RESPONSE OF TERRITORY FAMILIES

## Response to Questions from the Economic Policy Scrutiny Committee

### *Clause 4 – Section 8 amended – s8 (3) unacceptable risk of harm to the child*

**Question 1 - The Central Australian Aboriginal Family Legal Unit (CAAFLU) recommended that the Bill include a definition of 'unacceptable risk of harm'.**

a. ***What would be the effect on the operation of the Bill of defining the term 'unacceptable risk of harm'?***

This term provides guidance to those operating and making decisions in the child protection context. 'Unacceptable risk of harm' is a concept that exists in legislation in other jurisdictions including Western Australia (section 35(b) and (ca), *Children and Community Services Act 2004*), Queensland (section 51AE, *Child Protection Act 1999*) and Victoria (section10 (3) (G), *Children, Youth and Families Act 2005*). It is not feasible to define unacceptable risk of harm within legislation given the myriad of complex and varied situations that occur in practice. Rather it is important that this term is interpreted by professional and skilled child protection workers in the specific circumstances they face. In other jurisdictions the concept is guided by case law and defined in policy. Territory Families will support its professionals to understand this term through policy and training should this Bill pass.

b. ***Is the test of whether there is an unacceptable risk of harm intended to be an objective test of the 'reasonable person' or a subjective test from the perspective of the case manager?***

This amendment is introduced as a guiding principle in section 8 of the *Care and Protection of Children Act 2007* (the Act). The purpose of the amendment is to create a distinction between the threshold of initial investigation, which may lead to family support, and the threshold for removal from parents as ordered by the court. It will be interpreted by the Family Division of the Local Court to assist in the making of a decision about whether a child or young person might be in need of care and protection, as defined in section 20 of the Act.

**Question 2 - SNAICC recommended that s8 should be further amended to explicitly state that if a child is removed from their family, their timely and safe return should be facilitated as a first priority wherever possible.**

a. ***What would be the effect on the operation of the Bill if a statement to this effect was included, perhaps by replacing s8 (4) (b) – 'the child should eventually be returned to the family'?***

Replacing these words would not have material effect because reunification is already promoted and mandated throughout numerous parts of the Bill. The Bill includes a number of amendments that strengthen reunification of children with their family. This includes the proposed amendments to section 10 'Best interest of child', which explicitly recognise the importance of connection to family and culture and, if a child is removed, the need to consider all possibilities related to reunifying the child with their parents. The Bill also requires that Care Plans include a new component relating to what is required for reunification (sections 70 and 121).

### *Clause 7 – Section 12 amended – Aboriginal Children*

**Question 3 - Congress recommended that s12(3) be amended to state that the order of priority of placement should be observed at all times rather than 'as far as practicable'.**

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***a. What would be the effect on the operation of the Bill of removing the phrase 'as far as practicable' from s12 (3)?***

The term 'as far as practicable' provides the flexibility required for the wide variety of circumstances that occur in practice. There may be times when it is not possible or appropriate to place a child with family or community so retaining this phrase is necessary to allow for those situations.

**Question 4- CAAFLUAC proposed that Territory Families be required to file a comprehensive report of all efforts made to comply with the Aboriginal Child Placement Principle when making applications to the Court and that a long-term Protection Order should not be made unless the Court is satisfied that all other options have been exhausted.**

***a. What would be the effect on the operation of the Bill of including such a requirement?***

Information on the efforts made to comply with the Aboriginal Child Placement Principle will already be required for the Court in relation to the proposed amendments covering Care Plans (clause 9, section 70 and clause 25, section 130). The effect of requiring additional documentation as proposed by CAAFLUAC to detail compliance with the Aboriginal Child Placement Principle would be resource intensive and repeat information already provided through Care Plans.

With respect to the proposal that 'a long-term Protection Orders should not be made unless the Court is satisfied that all other options have been exhausted' the Bill proposes that orders will only be made when they are the 'least intrusive means' to safeguard the wellbeing of the child. This is delivered through proposed amendments to section 129 of the Act.

***b. What, if any, consideration has been given to ensuring compliance with the Aboriginal Child Placement Principle?***

There are a number of existing oversight mechanisms to monitor compliance with the Aboriginal Child Placement Principle including the Children's Commissioner's monitoring activities; national annual public reporting through the National Australian Institute of Health and Welfare's Child Protection Australia report and the Productivity Commission's Report on Government Services; annual public reporting through the Family Matters Campaign; and Territory Families' own Annual Report. Territory Families' budget paper key performance measures include key deliverables for out-of-home-care including 'Kinship places of care' and 'proportion of Aboriginal children placed with an Aboriginal carer.'

**Question 5 - SNAICC recommended that a section be inserted into the Bill to embed all five elements of the Aboriginal Child Placement Principle (prevention, partnership, placement, participation and connection) as underlying principles of the Act, similar to s5C(2) of the *Child Protection Act 1999* (QLD).**

***a. To what extent does the Bill already include the five elements of the Aboriginal Child Placement Principle as identified by SNAICC?***

This Bill provides the legal framework for child protection work in the Northern Territory. Current child protection practice implements all five elements of the Aboriginal Child Placement Principle and while Territory Families continues to improve its practice and partnerships it is not necessary to explicitly legislate each element to ensure success. Territory Families is consulting with the sector, including SNAICC, on a single Act for children where all five elements may be made more explicit (i.e. SNAICC's recommended wording specifically adopted).

***b. What would be the effect on the operation of the Bill of including the five elements of the Aboriginal Child Placement Principle in Part 1.3 of the Act?***

The implementation of all five elements of the Aboriginal Child Placement Principle requires a considered policy response beyond legislative amendment and must align with system and practice reforms.

***Clause 8 – Section 42 amended – What the CEO may do generally***

**Question 6 - Danila Dilba expressed concerns that the use of the term 'reasonable steps' to describe action the CEO must take in proposed sections 42(3) and (4) could allow the CEO to underfund key programs or avoid the requirements for programs to be culturally responsive, run in language, and involve holistic assessments.**

***a. What would be the effect on the operation of the Bill of replacing the words 'reasonable steps' with 'all steps necessary'?***

The aim of this amendment was to confirm the CEO's ability to provide and support services in early prevention and prevention. It is not intended, and is not drafted, to give rise to a single point of accountability for all early intervention services in the Northern Territory. The term 'reasonable steps' allows flexibility for the CEO of Territory Families to make important decisions about service delivery within his or her portfolio responsibilities and reflects the shared responsibility across all levels of government to provide early intervention and support services. Replacing these words may not have material effect because the CEO retains discretion to act appropriately.

**Question 7 - SNAICC recommended that the discretionary power of the CEO to implement activities described in proposed s42 (1) (cb) be removed and a positive obligation to implement these activities be required by amending the wording to require that the CEO '*must take reasonable steps* to provide or facilitate....'**

***a. What would be the effect on the operation of the Bill of amending the wording in line with SNAICC's recommendation?***

As above in response to question 6a. Amending these words would impact on the discretionary powers of the CEO to make decisions about service delivery that are more suited to the portfolio responsibilities and budget provided to him or her by the Cabinet of the day and the challenging context of service delivery within the Northern Territory. This wording would place an obligation on the CEO that is far broader than any existing obligations on the CEO.

**Question 8 - The NT Legal Aid Commission recommended that proposed section 42(1)(cb) be amended to remove the words "Aboriginal communities" and include only the words "the community" because the current wording is discriminatory. It should be applicable to the community as a whole.**

***a. What would be the effect on the operation of the Bill of amending the wording in line with the Legal Aid Commission's recommendation? For example, is the intent of proposed ss(cb) to specifically address the needs of Aboriginal communities or is it to operate across the whole community?***

The proposed section 41(1)(cb) recognises and addresses the over-representation of Aboriginal children and families in the care and protection system. The amendments were modelled off section 7(1)(f) of Queensland's *Child Protection Act 1999.*

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The Bill includes an obligation on the CEO to provide services to the community as a whole. In addition to section 41(1)(cb), the Bill specifies that the CEO may 'provide or facilitate the provision of services or support to children, families and communities aimed at promoting or safeguarding the wellbeing of children (Clause 8, section 42(1)(ab)). The Bill also mandates that the CEO must take reasonable steps to ensure that services provided under this Act include, where appropriate, 'preventative and support services to strengthen and support families to reduce the incidents of harm to children.' These provisions apply to the whole community.

***Clause 13 – Section 74 amended – Review of Care Plan***

**Question 9 - Danila Dilba noted that instability of placements for children in out of home care is common and recommended that proposed s74(2) be further amended to include the following as triggers for a review of the Care Plan: a substantial change in the living arrangements of the person caring for the child; and a placement change.**

***a. What would be the effect on the operation of the Bill of amending proposed s74 (2) to include these occurrences as triggers for a review of the Care Plan?***

The Act already requires a review of a Care Plan after 'a change of placement for the child' (section 74(2)(c)). A Care Plan can be updated at any time and does not require the formal process of a review. Amending the Bill to require a full Care Plan review following 'a substantial change in the living arrangements' would place too much emphasis on paperwork requirements and reduce critical time spent developing and maintaining a trusted relationship with children. For some young people in care their living arrangements can change frequently. In these circumstances it is appropriate that the Care Plan is updated but not reviewed (as required in section 74).

***Clause 15 – Section 85A – Transition to Independence***

**Question 10 - Several submitters expressed concern regarding the discretionary nature of proposed s85A (3) which states that the CEO *may* assist the young person to obtain the services listed at ss (a) to (j). It was suggested that these supports should not be tied to educational enrolment and that, given the vulnerabilities of those who have been in care, ongoing assistance should be provided until age 25.**

***a. What is the rationale for allowing the CEO to exercise discretion regarding the supports provided for young people as set out in s85A(3) but making such assistance mandatory in relation to young people engaged in education or training as set out in s85A(4)?***

The amendments to improve transitioning to independence clarify the CEO's obligations to ensure a 'young person who has left the CEO's care' is provided with appropriate services to help them transition from being a child in care to being independent. Every young person is unique and discretion is necessary to ensure that a range of services are available, but tailored to their needs, wishes and circumstances.

The introduction of the requirement to maintain the young person's living arrangements until they have completed the course is intended to address situations where, for example, a young person turns 18 while they are still in high school. In these situations it is appropriate that the CEO is required to maintain their placement, subject to the young person's wishes.

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Under section 68 of the Act, a 'young person who has left the CEO's care is between 15 and 25 years of age'. This means the CEO will be obliged to provide the services necessary or appropriate for the young person until they are 25 years of age.

**Question 11 - Royal Commission Rec. 33.23 requires that: children leaving the care of the CEO are fully informed of the CEO's obligation to provide child-related services until the individual turns 25; and that such children are followed up every six months until they turn 21. This recommendation is closely related to Rec. 33.21 which is being implemented by the Bill in proposed s85A.**

***a. Why is Rec. 33.21 being implemented but not Rec. 33.23?***

It is not necessary or desirable to legislate the practice sought by recommendation 33.21. Territory Families has created specialist transition from care officers to support the planning and engagement of children for this critical life transition. Territory Families also funds CREATE foundation and the Anglicare Moving on Program to provide dedicated leaving care services. Transition from care is a key policy and practice area that is improving and does not require any further legislative compliance measures.

***Clauses 17 and 22 – Sections 104A inserted and 124 replaced – Notice of Applications***

**Question 12 Recommendation 32.12 requires that information about a child's removal is provided in a language and form that is suitable for the family. This has been implemented through the amendment in proposed s106 but not s104A.**

**a.** ***Please clarify why this requirement was not included in the amendment to s104A***

The amendments have been designed to balance the need for appropriate engagement with families in a language and manner they understand with the immediate safety needs of children. Section 104A deals with a notice of application to a court for a Temporary Protection Order, and section 106 deals with notice of a Temporary Protection Order. Whilst it is best practice to always communicate with parents, it was not considered appropriate to place an additional requirement in the Act that would restrict the ability to take urgent action to safeguard a child (i.e. when a child is unattended and temporary protection is necessary in the absence of any parent). Consequently, the requirements regarding communication increase when an order is granted.

**Question 13 - Proposed sections 104A and 124 require the CEO to give notice of the application for a temporary protection order or permanent protection order to 'each parent and carer of the child'. Submitters have objected to this requirement due to the sensitive and confidential nature of the information contained in documentation and the fact that under s125 of the Act carers are not listed as parties to proceedings. Royal Commission Rec. 34.14, which forms the basis for these amendments, only makes reference to the parents of the child.**

***a. What is the rationale for including a carer of the child as a person to be served these notices?***

In relation to section 104A it was the intention of these amendments to create more accountability to provide notice and personal service of applications to parents and carers of children (i.e. carer is defined to include a family member). A child for whom a Temporary Protection Order is sought will not have a foster or kinship carer, and therefore the concerns expressed do not apply to 104A.

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For section 124, notice of an application for a Protection Order, it is the intent that foster and kinship carers are provided notice of an application when Territory Families applies to the court to vary, extend or replace the Protection Order. It is not the intention that sensitive personal information about the parents is provided to these kinship and foster carers, but that the carers are aware and contribute to the information concerning the child's current status and future needs. This recognises the role of kinship and foster carers as the primary caregiver to children during their time in care.

If passed in its current form, Territory Families would seek to refine the application documents to ensure privacy protections where necessary and appropriate.

***Clause 18 – Section 106 amended – Notice of Order***

**Question 14 - The purpose of this amendment is to implement Royal Commission Rec. 34.15 which requires that when the order is given, the length and effect of the order, the right of appeal, and information about how to appeal, is appropriately explained to the parent in their preferred language. The amendment only requires an explanation to be given in relation to the 'duration and effect of the order' and does not include a requirement to provide information about the right of appeal or how to appeal.**

***a. What is the reason for not fully implementing the amendment?***

Temporary Protection Orders cannot be appealed under the current Act and the Bill does not change this. Therefore, the Bill does not require information about the right of appeal to be included. The ability to appeal Temporary Protection Orders was raised during consultation for the Bill and Territory Families received varied and complex perspectives. These views highlighted the need to fully consider the issue in the context of future reform around court orders which will be delivered through a single Act.

**Question 15 - CAAFLUAC commented that the amendment would be strengthened if it required the CEO to also offer a referral to a relevant legal service as part of the information they must provide.**

***a. What would be the effect on the operation of the Bill of requiring the CEO to include this information?***

It is standard practice that, prior to applying for a Temporary Protection Order, families are referred to a legal service.

***Clauses 19 and 24 – Section 121 amended – Applying for protection order and Section 129 amended – When court must make an order***

**Question 16 The Legal Aid Commission commented that the grounds for applying a protection order (s121(1)(a), and for when a Court must make an order (s129(a), should be simplified to increase clarity and more closely align with other jurisdictions, with specific reference made to s72 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW). They recommended that subsections (ii) in both section 121(1)(a) and 129(a) be removed in order to provide greater clarity and alignment with other jurisdictions.**

***a. What would be the effect on the operation of the Bill of removing subsection (ii) in both s121 (1) (a) and s129 (a)?***

The subsections in question are part of the current Act and are used to enable a new Protection Order to be sought when a child is already on a Protection Order.

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Removing these subsections has not previously been raised and requires further analysis and consultation to determine the operational impact and to identify any unintended consequences. Territory Families will consider this proposal in the next stages of reform.

***Clause 21 – Section 123 amended – Directions in protection order***

**Question 17 - The Legal Aid Commission commented that the intent of this proposed section could be made clearer by inserting a note below s123 stating: 'for example, directions may be made for Territory Families to facilitate supervised or unsupervised contact whilst they have daily care and control of a child'.**

***a. What would be the effect on the operation of the Bill of inserting a note to this effect?***

Including a note of this type would not affect the meaning of the provision.

***Other issues raised in submissions***

**Question 18 - Congress recommended that the Bill be amended to more clearly define the term 'Aboriginal kinship carers' and recommended it be defined as: 'those members of an individual child's broader kin group who have been identified through Family Group Conferencing as best placed to act as kinship carers' (p3).**

**a. *What effect would an amendment to introduce such a definition have on the operation of the Act?***

The definition of 'Aboriginal Kinship carers' should not be limited or constrained by a strict legal definition. Specifically, the proposed definition would require a family group conference to occur before anyone would fit the definition of kin.

**b. *Are there any plans to introduce such a definition in future reforms?***

Yes. This matter will be a key component of the single Act for children.

**Question 19 - Both NAAJA and CAAFLUAC recommended an amendment to create an administrative review mechanism such as NTCAT to review decisions on child placements and other factors that impact on an Aboriginal child's continued cultural connection. This is identified in Royal Commission Recommendation 33.7 which is not being addressed by this Bill but which is listed by Territory Families as being addressed in Phase 1 or 2 through either the *Care and Protection of Children Act 2007* or a future single Act.**

***a. What plans have been made to implement Royal Commission Recommendation 33.7?***

The Government has committed to implementing Royal Commission recommendation 33.7. The implementation of this recommendation require the design, funding and establishment of an agreed tribunal or review mechanism. This may include powers of review in the Children's Commission or NTCAT as part of a broader implementation of Safe, Thriving and Connected. This will be considered in the development of a single Act.

**Question 20 - Family group conferencing has been identified as an important mechanism for facilitating appropriate decisions for Aboriginal children and is addressed by Royal Commission Recs, 34.07 to 34.10, however, these recommendations are not being addressed in this Bill.**

***a. What plans have been made to implement Royal Commission Recommendations 34.07 and 34.10?***

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The Government has committed to implementing family group conferencing. Territory Families is currently consulting on an appropriate Family Group Conferencing Model, with funding available to commence the model in 2019-20. This can occur under the current legislation and is not dependant on further amendments ahead of the single Act for children.

**Question 21 - Both SNAICC and Danila Dilba advocated for an increased role for Aboriginal and Torres Strait Islander Agencies, particularly as a means to facilitate Aboriginal family led decision making and to enhance participation in mediation conferences and family group conferencing. SNAICC noted that Queensland's *Child Protection Act 1999* requires that the chief executive, litigation director and authorised officers arrange for an independent Aboriginal or Torres Strait Islander entity to facilitate participation of the child and family in all decision-making processes.**

***a. What consideration, if any, has been given to mandating the involvement of such agencies in all significant decisions for Aboriginal children in the NT, including placement and judicial decisions?***

Territory Families has progressed significant new partnerships with Aboriginal organisations to empower them to lead and participate in the child protection system. Introducing a legislative framework for recognised Aboriginal entities requires significant design work including comprehensive consultation to ensure that the entity is empowered to be a key part of a new system. Amendments of such a significant nature require comprehensive consultation and will be progressed through a single Act.