

An Act respecting First Nations, Inuit and Métis children, youth and families

This is an internal document meant as a resource to answer questions you may have. As additional questions are identified, we will send out updated versions of this document, as required, and the document will remain updated on the [CI Portal](#). Additional resources will be developed, if required, for sharing with clients, agencies and stakeholders.

Issue:

The Government of Canada's *An Act respecting First Nations, Inuit and Métis children, youth and families* (the Act; formerly Bill C-92), came into force on January 1, 2020. This federal Act sets out national principles and standards for the delivery of child and family services to Indigenous children, youth and families.

Questions and Answers for Children's Services' staff:

When does C-92 come into force?

An Act respecting First Nations, Inuit and Métis children, youth and families (the Act; formerly Bill C-92) received royal assent on June 21, 2019, and came into force January 1, 2020.

What does the Act do?

The federal Act sets out national principles and minimum standards for the delivery of child and family services to Indigenous children, youth and families.

Also, An Indigenous Governing Body, defined in the federal Act, can enact Indigenous laws to deliver child and family services to their member children.

What changes now that the Act is in force?

As of January 1, 2020, all service providers across Canada that are providing child and family services in relation to First Nations, Métis and/or Inuit children and families must follow the national principles (best interests of the child, cultural continuity and substantive equality) and minimum standards outlined in sections 9 to 17 of the Act.

Between now and until an Indigenous Governing Body exercises their jurisdiction, services to Indigenous children will continue to be provided through regions and DFNAs.

What is Children's Services doing to implement the Act?

For a number of months, leadership in Children's Services has been working with representatives from Indigenous Relations and Intergovernmental Relations to consider all the elements of the Act and impacts to Alberta. The Premier, Minister Schulz and ministry leadership have also had many productive discussions with First Nations and Métis leadership.

Will the *Child, Youth and Family Enhancement Act (CYFEA)* still apply?

Yes. As of January 1, 2020, both the federal Act and CYFEA apply. If there is an inconsistency or conflict between these two pieces of legislation, the federal Act will prevail.

Overall, current Child Intervention policy, practice and legislation have a high degree of alignment with the principles and minimum standards established in the federal Act. There are, however, a few new obligations caseworkers will have related to providing formal notice of court matters to kinship caregivers and to Indigenous Governing Bodies. The processes to support staff in applying these new obligations were reviewed during the January 30, 2020, [policy-to-practice session](#).

What services are included in the definition of “child and family services” under the Act?

Child and family services under the Act means “services to support children and families, including prevention services, early intervention services and child protection services”. The list of services is not exhaustive.

Who do I send notice of significant measures to if I am uncertain if this is required for a child under the Act or if I have court-related questions?

Questions about child-specific situations and court related requirements need to be sent to: CS.C-92LegalMatters@gov.ab.ca.

Who should I contact if a stakeholder (i.e. a First Nation, Métis Settlement or Indigenous Governing Body) wants to discuss enacting legislation?

If a stakeholder contacts you requesting information on enacting legislation, information can be sent to: CS.FederalActInfo@gov.ab.ca for a follow-up response with the stakeholder.

Where can I go if I have questions about the Act?

If you have general inquiries about the Act, these requests can be sent to: CS.FederalActInfo@gov.ab.ca.

NEW - Does the notice requirement alter the requirement to involve a First Nations Designate, as per CYFEA?

No, the notice requirement is not a substitution for involving the First Nations Designate as prescribed under CYFEA. Over time, once Indigenous Governing Bodies have been established, they may wish to alter the role of the First Nations Designate in line with their laws and service delivery approach. However, in the meantime, CYFEA requirements remain the same.

NEW - What is the difference between “service” and “notice” in the Act?

The requirements with respect to **service of applications** under CYFEA remains the same. Service, under section 23 of CYFEA, requires notice of an application outlining the nature, date, time and place of every hearing be served in person to the guardians of the child (and the child themselves if 12 years of age or older) and by mail to a Director, foster parent and anyone who had the continuous care of the child for at least six months at the time of the apprehension. This notice must be served at least five days before the dated fixed for the hearing.

Under the federal Act, there is a new provision dealing with **notice of any significant measure**. This means that staff must provide notice to the child’s parent and care provider, as well as the Indigenous Governing Body that acts on behalf of the Indigenous group, community or people to which the child belongs. Alberta is defining significant measure as any court application or proceeding.

How notice is provided is not prescribed in the Act and can take several forms; however, standardized documentation creates a formal mechanism to let the party know that a significant measure is occurring. To assist caseworkers, *A Notice of Significant Measure* template has been developed and is available on the CI Portal at:

<https://intranet.humanservices.alberta.ca/home/homepages/CFS/portal/Pages/default.aspx>.

Notice can be can be emailed, faxed, mailed or delivered in-person.

NEW - Is there a deadline to identify an Indigenous Governing Body (IGB)?

The Act defines an IGB as “a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people...”. The Act does not give deadlines for IGBs to submit notices of intent to enact their authority. An IGB may choose to submit notice anytime after January 1, 2020.

NEW - Will a band automatically be an IGB eventually?

No, not necessarily. The Act enables Indigenous groups, communities or people to authorize an IGB to act on its behalf. The determination about the establishment of a formal IGB will be made by individual Indigenous groups and communities.

NEW - Is there a timeframe as to when the website identifying IGBs will be available?

No timeline has been provided by the federal government. However, a link to the website will be added to the CI Portal once it is available.

NEW - How will IGBs affect our offices that work directly with First Nations communities and on-reserve Children’s Services offices?

Services to Indigenous children will continue to be provided through regions and DFNAs until such time that an IGB enacts its own laws and assumes legislative authority over child and family services.

The current and ongoing relationships that Children's Services has established with communities and with DFNAs continue to be important to serving Indigenous children and families.

Communities that authorize an IGB to act on their behalf and enact child and family services laws will determine what role, if any, Children's Services will continue to play in delivering child and family services to their members.

NEW - Do the laws created by an IGB have to be consistent with provincial legislation, (i.e.: 1.2. a-h)?

No, they do not need to be consistent with provincial legislation. Laws created by IGBs will be given the force of federal law and will prevail over any federal or provincial law if there is inconsistency between the two. The laws created by IGBs will be required to adhere to the principles and minimum standards in the Federal Act.

NEW - If a child has parents/guardians from two separate First Nations with separate IGBs established, how will it be decided which IGB to go with if the child is not registered with either?

If there are two IGBs to which a child has ties, the Act outlines that the IGB that has developed closer ties to the child will have jurisdiction for that child. The evaluation of which IGB demonstrates closer ties to the child should take into consideration the child's normal place of residence, the child's views and preferences, as well as the parents' views and preferences. This process will be established over time.

The determination of closer ties as described in the Act is consistent with expected practice under CYFEA in ensuring early identification of Indigenous children in order to ensure that children can build and maintain connections with their families and all communities to which they belong.

NEW - How would you know that a child is under the jurisdiction of a particular IGB? What places a child under their jurisdiction?

To date, there are no IGBs in Alberta for the purposes of exercising and receiving notice under the Act. Should an Indigenous community come forward to declare they are an IGB, that entity would be responsible for identifying who their members are and confirm that they are representing those members. If the IGB drafts laws and enters into a coordination agreement with Alberta, their laws will prevail over member children and families.

In the meantime, existing policy and practice related to identifying Indigenous children and collaborating with their communities (including, but not limited to First Nations Designates) need to be followed.

NEW - When the IGBs are in place, will the IGBs then expect/determine that the children who are currently in provincial care under a Permanent Guardianship Order (PGO) or a Temporary Guardianship Order (TGO) have the case files transferred to the IGBs for ongoing case management? Does it matter if the IGB is in the same province as the child?

At this time, there are no formal or recognized IGBs under the Act in Alberta.

Once an IGB is established as defined under the Act, the IGB will require notice of significant measures pertaining to a child who is a part of the IGB, regardless of legal status. Under the Act, an IGB can table laws and enter into a coordination agreement with the province and federal government. These agreements will outline service delivery roles and responsibilities, and address transitional considerations. Each Indigenous community who wishes to proceed with the development of laws and legal authority over services will need to determine which children they want to provide services to and how that service will be provided.

NEW - Is it known yet how 'Sec 16(3) Family Unity' will be tracked with the ongoing reassessment of parents and other family members to ensure it is being done?

The Children's Services Planning form requires that staff address all critical areas of connection on an ongoing basis. This includes, but is not limited to, connection to family and community and an ongoing assessment of the longer-term placement needs of the child.

NEW - Who will ensure the Act is being followed? What if a caseworker does not honour the new legislation? What can Indigenous people do to ensure these "new standards" are adhered to?

As of January 1, 2020, every person providing services to Indigenous children will need to follow the minimum standards found in the Act.

As with all accountability processes within child intervention delivery, to ensure that the Act is being followed, it is critical that caseworkers document their decision-making process and rationale when making decisions regarding an Indigenous child that falls under the minimum national standards. This provides evidence that decisions were made in the best interests of the child. Over time as the implementation of the Act unfolds, specific measurement and evaluation will be developed to assess alignment with the principles and national standards.

NEW - What role will the Office of the Child and Youth Advocate (OCYA) have with IGBs?

At this time, it is unclear what role the OCYA will have with IGBs once they have been established.

NEW - Will the IGBs have access to Children's Services foster homes?

The development of coordination agreements between the IGB, province and federal government would outline service delivery roles and responsibilities, and address transitional considerations. This could potentially involve consideration of access to Children's Services' approved foster homes.

NEW - Do parents/guardians have the right to say they do not want their communities involved?

The Federal Act does not include an 'opt out' provision to providing notice to an IGB. However, all provisions are subject to a determination of 'best interest'. If there are particular reasons why providing notice to an IGB is not in the child's best interest in a particular situation, that decision and rationale should be well-documented.

NEW - What types of relationships does the Government of Alberta have with Inuit communities?

The Government of Alberta provides services to children and youth from Inuit, Métis and First Nations communities from across Canada. It is important to work with families to identify Indigenous children and the communities to which they may belong early to ensure connections and relationships can be built and maintained.

It will be important for caseworkers to reference the official list of IGBs for all children who are Indigenous to ensure proper notice is given to IGBs. Once this list is available on the federal site, a link will be posted on the CI portal.

NEW - What does the Act cover related to prenatal care?

The Act emphasizes the need for the system to continue to shift from apprehension to prevention, with priority given to services that promote preventive care to support families. It gives priority to services like prenatal care and support to parents.

As per existing policy, support to expectant mothers with already open child Intervention files will continue through case planning. Prenatal care for expectant mothers without an open child intervention will be delivered in accordance with existing health services in communities.

NEW - Will there be any additional federal or provincial funding to assist in these changes? For instance, prenatal resources, early intervention or prevention services.

To date, there has not been any funding announced regarding the federal government's implementation of the Act.

NEW - How many Indigenous communities have served notice under the Act so far?

As of February 21, 2020 CS is not aware of any Indigenous communities in Alberta that have served formal notice with the federal government for the purposes of developing laws and assuming authority; however, many communities are meeting and planning so that will change over time.

New - Does the legislation also apply to those children who do not have the potential to be registered, but have a connection to a specific First Nation?

Yes, the Act refers to all Indigenous children, youth and families with the specific intent to ensure an ongoing connection to and involvement of Indigenous communities. While it continues to be important to register children, the critical element is identification as being part of that community. As a result, registration is not a requirement.

NEW - Will this legislation impact private adoption agencies and their adoption of Indigenous children?

The Act is applicable to all child and family services, which include private adoptions. This means licensed adoption agencies will be required to follow the minimum standards as it relates to Indigenous children.

NEW - What will happen to all the files once IGBs take over?

Discussions on what will happen to children's files will occur during the development of Coordination Agreements. The laws and respective agreements on service delivery approaches and transition elements like child files may vary from one IGB to the next.