



## CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) AMENDMENT (FAMILY IS CULTURE) BILL 2022

### STATEMENT OF PUBLIC INTEREST

#### **Need: Why is the policy needed based on factual evidence and stakeholder input?**

The Children and Young Persons (Care and Protection) Amendment (Family is Culture) Bill 2022 seeks to implement particular recommendations of the Final Report of the Family is Culture: Independent Review into Aboriginal and Torres Strait Islander Children and Young People in Out-of-Home Care in New South Wales (**Family is Culture Report**), to respond better to the needs of children and families to ensure they grow up safely within their families and communities, and connected to culture.

This Family is Culture Review was commissioned by the former Minister for Families and Communities, the Hon. Brad Hazzard MP, to examine the causes of, and make recommendations to Government, to address the high rates of Aboriginal children and young people in the child protection system.

The **Family is Culture Report**, which was released on 7 November 2019, made 125 recommendations, 25 of which recommended changes to care and protection legislation and court processes, and changes to related legislation to reduce the number of children and young people entering and remaining in out-of-home care, improve service delivery, and increase transparency and accountability.

In April 2022, the NSW Government published a discussion paper which sought feedback on the 25 legislative recommendations. 11 targeted consultation workshops were held with Aboriginal people and community representatives, and legal and other stakeholders in various locations in Sydney, Wollongong, Lake Macquarie, Coffs Harbour and Dubbo. Over 130 individuals and organisations engaged in this process and 31 written submissions were received.

The Government seeks to implement 15 of the 25 recommendations of the Family is Culture Report, and consult further on recommendations that drew competing stakeholder views, were complex or required additional investment.

The amendments introduced by this Bill will also support the NSW Government priorities in delivering reform to change the long-term trajectory of Aboriginal children and young people in care and the outcomes for those children and families. It will support the government to meet its Closing the Gap targets to reduce the rate of Aboriginal children in OOHC by 45% by 2031. The Bill also supports the government's commitments under Safe and Supported: the National Framework for Protecting Australia's Children (2021 – 2031) to fully embed the Aboriginal Child Placement Principle published by SNAICC – National Voice for our Children into the Act, and support self-determination and the delegation of authority to Aboriginal communities and organisations.

#### **Objectives: What is the policy's objective couched in terms of the public interest?**

Aboriginal and Torres Strait Islander children are 7 times more likely than non-Aboriginal children to be seen by a child protection caseworker and 12 times more likely to be in statutory out-of-home care.

Often children are placed in out-of-home care because they are the subject of substantiated abuse or neglect. It is known that child abuse and neglect can have

substantial adverse impacts on a child's development including reduced social skills, poor school performance, higher likelihood of criminal offending and mental health issues.<sup>1</sup>

A key objective of the child protection system is to ensure that children grow up in a stable, secure and safe environment and minimise adverse impacts for children and young people who cannot be adequately cared for by their parents. These amendments support the improvement of out-of-home care services and ensure that best outcomes for the child or young person are achieved. Importantly, the amendments in this Bill do not in any way diminish the overriding principle that the safety, welfare and well-being of the child or young person is of paramount concern. This principle guides all child protection actions and decisions and prevails over all other considerations.

The legislative amendments will support service delivery and decision-making processes to ensure children are safe by:

- improving how restoration and permanency decisions are made by the Children's Court
- ensuring better casework for children
- requiring the Department to take active steps to prevent child removals and to show evidence of the active steps taken when making a care application
- ensuring Aboriginal children, families and relevant Aboriginal organisations are involved in care and protection decisions about their children, in casework and in Children's Court proceedings, and
- improving transparency and accountability in the system.

It is in the public interest to ensure that the NSW Government supports the safety and wellbeing of vulnerable children, young people, and their families.

#### **Options: What alternative policies and mechanisms were considered in advance of the bill?**

The Family Is Culture Report made 125 systemic recommendations in total, with 25 of those recommendations seeking legislative reform. The Government considered whether some of these 25 recommendations could be implemented by way of changes to policy and practice, but many require legislative amendment to give effect to the intention of the Family Is Culture Report. One of the 15 recommendations that the Government is implementing will be by way of policy.

#### **Analysis: What were the pros/cons and benefits/costs of each option considered?**

These legislative changes are part of a broader program of reform that aims to increase the focus on early intervention support, build the capacity of the Aboriginal Community Controlled Organisation sector to partner with the Department to deliver services to Aboriginal children, improve casework practice to preserve or restore children with their parents and families but only where it is safe to do so.

These reforms will relieve pressure on the out-of-home care budget by providing greater focus on early intervention through active efforts taken by DCJ, which should have a flow-on impact to safely reducing the flow of children into out-of-home care, by working with families to address risks and enabling children in out-of-home care to be able to return home safely.

Importantly, as almost half the children in out-of-home care are Aboriginal, this system cannot be reformed without directly engaging Aboriginal people and communities in how the system supports them and their children.

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<sup>1</sup> Same as above.

**Pathway: What are the timetable and steps for the policy's rollout and who will administer it?**

The Department of Communities and Justice will be responsible for the rollout, implementation of the amendments and monitoring the impacts of the reforms.

A number of the provisions of the Bill will commence immediately on assent including the incorporation of the SNAICC Aboriginal and Torres Strait Islander Child Placement Principle and related amendments, provisions relating to the rules of evidence and the removal of the presumption in s 106A, and all the amendments contained in Sch 2. The remaining provisions will commence on proclamation as these will require time for implementation planning, updating policies and procedures, updates to digital information systems and staff training.

The Bill contains a provision that requires the Minister to review the reforms made by the Bill within 12 months of their operation, to assess how effectively the amendments are working to achieve the reform objectives.

**Consultation: Were the views of affected stakeholders sought and considered in making the policy?**

This Bill has been shaped by the views of stakeholders.

In May 2022 the NSW Government consulted broadly with stakeholders on the 25 legislative recommendations. This involved 11 targeted consultation workshops with Aboriginal stakeholders and legal stakeholders in various locations across Sydney, Wollongong, Lake Macquarie, Coffs Harbour and Dubbo. Over 130 individuals and organisations engaged in this process with 31 written submissions received. The Department consulted closely with the Children's Court on recommendations that would have an operational impact on the Court and with other legal and government stakeholders who are partners in the reforms. A consultation report was released in September 2022 summarising the feedback received from public workshops and written submissions.

The Bill has also been drafted in close consultation with Legal Aid NSW, the NSW Children's Court, the Children's Guardian, NSW Ombudsman, key government stakeholders, the NSW Child, Family and Community Peak Aboriginal Corporation (AbSec), the Aboriginal Legal Service NSW/ACT and the Public Interest Advocacy Centre.

The NSW Government has closely considered all the feedback that has been provided through the consultation process.