

## Submission

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

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23 July 2020

The Aboriginal Health Council of Western Australia (AHCWA) welcomes the opportunity to provide feedback to the WA Legislative Council's Standing Committee on Legislation's Inquiry into the Children and Community Services Amendment Bill 2019 (the Bill).

AHCWA is the peak body for 23 Aboriginal Community Controlled Health Services (ACCHS) in WA. AHCWA exists to support and act on behalf of its Member Services, actively representing and responding to their individual and collective needs. WA ACCHS are located across geographically diverse metropolitan, regional, remote and very remote locations. They respond to complex health issues, and deliver prevention, early intervention, and social and emotional wellbeing services, across the life course. ACCHS deliver the most effective model of comprehensive primary health care for Aboriginal people<sup>1</sup>, and are in a unique position to identify and respond to the local cultural and health issues of Aboriginal people and their communities across WA.

The removal of Aboriginal children from their families has severe impacts on the health and Social and Emotional Wellbeing (SEWB) of the children, their families and their communities. These impacts are compounded by the experience of intergenerational trauma for Aboriginal families due to the legacy of past and present government interventions, including policies that resulted in the 'Stolen Generation' of Aboriginal children. When the removal of a child occurs, ACCHS and other Aboriginal Community-Controlled Organisations (ACCOs)<sup>2</sup> are on the frontline, supporting Aboriginal families and communities. ACCHS also play a key role in supporting the preservation and wellbeing of Aboriginal families through the delivery of Family Wellbeing, and Child and Maternal Health Programs.

Aboriginal children are over represented in the child protection system in comparison to non-Aboriginal children; therefore, AHCWA welcomes changes to the Bill, which include positive amendments for improving practices for working with Aboriginal children and their families. However, the changes fall short of recognising partnerships with ACCOs, shared decision-making and the self-determination of Aboriginal people.

This submission outlines background information about the ACCHS approach to health and wellbeing, which provides the basis for AHCWA's comments. The submission will also detail the key themes that should guide the amendments, including self-determination, partnerships with ACCHS

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<sup>1</sup> Throughout this submission, AHCWA uses the term 'Aboriginal' to respectfully refer to all Aboriginal and Torres Strait Islander people across Western Australia.

<sup>2</sup> ACCHS are a group of Aboriginal Community Controlled Health Services within a broader group of Aboriginal Community Controlled Organisations (ACCOs). ACCHS play an equally important, but different, role to ACCOs in the care and protection of Aboriginal children and their families. In this submission, ACCOs are referred to more broadly as they relate to Aboriginal Community Controlled Services that provide community services specifically for children. ACCHS, meanwhile, provide primary health care and support for Aboriginal children and their families.

and ACCOs and Aboriginal Family Led Decision-Making, along with general comments regarding the Bill.

## **Background Information**

### **A holistic view of health and wellbeing**

AHCWA and its Member Services assert that a holistic approach to health and wellbeing should inform child protection services' best practice. Prevention underpins the philosophy of the comprehensive primary health care and holistic Model of Care central to ACCHS service provision. It is a holistic model that guides the provision of health and wellbeing services to Aboriginal people within a broader context of culture, family, community, country, language, physical wellbeing, emotional wellbeing, and spiritual wellbeing. Each of these elements is fundamental to the health and wellbeing of Aboriginal people, their families and communities.

Within a holistic model of health and wellbeing is the concept of SEWB. Both the ACCHS Model of Care and SEWB acknowledge that connections to land, language, culture, spirituality, family and community directly contribute to the emotional and physical wellbeing of Aboriginal people, and that a person's SEWB is directly influenced by historical and contemporary government policies and events.

As mentioned in the introduction, the removal of Aboriginal children from their families, community and culture has a detrimental effect on the SEWB of families, the community and the child and their future prospects. Research has consistently found that a strong sense of cultural identity has a positive psychological impact, especially for youth<sup>3</sup>. Given the adverse impacts that removing children has on the SEWB of the child, family and community, a holistic understanding of Aboriginal health must be a key guiding principle of the Bill.

## **Feedback on the Bill**

### **Self-determination**

AHCWA affirms that full self-determination of Aboriginal affairs by Aboriginal people must underpin any legislation, policies or programs related to family wellbeing and child protection. Self-determination is central to enhancing opportunities, improving SEWB and closing outcome gaps for Aboriginal people.

AHCWA supports the change in language in the Bill more generally, but especially at *Section 13 – principle of self-determination*, with the addition of "Aboriginal people and Torres Strait Islanders have a right" instead of "Aboriginal people and Torres Strait Islanders should be allowed". This change in language more accurately represents the right of Aboriginal people to self-determination.

### **Partnerships with ACCHS and ACCOs**

AHCWA strongly advocates for strong and genuine partnerships in designing solutions for child protection reform, however, adequate details of genuine partnerships and active engagement with families, communities and ACCOs is absent from the proposed amendments. Working in partnership with ACCHS and ACCOs to promote a supportive approach to family preservation will ensure long-term outcomes and should be embedded within the Bill. AHCWA strongly supports an emphasis on a greater partnership between the WA government, child protection agencies and ACCOs.

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<sup>3</sup> Dockery, AM (2020) *Inter-generational transmission of Indigenous culture and children's wellbeing: Evidence from Australia* in the International Journal of Intercultural Relations (74:80-93)

'Partnerships' are the focus of the following comments on specific sections of the Bill:

- Section 22A - The Bill outlines that the CEO approves Aboriginal and Torres Strait Islander Representative Organisations (ARO) to be consulted under this Bill, and adds that the CEO makes an up to date list of AROs. However, there is no information regarding the criteria required to be an ARO and there is no information in relation to the list of AROs or where the list can be accessed. Further, there is a lack of emphasis on partnerships with Aboriginal organisations to determine appropriate AROs. Assigning an organisation as an ARO should be done in consultation with ACCOs, rather than solely at the discretion of the CEO.
- Section 61(2B) – This states that “The court must not make a protection order (special guardianship) for an Aboriginal or Torres Strait Islander child if no Aboriginal person or Torres Strait Islander is to be the special guardian unless the CEO has given the Court a written report prepared by a person who meets criteria prescribed by the regulations”. This is problematic as there is no mention of partnerships or family inclusion in discussions, and places the ultimate decision in one person’s hands, rather than empowering and including families in the decision.
- Section 81(1) – AHCWA welcomes greater engagement with AROs, however, there needs to be greater consultation with more than one member of a child’s family. By consulting with only one member of the family, the central role of extensive family and kinship relationships in Aboriginal culture is neglected.
- Section 92(3A) - AHCWA welcomes the addition of an Aboriginal panel member to review care plans however recommends that care plans must also be developed in partnership with Aboriginal people, their families and communities.
- Section 133 – This section does not outline the consultation involved for interim orders. The current wording indicates that the court or CEO can approve interim orders at any time regardless of consultation with the child, family or wider kinship group. This again limits the opportunity for partnerships, family voice and active consultation to influence the process.

### **Aboriginal family led decision-making**

AHCWA supports Aboriginal Family Led Decision Making (AFLDM). AFLDM ensures the child’s extended family is included in decisions, which is key for self-determination and empowerment of Aboriginal people. In turn, this positively influences the SEWB of Aboriginal children, their families and the wider community. Despite the positive outcomes from using this model, the Bill does not recognise the best practice process of including the child’s family in decision-making and does not emphasise the need for AFLDM.

'AFLDM' is the focus of the following comments on specific sections of the Bill:

- Section 81 – While AHCWA acknowledges the intent of the legislation to be consultative, AHCWA does not support allowing an Aboriginal child to be removed from their family following consultation with *only one member* of the child’s family. This approach, proposed by Section 81, does not take into consideration Aboriginal cultural understanding of family and kinship. Legislation in other states has established requirements to ensure that family and community consultation is undertaken and that the family participate in the decision-making process; Aboriginal Family Led Decision Making. There is an opportunity for WA to establish best practice in this area and align the Bill with other jurisdictions<sup>4</sup>. The Bill should be amended to require

<sup>4</sup> Child, Youth and Families Act 2005 (Vic), s12(1)(a) and s12(1)(b), and the Child Protection Act 1999 (Qld), s6AA(2) and s6AA(5)



consultation with a child's extended family prior to placement rather than only with one family member.

- Section 14(1) - participation requirements should be strengthened to specify that opportunity and assistance must be given to a child's family/kinship group, community and an approved ARO, to participate in decision-making processes under the Act (Note that the current proposed amendment only requires that the child's family, community or ARO participates).
- Section 39 (2) – There is no obligation for the CEO to consult with family or community in preparation and implementation of provisional care plan; this needs to be included.
- Section 61 (2A) (a) – It is positive that when assessing the suitability of a special guardian, there must be regard to the Aboriginal and Torres Strait Islander Child Placement Principle as detailed in section 12, however the Bill should note that guardians must also be decided in partnership with the family and community.
- The Bill does not include a requirement to comply with each of the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle (prevention, placement, partnership, participation, connection)<sup>5</sup>. There should be an increased alignment of the Bill with the five elements.
- Sections 89a and 90(2a) – AHCWA supports the development of Cultural Support Plans for Aboriginal removed from their families, but they must be developed in partnership with the family and community. They should not solely be given “an opportunity to participate” as worded in 90(2a); this should be an active partnership.
- The Bill should include additional provisions that ensures families are supported to participate in child protection decisions by means of an independently facilitated AFLDM process.

### **General comments on the Bill**

- AHCWA supports the reframing of language within the Bill, and the shift from ‘relative’ to an emphasis on family and family connection. However, this stops short of fully recognising the Aboriginal cultural understanding of family, and the importance of extended family, kinship groups and community in a child's life.
- The renewed emphasis at section 8h and 8j of ensuring an ongoing connection to family, culture and community is positive. AHCWA also welcomes the inclusion of 9(ga)(iii) which recognises the importance of cultural continuity and connection to family and culture to the SEWB of children, their families and community.
- The addition of 39(2B)(e)(ii) which strengthens the child's voice and takes their wishes into consideration is positive.
- Changes to placement priorities and ensuring connection of Aboriginal children to family and culture is encouraging. AHCWA asserts that in the first instance, an Aboriginal child should be placed with an Aboriginal family, however recognises this is not always possible. Clarification regarding the assessment of a non-Aboriginal families' commitment to support a child's ongoing connection to culture is required. The Bill mentions at 3c, 61(3d) and 89a, the incorporation of a cultural support plan to try to ensure this, but it does not detail the design of this plan. Although section 89a(2) states that “an approved ARO is to be given an opportunity to participate”, this is insufficient to safeguard a child's ongoing connection to their family, community and culture. The cultural support plans must be developed in partnership with the child, their family and community.

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<sup>5</sup> <https://aifs.gov.au/cfca/publications/enhancing-implementation-aboriginal-and-torres-strait-islander-child/aboriginal-and>  
[Accessed 20 July 2020]



- Further, Section 14(3) outlines that the requirements for family and community participation do not apply to decisions about placement and cultural support plans. This should be removed as it does not ensure an active partnership approach.

## **Conclusion**

The amendments to the Bill are welcomed, however, this submission has outlined some additional considerations for the WA Government to ensure better outcomes for Aboriginal children, young people and their families.

Partnerships with ACCHS and ACCOs must be embedded within the Bill especially in the particular sections outlined within this submission. AFLDM must also be enshrined within the amendments to ensure best practice within child protection, and alignment with the Aboriginal and Torres Strait Islander Child Placement Principle.

Ensuring that these key elements are included within the Bill will enhance the engagement of Aboriginal families and their communities in decision-making and planning for the care of Aboriginal children in the child protection system. Inclusion of Aboriginal families in these processes also demonstrates the child protection system's recognition of the cultural importance of family and kinship for Aboriginal health and wellbeing.