From: Alexander Mulligan
To: Legislative Scrutiny Committee
Subject: Feedback on the proposed amendments to the Care and Protection of Children Act
Date: Monday, 18 May 2026 8:29:41 PM

I write to provide feedback on the proposed amendments to the Care and Protection of Children Act.

Section 12B – Placement of a Child

- The proposed removal or weakening of the Aboriginal Child Placement Principle presents a significant risk that Aboriginal children may be placed with carers who are not family and are disconnected from their community, culture, and identity.
- While the section refers to placement with "a family member of the child", it does not define the term *'family'* or clarify whether this definition encompasses Aboriginal kinship systems, including extended family, community relationships, and cultural obligations.
- The absence of a clear and culturally appropriate definition creates ambiguity and may result in a narrow interpretation by decision-makers. This raises concerns that culturally relevant placement options may not be fully identified or appropriately considered.
- The provision allowing placement with a person approved by the CEO, where no "family" member is identified as willing and able, further elevates this risk. Without explicit safeguards, oversight mechanisms, or clear evidentiary thresholds, there is limited assurance that all reasonable efforts to locate suitable Aboriginal carers have been exhausted.
- It is unclear how compliance with culturally appropriate placement requirements will be monitored or verified. In particular, there is no explicit requirement to demonstrate consideration of options such as placement within the child's broader community, language group, or cultural network.
- Without strengthened definitions, accountability mechanisms, and culturally-informed decision-making criteria, the proposed approach may undermine the intent of preserving the child's connection to culture, family, and community.

Section 12C – Aboriginal Children

- The wording of this section is of concern, particularly the repeated use of the term *'should'*, which introduces ambiguity and weakens the enforceability of the provision.
- In a legislative context, the use of discretionary language such as *'should'* implies that the requirement is optional or subject to interpretation. This is

inappropriate in circumstances involving decisions about children, where consistency, accountability, and cultural integrity are critical.

- Engagement with families and kin in decisions affecting Aboriginal children must be established as a mandatory and central requirement, rather than a discretionary consideration. The current drafting does not provide sufficient assurance that families will be consistently and meaningfully involved in decision-making processes.
- The absence of clear, directive language risks inconsistent application across decision-makers and may undermine culturally appropriate practice. It also limits the ability to hold the decision-maker accountable for demonstrating genuine efforts to involve family and community.
- Consideration should be given to strengthening the provision through the use of directive language (e.g. *'must'*), and explicitly requiring documented evidence that families and relevant kinship networks have been identified, consulted, and afforded appropriate opportunity to participate in decisions.
- Without these amendments, the provision does not sufficiently reflect the importance of family-led decision-making or the cultural rights and interests of Aboriginal children.

Section 12D – Proactive Efforts

- While the intent to implement proactive or active efforts is supported, the effectiveness of this provision is contingent on the availability, capability, and sustainability of supporting services.
- There is a lack of clarity regarding how the Government will ensure that adequately resourced services are available to support families to address identified concerns. Current service systems are widely understood to be under-resourced and operating with constrained capacity, limiting their ability to provide timely and effective support.
- Without a corresponding commitment to service system strengthening, there is a significant risk that the requirement for proactive efforts will not be achievable in practice. This may result in inconsistent application and, in effect, place an unreasonable burden on families without providing the necessary supports to enable them to safely care for their children.
- Consideration should be given to embedding clear accountability for service availability and capacity within the framework, including mechanisms to monitor whether appropriate supports have been accessible and delivered prior to escalation to removal.
- It is critical that the provision is supported by a strengthened service system that prioritises early intervention, family support, and culturally appropriate services. This would assist in addressing underlying issues and reduce the need for child removal.
- Without these safeguards and system-level commitments, the provision risks

being aspirational rather than operational, and may not achieve the intended outcome of keeping children safely within their family and community.

Section 102G – Notice of Application

- Consideration should be given to requiring access to interpreter services for families who need assistance to understand an application for a Family Responsibility Order. Without appropriate language support, there is a risk that affected individuals may not fully comprehend the nature, implications, or legal consequences of the application, which undermines procedural fairness and informed participation.
- The current proposal also lacks clear differentiation between a Family Responsibility Agreement and a Family Responsibility Order. While one is voluntary and the other is mandatory, the substantive content and expectations appear largely aligned, creating ambiguity regarding their respective purpose, threshold, and intended use.
- This lack of distinction risks confusion for families and inconsistent application by decision-makers. It also diminishes transparency regarding when escalation from a voluntary agreement to a formal order is warranted.

Section 121(1)(b)

- This provision appears to enable the Court to direct the CEO to apply for a protection order, thereby initiating action to bring a child into care.
- Granting the Court the authority to compel the CEO to make such an application raises significant concerns regarding the separation of powers and functions between the judiciary and child protection authorities.
- The current child protection framework relies on the CEO, as the statutory decision-maker, to assess risk, determine the appropriate intervention, and initiate proceedings based on professional expertise and statutory thresholds. Directing the CEO to make an application may undermine this role and blur the distinction between judicial oversight and executive
- decision-making.
  This approach risks compromising the independence of professional assessments and may result in applications being progressed in circumstances where the threshold for intervention has not been
- independently satisfied by the responsible authority.
  Consideration should be given to preserving clear delineation between the Court's role in reviewing and determining matters before it, and the CEO's responsibility for initiating applications based on evidence, risk assessment,
- and legislative criteria.
  Maintaining this separation is critical to ensuring procedural integrity, accountability, and the appropriate exercise of statutory functions within the child protection system.

Section 122(1)(b)(v) – Applications

- This provision requires consideration of whether a parent has made efforts to engage with family support services; however, it does not adequately account for systemic limitations affecting service access.
- There is a significant risk that this criterion may be applied inequitably where families have made genuine attempts to engage, but are unable to do so due to factors outside their control, including service capacity constraints, long waitlists, or referral declines.
- In many instances, family support services are operating under considerable resource pressure, resulting in limited availability and delays extending over several months. In such circumstances, the absence of engagement should not be interpreted as a lack of willingness or effort on the part of the parent.
- Reliance on this measure as evidence in support of an application, without consideration of service accessibility and timeliness, risks undermining procedural fairness and may lead to adverse decisions that do not accurately reflect the efforts of the parent.

Section 123 – Directions in a Protection Order

- The proposed reduction in the duration of protection orders from two years to one year raises significant operational and systemic concerns. Reunification is a complex process that requires careful planning, sustained engagement, and coordinated service delivery, all of which are dependent on the availability of appropriate supports within realistic timeframes.
- In practice, key enablers of reunification—such as access to stable and suitable housing—are subject to significant constraints. Even where families are prioritised for housing, it is unlikely that appropriate accommodation will become available within a 12-month period. Without access to a safe and suitable home environment, the capacity to progress meaningful reunification is substantially limited.
- The shortened timeframe therefore risks creating unrealistic expectations for both families and service providers, potentially leading to premature assessments of non-compliance or failure to achieve reunification outcomes that are constrained by systemic factors beyond the family's control.
- Further, the proposal to limit short-term orders to a maximum of two before progressing to a long-term protection order has significant implications. This approach is likely to increase the number of children subject to long-term orders, including placement in care until 18 years of age, where reunification may have otherwise been achievable with additional time and support.
- This shift would place additional pressure on an already constrained out-of-home care system. Placement availability is limited, and reliance on high-cost placements is already significant. An increase in long-term care arrangements is likely to exacerbate these pressures.

Sections 125 and 137D – Parties to Proceedings

- The inclusion of carers as parties to proceedings is acknowledged and supported in principle, recognising the important role carers play in the day-to-day care and wellbeing of children.
- However, the proposed threshold of eight months is not considered a sufficiently robust period to justify conferral of party status. Placement durations of this length may not reflect stability or permanency and may occur within the context of ongoing reunification planning or transitional care arrangements.
- Conferring party status provides carers with formal standing to participate in proceedings and advocate in relation to the child's circumstances. While intended to support the child's interests, there is a risk that this may, in practice, enable advocacy that reflects the carer's personal interests or preferences, particularly in situations where strong attachments have formed.
- There is evidence in practice of carers developing significant bonds with children in their care, which, while understandable, can at times influence their position on reunification. This may manifest in opposition to reunification efforts or the portrayal of families in a manner that does not fully reflect the broader context or progress being made.
- Without appropriate safeguards, this provision may unintentionally create tension between parties and complicate reunification processes, particularly where the views of carers are given formal standing without clear
- parameters. Consideration should be given to strengthening the criteria for party status, including extending the minimum period of placement or requiring additional factors to be demonstrated (such as placement stability
- or care trajectory). Further, safeguards should be embedded to ensure that participation by carers remains focused on the best interests of the child, with appropriate weight given to professional assessments and reunification planning led by the responsible authority.
- This section as it is currently written implies the assumption that a carer will act in the best interest of a child