



Children and Community Services Amendment Act 2021

Frequently asked questions

1. Introduction

New child protection laws were passed by the Western Australian Parliament on 14 October 2021. The *Children and Community Services Amendment Act 2021 (Amendment Act)* received royal assent on 19 October 2021.¹

This document provides information on key changes contained in the Amendment Act which will commence in law from 1 May 2022, including changes in the following areas:

- [Aboriginal children, families and communities](#)
- [‘Written proposal’ for the wellbeing of a child](#)
- [Special guardianship orders](#)
- [Services for children in care and care leavers](#)
- [Other miscellaneous changes](#)

It also provides an overview of the changes being made to increase the [mandatory reporting](#) of child sexual abuse, which is the subject of a separate Frequently Asked Questions.

The Amendment Act implements recommendations of the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**) and the 2017 *Statutory Review of the Children and Community Services Act 2004 (Review)*². It also includes additional amendments recommended by the Legislative Council Standing Committee on Legislation,³ which inquired into the policy of the former Children and Community Services Amendment Bill 2019 before it lapsed when Parliament was prorogued on 7 December 2020.

The new laws will strengthen the *Children and Community Services Act 2004 (Act)* to better protect WA’s children⁴ from harm as a result of abuse. They are also intended to improve outcomes for children who are in the care of the Chief Executive Officer of the Department of Communities (**CEO**), particularly Aboriginal children⁵ who are significantly over-represented in Western Australia.

¹ A copy of the Amendment Act is available on the Western Australian legislation website at: [Children and Community Services Amendment Act 2021 - \[00-00-00\].pdf \(legislation.wa.gov.au\)](#)

² A copy of the Review report is available on the WA Parliament website at: [www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/4010991ac1b94f27cef79237482581e7001d5deb/\\$file/991.pdf](#)

³ A copy of the Legislative Council Standing Committee on Legislation, Report 44 can be viewed on the WA Parliament website at: [ls.ccs.200902.rpf.044.xx- web version.pdf \(parliament.wa.gov.au\)](#)

⁴ “Child” means a person who is under 18 years of age.

⁵ Use of the term Aboriginal in this document includes reference to Torres Strait Islander people.





2. Mandatory reporting

WA first introduced mandatory reporting laws in 2009. Since then, doctors, teachers, nurses, midwives, police and boarding supervisors have been legally required to report child sexual abuse to authorities.

What is changing?

- The changes will see reporting of child sexual abuse become mandatory for early childhood workers, ministers of religion, out-of-home care workers, registered psychologists, school counsellors and youth justice workers. Assessors appointed under section 125A of the Act and officers of the Department of Communities (**Communities**) will also become mandatory reporters.
- The new groups of reporters of child sexual abuse (mandatory reporters) will commence as reporters at different times to enable the necessary training to occur beforehand.
- Further information about mandatory reporting is available on the WA Government's [website](#), including information about when each new group will commence as mandatory reporters, and answers to Frequently Asked Questions.

What if I am not a mandatory reporter?

- Anyone can and should notify the [Department of Communities](#) if they have concerns about the wellbeing of a child. This enables authorities to assess the circumstances and take action to protect the child and other children where necessary.
- Just like mandatory reporters, people who voluntarily notify Communities in good faith about concerns for a child are protected under the legislation.
- If you are concerned about a child's wellbeing, but are not making a mandatory report, please contact the Central Intake Team on 1800 273 889 or email cpduty@communities.wa.gov.au
- To report a concern out of business hours please contact the Crisis Care Unit on 1800 199 008.

3. Aboriginal children, families and communities

- At 30 June 2021, 5,344 children under 18 were in the care of the CEO. Fifty-seven per cent of these children were Aboriginal despite Aboriginal children forming only 6.7 per cent of all children in WA. Reducing the over-representation of Aboriginal children in care is a key priority for the WA Government⁶, a major driver of Communities reforms and a strong focus of the Review's recommendations.
- The changes in the Amendment Act are intended to build stronger connections to family, culture and Country for Aboriginal children in care through working more closely with Aboriginal people and Aboriginal community controlled organisations to achieve better outcomes for Aboriginal children, families and communities.

⁶ National Agreement on Closing the Gap | Closing the Gap



What is changing?

Some of the amendments of particular significance to Aboriginal people include those below. Others are explained in **Written proposals** and **Special guardianship orders** later in these FAQs.

Aboriginal and Torres Strait Islander child placement principle

- The Aboriginal and Torres Strait Islander child placement principle in section 12 of the Act will be amended to prioritise placement arrangements for Aboriginal children closer to their communities.
- A placement arrangement is an arrangement about who a child should live with when they are in the care of the CEO (often referred to as a care arrangement).
- The Aboriginal and Torres Strait Islander child placement principle sets out an order of priority for the placement of an Aboriginal child in care. The intent of the principle is to maintain a connection with family and culture for Aboriginal children in care.
- The *current order of placement priority* for an Aboriginal child in section 12 is with:
 - (a) a member of the child's family;
 - (b) an Aboriginal person in the child's community in accordance with local customary practice;
 - (c) an Aboriginal person (who could be anywhere in WA); or finally,
 - (d) a non-Aboriginal person (who could also be anywhere in WA).
- *Under the Amendment Act* the new order of placement priority will be placement with:
 - (a) a member of the child's family;
 - (b) an Aboriginal person in the child's community in accordance with local customary practice;
 - (c) an Aboriginal person in close proximity to the child's community;
 - (d) either an Aboriginal person (who could be anywhere in WA) or a non-Aboriginal person in close proximity to the child's community; or finally,
 - (e) a non-Aboriginal person (who could also be anywhere in WA).
- Placements with a non-Aboriginal person will have to be with someone who *"is responsive to the cultural support needs of the child and is willing and able to encourage and support the child to develop and maintain a connection with the culture and traditions of the child's family or community"*.

Placement consultations and cultural support planning

- Section 81 of the Act *currently requires* that before making a placement arrangement for an Aboriginal child in care, consultation must occur with **at least one** of the following:
 - an Aboriginal officer of Communities;
 - an Aboriginal person with relevant knowledge about the child, the child's family or the child's community; or
 - an Aboriginal agency that in the opinion of the CEO has relevant knowledge about the child, the child's family or the child's community.
- *Under the Amendment Act*, before making a placement arrangement for an Aboriginal child in care, consultation will have to occur with **each of** the following:
 - Aboriginal members of the child's family; and



- subject to regulations, an Aboriginal and Torres Strait Islander representative organisation (ARO) approved by the CEO; and
 - an Aboriginal officer of Communities who has relevant knowledge of the child, the child's family or the child's community.
- Subject to regulations, an ARO must also be given an opportunity to participate in the preparation of an Aboriginal child's cultural support plan and annual reviews of the plan.

Care Plan Review Panel

- If an application for the review of a child's care planning decision concerns an Aboriginal child, the membership of the Care Plan Review Panel dealing with the application must include at least one Aboriginal person.

What are Aboriginal representative organisations?

- The CEO will be able to approve an organisation to be an ARO for the purposes of the placement consultation and cultural support planning referred to above. AROs may be existing Native Title bodies or other Aboriginal community controlled organisations that are recognised by the local Aboriginal community, and have knowledge of the child, the child's family or the child's community.
- The term 'representative organisation' reinforces the need for these Aboriginal bodies to be 'placed-based' (and therefore to hold local cultural knowledge of the child, the child's family or the child's community), rather than the term 'Aboriginal agency' which is currently referred to in section 81.
- To become an ARO, organisations will need to meet certain criteria in regulations and will also need to comply with other standards such as the information sharing provisions under the Act and confidentiality requirements.

When will Aboriginal representative organisations (AROs) start?

- The amendments involving AROs will come into effect later than most of the other changes to the Act, to allow time for Communities and potential AROs to build the capacity needed to implement the delivery of ARO services statewide.
- Communities is working in partnership with Aboriginal stakeholders to determine how AROs will operate across WA. This includes piloting place-based and culturally appropriate service models in a regional and metropolitan location to inform statewide implementation.
- This work will include consultation on the criteria in regulations that the CEO will need to be satisfied of before approving an organisation as an ARO.

How will these changes help improve outcomes for Aboriginal children?

- The greater consultation required in relation to who an Aboriginal child in care should be placed with will help to better implement the Aboriginal and Torres Strait Islander child placement principle.
- Working with AROs will help to:
 - (a) find suitable placements for children with family or placement options that are closer to a child's community; and



- (b) provide Aboriginal children with stronger cultural support plans based on the cultural knowledge of the AROs.
- Providing the Children’s Court (Court) with information on how the Aboriginal and Torres Strait Islander child placement principle has been applied and the placement consultation Communities has undertaken, will give greater prominence to, and accountability for how Communities is applying the principle. An Aboriginal child’s cultural support plan must also be provided to the Court.
- In time, these amendments, together with the others being made, will help to strengthen the cultural identity and connections to family, culture, community and Country that are so important to Aboriginal children in the care of the CEO.

5. Written proposal for the wellbeing of a child

A section 143 ‘written proposal’ is a report Communities must provide to the Court when the Court has found that a child is in need of protection. A written proposal must outline proposed arrangements for the wellbeing of a child if a protection order (time limited) or extension, or a protection order (until 18) for a child has been applied for.

How are Communities ‘written proposals’ to the Court changing?

- In the new s.143A, these reports will have to outline proposed arrangements for safeguarding and promoting the wellbeing of the child, including:
 - arrangements for promoting, where appropriate, the child’s relationships with family or other people significant to the child;
 - for Aboriginal children or children from culturally and linguistically diverse (CALD) backgrounds, arrangements for placement in accordance with the Aboriginal and Torres Strait Islander child placement principle or CALD placement guidelines.
- The child’s cultural support plan must also be attached to the report and the proposal for an Aboriginal child must outline the placement consultation under section 81.
- For protection orders (time limited), the report must outline proposed arrangements for working towards the child’s reunification with parents or an explanation as to why this would be contrary to the child’s best interests or not practicable.

6. Special guardianship orders

A protection order (special guardianship) (**SGO**) is an order that appoints one person or two people jointly, to be a child’s “special guardian”. The order gives parental responsibility for the child to the special guardian, to the exclusion of any other person, until the child reaches 18 years of age or the order is revoked under the Act. The child on an SGO is not in the CEO’s care, and the special guardian does not have to consult with Communities.

When applying for an SGO for a child, Communities must provide the Court with a report that addresses the suitability of the person to be the child’s long-term carer and the person’s willingness and ability to. The report also has to outline the proposed arrangements for the child’s wellbeing if an SGO were to be made (s.61).



How are SGOs changing?

- For Aboriginal children and children from a CALD background Communities report must:
 - address the Aboriginal and Torres Strait Islander child placement principle or the guidelines for the placement of a CALD child; and
 - include a copy of the child's cultural support plan.
- Before making an SGO for an Aboriginal child in favour of a non-Aboriginal person or persons only, the Court will have to consider a written report from an Aboriginal agency or suitably experienced Aboriginal person.
- An SGO may include conditions to be complied with by the special guardian/s about cultural support for the child.
- It will be a condition of an SGO that the special guardian must not apply to the Registry of Births, Deaths and Marriages to have the child's name changed without the permission of the Court. The Court may only grant permission if exceptional circumstances exist and, if the child has sufficient maturity and understanding, the child consents.
- If Communities learns about the death of a child's sole or joint special guardian/s, the Court must be notified and from the date of notification the SGO will be revoked and replaced with a protection order (time limited). Notice of the new protection order must be given to the parties to the initial SGO and to other people with a significant interest in the child's wellbeing. Persons notified of the new order will be eligible to apply for a revocation order in accordance with section 67 of the Act.



7. Services for children in care and care leavers

What is changing for care leavers?

- Amendments regarding children and young people once they leave the CEO's care include the following:
 - a leaving care plan must be prepared once a child reaches 15 years of age;
 - leaving care plans should include the social services proposed to be provided for the child post-care;
 - children leaving care must be provided with social services the CEO considers appropriate having regard to the child's needs, regardless of whether those needs are identified in the child's last care plan;
 - children leaving care are to receive written information on their entitlements post-care.
- Public authorities named in regulations must prioritise CEO requests for assistance to a child in care, a child under an SGO or a care leaver who qualifies for assistance until they reach 25, provided it would be consistent with and not unduly prejudice the performance of the public authority's functions to do so.

8. Miscellaneous

What other changes are included in the Amendment Act?

New powers of investigation

- The Act contains offences in relation to the employment of children, mandatory reporting and a number of other offences. Authorised officers of Communities and industrial inspectors currently have investigation powers regarding employment of children offences only.
- New Part 10A will give Communities broader powers to investigate possible breaches of the employment of children laws and also enables them to be used for investigating the other offences under the Act.
- The broader powers are also given to industrial inspectors for the purposes of employment of children offences.
- The powers are consistent with the powers that licensing officers have under the *Child Care Services Act 2007*.
- The new powers relate to powers of entry and after entry; directions regarding information or documents; procedure on seizing things.

Urgent placements – The Amendment Act enables regulations to be made under section 79(2) of the Act to prescribe new types of arrangement for the placement of a child in care. It is intended the regulations provide for a short-term placement to be made with a person/s not yet approved by the CEO in accordance with regulation 4 of the *Children and Community Services Regulations 2006*. The regulations will also provide timeframes within which carer approvals should occur.

Protection orders (supervision) – The Amendment Act clarifies that a protection order (supervision) may include a condition as to the parent with whom a child is to reside for the duration of the protection order.



Failure to protect child from harm – If a charge for this offence involves conduct that may result in harm to a child resulting from emotional abuse involving the exposure of a child to family violence, it is a defence if the accused can prove she (or he) was a victim of that family violence.

Grounds for protection - Changes to the grounds for a child being found in need of protection are included to address situations in which parents are found to be able but unwilling to care for their child.

Next review – The next review of the Act will be due 5 years after the amendments in the Amendment Act come into operation and then at five yearly intervals.

The Amendment Act requires the next review to address several recommendations of the Standing Committee on Legislation, including whether Aboriginal Family-Led Decision Making (**AFLDM**) should be in the Act. The review will also have to give consideration to including a definition and the five elements of the Aboriginal child placement principle in Part 2 of the Act.

- The AFLDM process supports the right to self-determination of Aboriginal families to make decisions on how to keep their child or young person safe and connected to their community. AFLDM provides the family with a culturally safe space in which meetings are facilitated by an Aboriginal convenor and families are supported to make culturally based and family-driven decisions (SNAICC 2018).
- In October 2021, a pilot of AFLDM commenced in WA. AFLDM can happen without being in legislation. The AFLDM pilot will test how it can work in WA and will be trialled in Communities' Mirrabooka District Office and in the Midwest-Gascoyne. The pilot will be led by Aboriginal convenors from Wungening Aboriginal Corporation (Mirrabooka) and Geraldton Streetwork Corporation (Midwest-Gascoyne).
- The pilot complements a wide range of other initiatives including the Aboriginal In-Home Support Service and, expansion of the Aboriginal community controlled organisations sector in Western Australia. The AFLDM approach also complements Signs of Safety, which is Communities child protection practice framework.
- Further information about AFLDM can be found at: [Aboriginal Family Led Decision Making \(www.wa.gov.au\)](http://www.wa.gov.au).