



Youth Parliament of Western Australia

Child Protection and Foster Care Bill 2024

Explanatory Memorandum:

The core principle in international and Australian law is that all decisions regarding children should prioritise their “best interests,” as emphasised by the Convention on the Rights of the Child and the Family Law Act. However, the term “best interests of the child” is often criticised for its vagueness, leading to subjective interpretations by legal authorities. While the Family Law Act outlines factors such as the child’s desires, relationships, and potential harm, more comprehensive and universally applied criteria are needed.

Proper training for foster carers and professionals is essential to avoid re-traumatisation and provide effective support. Additionally, carers must be culturally competent, especially when caring for Culturally and Linguistically Diverse (CaLD) children.

CaLD children in out-of-home care should maintain connections to their culture, religion, and language to foster a sense of belonging and identity. Carers should be educated about the child’s cultural background, and where possible, children should be placed with carers who share their cultural heritage. This approach can facilitate a smoother transition back to their birth families and communities.

Mental health support is crucial for children in out-of-home care, addressing the high prevalence of mental health and behavioural issues. Every child entering foster care should undergo regular mental health evaluations by trained professionals.

Aboriginal and Torres Strait Islander (ASTI) children are disproportionately represented in the out-of-home care system. In 2023, ASTI children accounted for 43.7% of children in out-of-home care nationally and 59.6% in Western Australia. They are 10.5 times more likely to be in out-of-home care than non-Indigenous children. Key strategies include providing culturally safe supports, empowering communities to make decisions, and ensuring accountability in child protection systems. Implementing these strategies can significantly reduce the over-representation of ASTI children in foster care.



Western Australia

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Child Protection and Foster Care Bill 2024

No. 3 of 2024

A Bill for

An Act —

To provide support for children in the out-of-home care system.

[Assented to 29 JULY 2024]

The Youth Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short Title

This is the *Child Protection and Foster Care Bill 2024*.

2. Commencement

This Act comes into operation on the day on which this Act receives the Youth Governor's Assent.

3. Terms used

In this Act —

CAMHS means the Child and Adolescent Mental Health Service;

Carer means foster carers or foster families who are responsible for the day-to-day wellbeing of a child under the care of the CEO;

CEO means Director General of the Department of Communities Western Australia;

Child/children means a person who is under 18 years of age, and in the absence of positive evidence as to age, means a person who is apparently under 18 years of age;

Child Placement Principle as defined by the SNAICC (the Secretariat of National Aboriginal and Islander Child Care), the Child Placement Principle is “a framework designed to promote policy and practice that will reduce the over-representation of Aboriginal and Torres Strait Islander children in the child protection system”;

Complex Trauma means trauma that involves interpersonal threat, violence, and/or violation. Complex trauma includes multiple incidents and can be associated with stigma and a sense of shame experienced by its victims;

Connection refers to Aboriginal & Torres Strait Islander children in out of home care (OHC) must be supported, to ensure connections to family, community, country & culture are maintained (High importance when child is placed with non-indigenous caregivers);

Country refers to the land to which Aboriginal peoples and Torres Strait Islander peoples belong; where the spiritual essence of their ancestors remains in the landscape, the sky, and the waters;

Culturally and Linguistically Diverse means individuals from a cultural background different from the majority or 'Anglo-Celtic' Australian culture; this definition is abbreviated as CaLD;

Culturally relevant materials mean books, toys, videos, and music that suitably connects to the child's culture and identity;

Culturally safe refers to actions from the majority position which recognise, respect, and nurture the unique cultural identity of Aboriginal and Torres Strait Islander people. Unsafe cultural practice is 'any action which diminishes, demeans, or disempowers the cultural identity and wellbeing of an individual';

Cultural responsiveness means a contemporary way to think about culture and enables individuals and organisations to be respectful of everyone's backgrounds, beliefs, values, customs, knowledges, lifestyles, and social behaviours;

Cultural Secure Care means an approach to foster care that ensures Cultural and Linguistically diverse children can connect with and understand their cultural heritage;

Cultural sensitivity means acknowledging and respecting the diverse cultures within the nation, including the beliefs and practices of ethnic groups, indigenous communities, and migrants; understanding Australia's historical context and how it impacts societal dynamics;

Cultural Support Plans means written documentation of how a child's cultural, ethnic, and religious needs are identified and the plan for how the Department of Communities will develop and maintain that child's connection with the culture and traditions of their family or community;

CPS means the Child Protection Service;

Departmental Officer means an officer as defined under the *Children and Community Services Act 2004* (s. 124A(a)(b));

Designated Channels means Western Australian government run communication sites;

Foster (Care) Facilities means any houses, group homes or centres at which foster children reside in, both temporarily and permanently;

IAHA stands for Indigenous Allied Health Australia;

Indigenous Elder means someone who has gained recognition as a custodian of knowledge and lore, and who has permission to disclose knowledge and beliefs;

LGBTIQA+SB means identifying as Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, Asexual, Sistergirl, Brotherboy or any other non-Heterosexual identities.

NDIS means the National Disability Insurance Scheme;

Neurosequential Model of Therapeutics (NMT) means an approach to trauma treatment that focuses on understanding a child's brain development, history and current function, to provide a framework for assessing a child, identifying primary issues and applying interventions;

Out of Home Care (OHC) means care arrangements for children outside of their own family home including afterhours placement, district care, foster care, group homes and transitional high needs care;

Partnership & Participation means Organisations & communities must be involved in the design & delivery of child protection intervention by addressing the underlying causes & supporting families to ensure safety in homes;

Placement meaning placement with a non-Indigenous guardian should be considered a last resort. They have a right to be placed with a member of their family group, community, or language group;

Professional healthcare workers means provider of health care treatment and advice based on formal training and experience;

Prevention meaning that efforts should be made to prevent the need for CP intervention by addressing core causes;

Reasonably unable means financially, geographically or socially unviable;

Relevant Paid Participant Policies means remuneration for those participating in the monitoring and evaluation framework;

Remote means a township far removed from a major capital or regional centre. Remote Communities also encompasses Indigenous Communities, and areas in which there is limited access to basic supports and needs;

Regional refers to towns and small cities outside of the major capitals;

Section 8 of the Child and Community Services Act 2021 Amendment bill refers to the amendment to the original best interest's principle, which emphasizes (in all its clauses) that all decisions and actions related to children should be made with their best interests in mind;

The Department means the Department of Communities, Western Australia;

Trauma means the emotional, psychological and physiological harm as a result of heightened stress that accompanies experiences of threat, violence, and life-challenging events;

Young People with Complex Care Needs (YPECN) means an inter-agency Western Australian state government initiative to provide young people with the highest level of care needs with a comprehensive and co-ordinated response from services through interagency coordination, information sharing. This service is for young people who have experienced gaps in regular service provision.

Part 2 — Mandatory Training Standards for Carers

4. Mandatory Training Standards

Mandatory training as outlined in Part 2 will apply to Carers who have been approved by the Department, outlined by *Children and Community Services Regulations 2006 (r. 4)* before a child may be placed in their care.

5. Provision of Mandatory Training

- (1) The Department will facilitate the provision of Mandatory Training.
- (2) Mandatory Training will be provided free of charge given that potential Carers meet all other requirements as outlined in *Children and Community Services Regulations 2006 (r. 4)*.
- (3) Mandatory Training may be delivered through one or more means of the following means:
 - (a) group workshops or seminars;
 - (b) individual training sessions;
 - (c) hybrid delivery — online modules, as well as any other mode included in Section 5—
 - (i) no more than 50% of training may be delivered online.
 - (d) exceptions include—
 - (i) foster carers who live in regional areas and are reasonably unable to attend in person training seminars or workshops.
- (4) Mandatory Training must include, but not be limited to:
 - (a) navigating challenging responses and establishing beneficial support strategies;
 - (b) trauma and attachment—
 - (i) understanding of an individual child’s symptoms and experiences in relation to their background and culture;
 - (ii) providing a safe and supportive environment to protect against physical harm and retraumatisation;

Part 3 — Cultural Support Plans for Carers

Division 1 — Implementation of Cultural Plans

8. Cultural Support Plans

Carers of Aboriginal and Torres Strait Islander children and for children from Culturally and Linguistically Diverse (CaLD) backgrounds must engage with personalised Cultural Support Plans developed with The Department's guidelines;

- (a) carers of Aboriginal and Torres Strait Islander children and CaLD children must demonstrate full comprehension of all aspects of the personalised Cultural Support Plans through tailored training outlined in *part 2*;

9. Implementations of Cultural Support Plans

- (1) The Department must meet all the criteria of the child's best interest outlined in *section 8 of the Child and Community Services Act 2021 Amendment bill* when forming Cultural Support Plans;

- (a) carers must adhere to Cultural Support Plans and subsequent cultural knowledge and sensitivity training provided in *Part 2* throughout the duration of the child's placement in care of the Ceo;
- (b) personalised Cultural Support Plans must be implemented appropriately to a child by carers and emphasise the child's best interests as outlined in *(9.1)* through ensuring;
 - (i) child's permission in development and implementation of the personalised Cultural Support Plan;
 - (ii) child's requests within the training provided for Carers outlined in *part 2* where applicable;
 - (iii) acknowledgement of child's personalised Cultural Support Plan by members of the carers household who will be in regular contact with the child or the child's environment;
 - (iv) acknowledgment of personalised Cultural Support Plan by members of The Department and professional healthcare workers who come into regular contact with the child.

Part 4 — Mental Health Support

Division 1 — Complex Trauma Service

11. Establishment of a Complex Trauma Service

- (1) A Complex Trauma Service will be established, it will be the lead statewide specialised service for supporting children with complex trauma.
- (2) The Complex Trauma Service will be overseen by the Department of Communities.
- (3) Decisions relating to the provision of the Complex Trauma Service should be made in conjunction with relevant WA Government Departments and any additional parties deemed appropriate.

12. Functions of the Complex Trauma Service

- (1) The functions of the Complex Trauma Service are—
 - (a) provision of specialist expertise and support to Child Protection services through—
 - (i) provision of Neurosequential Model of Therapeutics (NMT) informed assessments, in partnership with Child and Adolescent Mental Health Services (CAMHS), for all children on entry into Out of Home Care;
 - (ii) provision of a consultation liaison phoneline to provide case by case advice to Child Protection staff working with children with complex trauma;
 - (iii) provision of Complex Trauma training to staff at the Kath French Secure Care Centre, this is in line with a Recommendation of the Evaluation of the Kath French Secure Care Centre (2019).
 - (b) provision of specialist expertise and support to CAMHS through—
 - (i) provision of Neurosequential Model of Therapeutics (NMT) training to CAMHS staff working with children in Out of Home Care who have experienced complex trauma;
 - (ii) case by case advice to CAMHS staff working with children in Out of Home Care who have experienced complex trauma;

- (iii) provision of staff to conduct joint NMT-informed assessments, for all children on entry into Out of Home Care;
 - (iv) provision of shared care for children in Out of Home Care with highly complex needs related to complex trauma;
 - (v) provision of clinical supervision to CAMHS staff who are working with children in Out of Home Care who have experienced complex trauma;
 - (vi) provision of ongoing professional development and capacity building to increase the ability of CAMHS staff to provide care for children in Out of Home Care who have experienced complex trauma.
- (c) sit on the Young People with Complex Care Needs (YPECN) to regarding promote a co-ordinated response to information sharing and mental health support.

13. Staffing of the Complex Trauma Service

- (1) The Complex Trauma Service will be staffed by a contingent of psychiatrists, psychologists, Aboriginal Mental Health Workers, Social Workers, Peer Workers and other relevant staff;
- (2) Staff must have—
 - (a) experience supporting children with a history of abuse, neglect or other trauma;
 - (b) training in NMT and experience utilising an NMT-informed model of care or in the case of Peer Workers, training in NMT and experience working with a Multidisciplinary team that uses an NMT-informed model or similar;
 - (c) demonstrated understanding of Intersectionality, Human Rights, the United Nations Convention on the Rights of the Child and how these relate to the provision of care;
 - (d) demonstrated ability to provide culturally secure care to Aboriginal and Torres Strait Islander children and children from Culturally and Linguistically diverse backgrounds;

- (e) qualification in Social Work/Psychology/Psychiatry/Aboriginal Mental Health Work/Peer Work/Similar;
- (f) registration with the relevant professional body e.g. AHPRA;
- (g) a valid Working with Children's Check.

(3) Peer Workers must demonstrate—

- (a) understanding of and alignment to relevant state or national Peer Work frameworks;
- (b) show commitment to a recovery focused, holistic, whole of person, human rights approach to peer support.

Division 2 — Monitoring Complex Trauma Services

14. Monitoring and Evaluation of the Complex Trauma Service

- (1) A Monitoring and Evaluation framework will be developed that measures the effectiveness of the Complex Trauma Service. The framework must consider alignment with—
 - (a) recent reform activities in the Infant, Child and Adolescent mental health system, particularly in relation to Complex Trauma;
 - (b) recent reform activities in the Child Protection and Out of Home Care system;
 - (c) priorities and positions of lived experience, advocacy or social justice organisations in the areas of—
 - (i) child protection;
 - (ii) complex developmental trauma;
 - (iii) reducing the over representation of Aboriginal children in the Child Protection/Out of Home Care system;
 - (d) any other relevant work.
- (2) The Monitoring and Evaluation framework will measure outcomes for—
 - (a) children, families and carers accessing the service;

- (iv) disabled children and families/children and families with disability/s;
 - (v) neurodivergent children and families;
 - (vi) children and families experiencing poverty or socioeconomic barriers.
- (4) The Monitoring and Evaluation Framework must include outcomes related to—
- (a) experience of service for children, families and carers;
 - (b) whether children, families and carers felt the service met their needs;
 - (c) experience of safety for children, families and carers;
 - (d) experience of cultural safety for children, families and carers.
- (5) Development of the Monitoring and Evaluation Framework must align with contemporary engagement, co-design principles and relevant engagement frameworks, including but not limited to;
- (a) implementing inclusion strategies to ensure equity of access and participation for marginalised populations, including but not limited to—
 - (i) Aboriginal and/or Torres Strait Islander people;
 - (ii) people from Culturally and Linguistically Diverse backgrounds;
 - (iii) LGBTIQ+SB people;
 - (iv) disabled people/people with disabilities;
 - (v) neurodivergent people and/or people with sensory accommodation needs.
 - (b) offering multiple, flexible methods or engagement including but not limited to—
 - (i) in person options;
 - (ii) hybrid options;
 - (iii) online only options;
 - (iv) one on one interviews;
 - (v) small focus groups;
 - (vi) survey or email communication;

Part 5 — Care Plan Review Panel Modifications; Community Outreach Parenting Program

15. Criteria for Membership of the Care Plan Review Panel

As established in the *Children and Community Services Act 2004*, the Care Plan Review Panel has been established to “review decisions that are made as part of a care plan for children in the care of the Chief Executive Officer of the Department of Communities.”

16. Act Amended

This clause amends the *Children and Community Services Act 2004*:

(1) *Part 4, Division 5, Clause 92 amended* —

(a) insert Subsection (9) under Clause 92 —

(9) In order to ensure cultural sensitivity and responsiveness, as well as the four key elements of the Principle (Connection, Prevention, Partnership and Placement), are maintained, the Care Plan Review Panel must —

(i) include a minimum of two Aboriginal and Torres Strait Islander Peoples, one of whom can be a councillor or support worker from the child’s community’s “Out Reach Parenting Program,” acting as a representative;

(ii) ensure all members complete Mandatory Cultural Responsiveness Training once over a 12-month time span, this is carried out by Indigenous Allied Health Australia (IAHA).

17. Mandatory Cultural Responsiveness Training

(1) In order to protect and maintain the four key elements of the Principle, all members of the Care Plan Review Panel must undertake Mandatory Cultural Responsiveness over the time span of 12 months;

(2) Mandatory Cultural Responsiveness Training will be facilitated by IAHA;

(3) The training will be based off the IAHA Cultural Responsiveness Framework;

- (4) Mandatory Cultural Responsiveness Training will be provided to all members of the care review panel through the Department of Communities;
- (5) IAHA delivers training modules through both online, in person, with holistic and blended learning stages. This promotes accessibility to those in regional or remote areas. The course is centred around three driving principles —
 - (a) what do individuals/organisations need to know (knowing);
 - (b) whom do individuals/organisations need to be (being), and;
 - (c) how do individuals/organisations, transform behaviours and systems to be culturally safe and responsive in meeting Aboriginal and Torres Strait Islander people’s needs (doing).
- (6) *IAHA Cultural Responsiveness Framework* consists of three Levels —
 - (a) level 1 — the fundamental knowledge of cultural responsiveness being established;
 - (b) level 2 — participants being encouraged to reflect on their current actions and attitudes surrounding cultural responsiveness and awareness and implement more progressive and respectful practices in the workplace;
 - (c) level 3 — Encouraging participants to utilise cultural responsiveness and awareness and begin initiating and creating change in their workplaces and encouraging safe and inclusive behaviours.

18. Community Outreach Parenting Program

- (1) The Aboriginal and Torres Strait Islander Principle — Prevention states “To protect the rights of children to be brought up in their families, it is necessary to ensure that families have equitable access to quality service supports.” In order to maintain the Prevention element, it is vital to ensure a member of the Care Plan Review Panel from respective communities engage with families and children who are at risk of being placed in the child protection system;
- (2) The Community Outreach Parenting Program (Out Reach: Community, Connection, Prevention) aims to -
 - (a) work closely with professionals to provide courses aimed to address parental issues including the cycle of intergenerational trauma, substance misuse, mental health issues, violence, and poverty;

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- (b) connect with families in remote communities to promote connection with professionals if needed;
- (c) provide families with resources needed to address issues outlined in (a);
- (d) connect with children in remote and regional communities and provide resources to ensure connection to country and community is sustained.

19. Outreach: Community, Connection, Prevention

(1) Outreach is to —

- (a) provide access and spread knowledge of courses facilitated by a registered provider;
- (b) be culturally safe and promotes strengths-based approaches that promote autonomy and cultural significance to understanding parenting consistent with Aboriginal and Torres Strait Islander worldviews and knowledge;
- (c) ensure elements of generational trauma, mental health issues, substance abuse, violence, and poverty are addressed in a respectful and supportive manner.

(2) Outreach Courses aim to provide support that endeavours to empower Aboriginal and Torres Strait Islander parents through improved health literacy and practicing healthier self-efficacy and autonomy, this aims to prevent the alarming rate of children being placed in out of home care and being displaced off country.

(3) Outreach Courses will —

- (a) provide a safe space for parents to communicate with certified councillors and support workers about their concerns and struggles, to promote healthier behaviours and openness. The councillor/ support worker will aim to also act as a consultant and member on the Care Review Panel;
- (b) facilitate therapeutic art classes, taught by elders that help channel emotions in a healthy way and help build identity and strengthen cultural ties, this promotes the principle of connection;
 - (i) connect with local and small businesses and art galleries, if accessible, to foster opportunities to sell artwork created, assisting in advancing financial freedom.

- (c) provide educational classes around teaching parenting tasks and also strategies to parents that seek support, aiming to address and mitigate unhealthy and damaging parenting behaviours;
- (d) offer support for parent's/family members caring for a child's financial growth and stability —
 - (i) connect with local businesses as mentioned in Subsection (b), (i);
 - (ii) work closely and assist in entering the workforce, including, but not limited to - aiding the writing of resumés, supporting any training or upskilling required, and facilitating transport to and from interviews or setting up online interviews if required;
 - (iii) assisting in seeking financial support if the child in their care will require childcare for the person to enter the workforce.

Part 6 — Reporting of Incidents in Foster Care Facilities

Division 1 — Incident Reporting Requirements

20. Incident Reporting Requirements

(1) Incident Reporting Requirements:

(a) Foster care facilities shall be mandated to maintain de-identified registers documenting the following incidents involving children under their care:

- (i) Suicides;
- (ii) Deaths;
- (iii) Cases of self-harm;
- (iv) Suicide attempts;
- (v) Instances of verbal or physical abuse experienced by children;
- (vi) Cases of absconding;
- (vii) Restraining orders; and
- (viii) Instances of family or domestic violence.

(b) Foster care facilities must also document the ages of the children involved in the incidents.

(c) The aforementioned registers shall be regularly updated and made accessible to the relevant authorities as outlined in Clause 20, to ensure transparency and accountability.

(2) Reporting Procedure:

(a) foster care facilities shall report all incidents listed in subsection 1(a) to the appropriate authorities within 48 hours of their occurrence;

(b) authorities receiving such reports shall conduct thorough investigations into each incident to ascertain the circumstances and take necessary actions to ensure the safety and well-being of the children involved.

(3) Penalties for Non-Compliance:

(a) failure to comply with the reporting requirements outlined in this Part shall result in penalties as determined by CPS;

