consistent with those under the *Child Care Services Act 2007* (WA) and in the case of an industrial inspector, are in addition to, and do not limit, the powers conferred by the *Industrial Relations Act 1979* (WA).

The following sections are inserted under Part 10A:

Section 241A – *Terms used*

Section 241B – *Application of Part*

Section 241C – *Entry to places*

Section 241D – *Powers after entering a place*

Section 241E – *Directions to provided information or documents*

Section 241F – *Additional powers for relevant records*

Section 241G – *Contravention of directions*

Section 241H – *Exercise of power may be recorded*

Section 241I – *Assistance and use of force to exercise power*

Section 241J – *Procedure on seizing things*

Section 241K – *Application of Criminal and Found Property Disposal Act 2006*

Section 241L – *Application for entry warrant*

Section 241M – *Issues and content of entry warrant*

Section 241N – *Refusal of entry warrant*

Section 241O – *Effect of entry warrant.*

Clause 72: Section 243 amended

This clause amends section 243 by inserting ‘industrial inspector’ in consequence of the amendments in clause 71.

Clause 73: Section 246 amended

This clause amends section 246 by inserting ‘industrial inspector’ in consequence of the amendments in clause 69.

Clause 74: Section 249 replaced

This clause deletes section 249, which currently requires the Minister to conduct a review of the Act every 5 years and inserts a new provision. The effect of the amendment is that the next statutory review of the Act will be required 5 years after this section of the Amendment Act.

Clause 75: Various penalties amended

This clause amends various penalties throughout the Act in accordance with current drafting practice: ‘Penalty’ is replaced with ‘Penalty for this subsection’. The sections amended are listed in a Table.