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Dear Committee Secretariat

Inquiry into the Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026

The Law Society Northern Territory (**Society**) is a statutory body constituted under the *Legal Profession Act 2006* (NT). It is responsible for the regulation of the legal profession in the Northern Territory and represents the interests of its legal practitioner members whose work is core to the maintenance of fair commerce, the rule of law and the administration of justice.

The Society writes with respect to the Committee's inquiry into the *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026* (**the Bill**).

The Society makes the following points in relation to the proposed amendments:

1. The Society is concerned that the amendments to the *Care and Protection of Children Act 2007* (NT) (**NT Care Act**) proposed by the Bill:
 - a. have not been developed through consultation with child welfare experts, sector representatives or affected individuals;
 - b. do not reflect the best practice principles in relation to the welfare and safety of children, and in some cases are contradicted by evidence as to the harm they may cause; and
 - c. negatively impact the rights of Territorians, including children.
2. The Society echoes the submissions of other legal sector organisations in this respect and draws particular attention to the concerns raised therein that the Bill makes it easier to remove children from their families, makes reunification harder and weakens legal safeguards for the rights of children. It notes that the Committee is briefed to report to the Legislative Assembly on whether the Bill has sufficient regard to the rights and liberties of individuals. The Society is of the view that it does not.
3. As the Committee is aware, best practice principles for effective consultation should "start when policy objectives and options are being identified" and allow sufficient

time for stakeholders to provide considered responses.¹ The Society is concerned that the specialist child protection sector, including legal assistance services, Aboriginal community-controlled organisations, and dedicated family violence services were not consulted prior to the introduction of the Bill.

4. While the Society is grateful for the opportunity to provide submission in response to this inquiry, the changes proposed by the Bill effect fundamental rights of children and will have a significant impact on the operation of the Northern Territory's child protection framework. The Society submits that further time and consultation is required before such changes are adopted.
5. Furthermore, it is concerning that this Bill has been introduced despite longstanding and significant criticism of the amendments proposed therein by the specialist child protection sector. The Society wrote to Minister Cahill's office in January of 2025, along with the legal sector and Aboriginal peak body organisations, noting its concerns with the proposal to water down the Aboriginal child placement principle. Despite these concerns, the Bill still proposes to remove this principle. This issue is discussed further below.
6. The Society understands the intent of the proposed reform is to create safety for all children. However, the unintended consequence of these changes will result in more harm to children and families. There is no dispute that putting a child's safety and best interests first should be paramount; however, the proposed mechanisms for achieving this are likely to have a disproportionate impact on Aboriginal and Torres Strait Islander families and are not supported by evidence of their effectiveness in improving child welfare outcomes.

Amendments to the Principles

7. Currently, the principles in the NT Care Act includes provision that, where practicable, the principles of the Act must be upheld.² The Bill introduces an amendment which specifically provides that the principles do not create or confer on any person any right or entitlement enforceable at law or effect the operation of any law in force in the Territory.³ The addition of this proposed subsection (4) is directly at odds with the immediately preceding subsection (3) which provides that the Court and the Department's CEO and persons performing functions under the Act must uphold the underlying principles of the Act, which by its nature effects the operation of the NT Care Act.
8. This amendment introduces considerable uncertainty into the interpretation and application of the NT Care Act. Accordingly, any dispute about the operation of the principles would require judicial determination, creating a burden on the Court and a liability for the Department of Children and Families (**the Department**).
9. The resulting uncertainty is also likely to impact decisions made by the Department and its Chief Executive Officer and open the Department up to a greater risk of appeal or review. Noting the principles also bind decision making by the Court in

¹ Regulation-Making Framework adopted on 1 November 2017.

² See s 6(2) of the *Care and Protection of Children Act 2007* (NT).

³ See the proposed s 7(4)(a).

relation to the Act, the introduction of the proposed subsection (4) may slow the Court's process of decision-making under the NT Care Act whilst ambiguity as to its interpretation is resolved.

Threshold of risk

10. The current threshold assessment as to risk contained in s 8(3) of the NT Care Act, provides a child **may** be removed from the child's family only if there is an **unacceptable risk** of harm to the child (emphasis added). The proposed amendment replaces this threshold assessment of risk to provide that a child **must** be removed if there is a **significant and likely risk**.⁴ The impact of the proposed amendment is to:
 - a. require mandatory child removal, rather than allow for removal at the discretion of the decision maker in each circumstance, who is the person best placed to consider the relevant information and likely risk;
 - b. lower the threshold from unacceptable to significant and likely;
 - c. introduce a prospective element to the test about whether harm is *likely* as opposed to whether it is present.
11. The combined operation of a and c above will significantly change the framework of operation of the Department and remove the discretion of decision makers to consider all circumstances of a child's care, not just the existence of a likely (i.e. a probable but not actual) risk.
12. What constitutes a likely risk is not defined in the legislation, and the phrasing of 'significant and likely risk' is not a common legal phrase whose meaning is clear (such as the term 'reasonable likelihood', which indicates a test on the balance of probabilities). Indeed, the ordinary meaning would not seem to require the risk to be more likely than not, just possible, for the removal of children from the families of Territorians to be *mandated*.
13. In practical terms, the Society notes this amendment will result in:
 - a. an increase in removals of children from families;
 - b. an increase in Court proceedings; and
 - c. a significant burden on the Courts to determine the uncertainty of language in the proposed amendments with respect to risk assessments for children.
14. If the Bill is passed and the threshold test for child removal is lowered, it will result in a substantial increase in workload for the sector. Of particular concern to the Society is the increased burden on the Youth Court that this change will create, likely resulting in a backlog of matters and additional pressure on a system which is already struggling under the demand for its resources.
15. Furthermore, increased removals of children under a lower threshold assessment of risk is contrary to well-documented evidence of trauma, and evidence of the long-

⁴ See the proposed s 12A(3).

term harm of removal from families, particularly for Aboriginal children. The Society stresses that removal of children should be treated as last resort and not a mandatory requirement following a nonspecific assessment of risk.

16. The Society submits that amending the threshold test as proposed would create an unacceptably low threshold for mandatory child removal and negatively impact the rights of children and their parents in the Territory. It should not be passed.

Best interests of children

17. Positively, the Bill confirms the best interests of the child remain paramount. However, the Society is concerned that the Bill makes significant amendment to how the CEO and in turn the Court assesses what constitutes the best interests of a child. Best interests are now to be assessed in order of priority, which order places stability and permanency above emotional, intellectual, spiritual, developmental and educational needs.⁵ Further, stability is placed above the capacity and willingness of a child's parents to care for the child, effectively deprioritising a child's relationship with and connection to their family.
18. While the Society recognises the intent of the amendments are to ensure child safety, the practical effect of these amendments is to remove children from families with low prospects of reunification even in circumstances where a parent can evidence both capacity and willingness to care for the child.
19. The inclusion of priority listing which preferences stability over parental capacity will disproportionately affect families in regional and remote areas, particularly low-income and Aboriginal families, who have little options for support services and funding to facilitate care of children in community.
20. The Society further notes that the Bill directly removes the rights of Aboriginal children to have their connection to their kinship group considered by the decision maker as part of what constitutes their best interests.⁶

Contact between children and families

21. The proposed amendment at s 12A(4) of the Bill also limits the extent to which a child's right to ongoing contact with their families is to be facilitated. The Bill provides that contact is to be "*encouraged and supported...as far as practicable, and consistent with the best interests of the child*".⁷
22. The unique geographical and resourcing constraints in the Northern Territory already prove difficult for children removed from their families to maintain and foster meaningful relationships. Children taken from remote communities are disproportionately affected by the lack of resources and funding available to facilitate regular contact. The introduction of the proposed s 12A(4) will likely result in the practical effect of less contact being maintained for children removed to metropolitan

⁵ See the proposed s 8(2).

⁶ See s 10(2)(ca) of the NT Care Act in contrast to the proposed s 8(3)(b).

⁷ See the proposed s 12A(4).

areas, away from family and community which will further impact whether reunification is a realistic possibility.

23. If the proposed amendment in s 12A(4) is adopted, it must be accompanied by adequate resourcing to support families in maintaining contact, particularly where children are placed with carers at significant geographic distance from their families and communities. This resourcing has not been provided for in the NT Budget and, in the Society's view, will require considerable funding.

Removal of the Aboriginal Placement Principle

24. As noted above, the Society is concerned by the removal of the Aboriginal and Torres Strait Islander Child Placement Principle (**ATSICPP**) despite unanimous opposition from sector organisations, child welfare experts and Aboriginal peak body organisations which the government has been aware of since it first proposed this amendment to the NT Care Act in January 2025.
25. The proposed amendments are likely to have a disproportionate detrimental effect on Aboriginal children and families. The Society echoes the submissions of Aboriginal organisations in the legal sector who have stated that the removal of the ATSICPP will not result in the intended increase in safety for children, but rather likely result in further harm to Aboriginal and Torres Strait Islander children through their removal from families and placement with individuals outside of their community and culture.
26. The Northern Territory already has the lowest rate of placement of Aboriginal Children with carers in their kinship group. In 2022-23, the Australian Institute for Health and Welfare recorded more than 70% of Indigenous children placed in out of home care were placed with non-indigenous carers.⁸ The data also revealed that approximately 90% of children removed from their families in the Northern Territory were Aboriginal. The reasons for the overrepresentation of Aboriginal and Torres Strait Islander children in the care and protection system are complex and involve consideration of generations of trauma due to previous separation from family and culture.
27. The removal of the ATSICPP is unsupported by evidence and is contrary to the Territory's obligations and commitment under the National Agreement on Closing the Gap. There is no evidence that identifies how the removal of the ATSICPP could assist with the stated intention of improving welfare outcomes for children.

Proactive efforts

28. The Society understands that the intent of the amendment introducing the proposed s 12D requiring the CEO of the Department to take proactive efforts to address risks to a child is to ensure an effort is made to allow a child to remain with family. However, the drafting of ss 12A(3) (mandating removal in the case of significant and likely risk) and 12D (mandating efforts to address risk to prevent removal) results in an unclear operation of the provisions, noting that 12A includes significant risk which is *likely* but 12D appears to refer to risk which has materialised.

⁸ Australian Institute for Health and Welfare, *Child Protection Australia 2022-23 report*, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2022-23/contents/aboriginal-and-torres-strait-islander-children>.

29. In addition, the term 'proactive efforts' is nonspecific and unclear, introducing further uncertainty into the NT Care Act, particularly considering how this nonspecific requirement could be measured and enforced. It creates uncertainty both for the Department (as to what efforts are required to meet the threshold) and for families (as to what must be tried before their child is removed). The amendments are also silent as to the consequences of failing to take proactive efforts. While s 12D purports to introduce accountability and ensure removal is a last resort, it falls significantly short of that goal because it is nonspecific, ambiguous and unenforceable.
30. The Society is concerned that the effect of these amendments is that without proper measurable and enforceable effort a discretionary determination can be made in relation to a child that reunification is not achievable and efforts can be directed elsewhere without ever supporting that child being returned to their family, particularly when efforts may be resource demanding.

Family Responsibility Agreements

31. The Bill makes significant amendment to the current interventions the CEO can make in a family's life. The addition of s 65C and s 65D to the NT Care Act place an obligation on the CEO to invite a parent and/or family member of a child to enter into a family responsibility agreement if the CEO reasonably believes that: an event of concern has occurred or is at risk of occurring in relation to the child; their family's circumstances have caused or contributed to the event of concern or the risk; and the child's family circumstances may be improved by the agreement.
32. An event of concern is defined as a child exhibiting criminal or anti-social behaviour; a school age child not attending school or an event that adversely affects a child's wellbeing.⁹ The Society is concerned that the proposed amendment will result in statutory intervention of the Department in circumstances that may be outside the control of a parent or family. The threshold includes where a family's circumstances which create a **risk** that an event of concern will occur (emphasis added). This significantly reduces the threshold for intervention with a family by the CEO and will likely result in the foreseeable substantial increase in workload of staff of the CEO, the legal profession and the courts.
33. The Society also notes that 'family circumstances' are not defined in the Bill. It is anticipated that a general definition may be applied which will result in circumstances such as housing instability, drug and alcohol misuse and addiction, poverty or being at risk of poverty, being a victim of domestic and family violence or other issue that is impacted by structural disadvantage outside of a parent's control. This will not result in additional safety for children, but rather punishment of families who fall within lower socio-economic status. Failure to agree to enter a family responsibility agreement can then be used as a reason for the Court to make a family responsibility order.¹⁰ A family responsibility order can include a direction that a parent take or not take any action relevant to the effective care and supervision of a child.¹¹

⁹ See the proposed s 65D(6).

¹⁰ See the proposed s 102C.

¹¹ See the proposed s 102E(1)(b).

34. The proposed s 65B of the Bill requires that any risk of domestic violence effecting children or families encountered when exercising powers or performing functions in relation to family responsibility agreements must be managed in a way that is consistent with the family violence framework.
35. The current Risk Assessment Management Framework approved under s 124Q of the *Domestic and Family Violence Act 2007* identifies the steps of managing risks associated with domestic, sexual and family violence (**DSFV**) as including safety planning (immediate and ongoing); information sharing; secondary consultation; referrals; ongoing risk assessment and management monitoring through case planning; and ongoing case management. It further provides that DSFV risk management is most successful when there is a service or agency which is identified as the lead or case coordinator.
36. The Society is concerned that CEO acting as the coordinating agency under the framework creates a risk that victim-survivors sharing concerns about DSFV will be at risk of their children being removed due to having shared those concerns; or alternatively the perception that such concerns cannot be shared because doing so may result in child removal. The inclusion of domestic violence risk in the provision for family responsibility agreements places the onus of changing violent behaviour placed on the victim-survivor and not the perpetrator.
37. The Society recommends the Committee carefully consider the language contained in the amendments resulting in s 65C and s 65D. Under s 65C, the CEO may make a family responsibility agreement with a parent and an operator of family support services. The Bill does not address non-compliance by the operator as to the terms of the agreement, which is concerning when failure to meet the terms of the agreement will likely result in the removal of the child, even where that failure is outside of parent control.
38. Under s 65D, the CEO is mandatorily obligated to invite a parent to enter a family responsibility agreement where an event of concern has been identified and such event includes an event that adversely affects a child's wellbeing. The obligation also extends to a **risk** of an event of concern occurring (emphasis added). This broad language will inevitably result in a significant increase in workload and required resourcing of the CEO, which has not been adequately addressed in the Bill nor the recent NT Budget.
39. Finally, the Society notes there is no requirement for the CEO to refer families for legal advice with respect to family responsibility agreements, nor to be satisfied that a parent or family member has understood an agreement and its consequences. The Society strongly recommends the Committee carefully consider the practical effect this has on procedural fairness noting:
- a. whether a parent has entered into an agreement is a consideration when making a family responsibility order;
 - b. the Bill does not provide consequence for parties other than parents to the agreements for any purported breach of terms; and

- c. the Court can consider any purported contravention of the terms of an agreement when making a care order.

Family Responsibility Orders

40. The Society notes, similarly with regards to the proposed amendments to family responsibility agreements, that the proposed amendments introducing family responsibility orders creates a significant obligation on parents to change circumstances which may be out of their practical control.
41. Additionally, the Society is concerned that there is no requirement for procedural fairness afforded to parents in relation to family responsibility orders. Section 102C permits the Court to hear and determine applications in the absence of a parent. Section 102H and section 102R empower orders to continue notwithstanding non-attendance at court by parents. Noting the significant obligations the terms of these orders place on parents, the hearing of an application in their absence or the making of and continuation of orders without notice on parents creates a situation in which a Court can determine parents must comply with specific obligations without the parents having an opportunity to be heard, nor even being aware, that they are subject to those obligations.
42. If hearings in the absence of parents are introduced, at a minimum section 102K should be amended to require personal service of a family responsibility order on a parent, rather than allowing for service at a last known address to be sufficient to bind parents to compliance with an order.
43. The family responsibility orders also provide a backdoor by which child removal can be facilitated, even if it is not the least intrusive means to safeguard the wellbeing of a child.¹²

Reunification

44. The Society acknowledges that the intention of the Bill is to provide greater emphasis on parental responsibility when attempting to reunify children with families. However, the Bill fails to recognise the impacts of continued structural disadvantage families face in the Northern Territory, which can impact reunification processes. Poor resourcing and geographical isolation impact whether reunification can be successful.
45. The Bill contains the mandate that the Court must only make two short-term protection orders for a child before having to make a long-term protection order.¹³ This amendment fails to consider circumstances in which, due to no fault of the parents, legitimate and meaningful steps towards reunification have not been able to occur, including because of a failure by the CEO to support reunification where it was practically difficult to do so due to resourcing constraints and/or geographic isolation. In such circumstances, even if a Court found the CEO had manifestly failed to meaningfully support reunification, it would be bound to make a long-term order for a child to be in care away from their family.

¹² See the proposed s 121(1)(b).

¹³ Proposed s 128(1B).

46. This amendment also fails to reflect the practical reality of life, particularly for parents facing structural disadvantage and complex personal circumstances, who may not be able to reunify within the period of two short-term orders but could later take the steps required to reunify with their child and have a meaningful relationship with them which would support the child's best interests.
47. The Society notes other jurisdictions have adopted legislation that includes sharing parental responsibility and daily care and control between parents and the CEO which provides for accountability and support in circumstances which may be beyond a family's control. Further, jurisdictions such as the ACT provide specific provision for parents to apply to revoke or amend orders every 12 months or where there has been a significant change in circumstances.¹⁴ This provides opportunity to parents to address concerns outside of formal court processes, without restrictions on their ability to have their children reunified with them in appropriate timelines.
48. The proposed amendments, when taken together, operate in a practical sense to reduce the ability of reunification once a child is removed. The focus is on stability and permanency of placement and not with reunifying the child with parents and family. Not only do these provisions limit the ability of the Court to consider what is in the best interests of the child but they also reduce the onus on supporting families to change their circumstances. It places the onus of changing decades of structural disadvantage and discrimination squarely on the discriminated.
49. The detrimental impacts of such restrictions on reunification have recently been recognised in Victoria. The similar permanency provisions in the Victorian care legislation to those proposed in the Bill have been repealed following the determination of the unintended harmful consequences to children.¹⁵ The information relating to Aboriginal children through the Victorian Inquiry provided distinct evidence that permanency provisions discriminated against Aboriginal families because of the structural barriers they faced including housing instability, unavailability of culturally safe services, and poverty. The findings from the inquiry are directly relevant to these proposed amendments and ignoring this evidence will result in repeated systemic discrimination of Aboriginal and Torres Strait Islander families and children and structural harm to all children.

Parties to a proceeding

50. The Bill proposes under sections 94, 125 and 137D to automatically include, as a party to a proceeding, a person who has cared for the child for more than 8 months. The Society notes that there is ambiguity in whether this term of care has to be ongoing at the time of the care proceedings, or whether a person who has previously cared for a child for more than 8 months but no longer cares for the child is captured within the provision.

¹⁴ *Children and Young People Act 2008* (ACT) s 467(3).

¹⁵ See for example, Women's Legal Service Victoria, *A long awaited step forward: Victoria moves to repeal harmful laws that permanently separated families*, <https://www.womenslegal.org.au/a-long%E2%80%91awaited-step-forward-victoria-moves-to-repeal-harmful-laws-that-permanently-separated-families/>.

51. Notwithstanding the legislative ambiguity in the currently drafted provisions, the Society notes that carers of children in the Northern Territory are overwhelmingly non-family members. A party to a proceeding is given the same rights in Court processes as the parents and CEO, including the ability to be heard, make submissions, call evidence, block an agreed resolution and access sensitive records and information put before the court about the parents and family of the child. This has particular implications for the rights of parents who are subject to child protection proceedings.
52. The Society further notes that allowing automatic access for individuals who may not be family to these records will likely increase the scope of litigation in these proceedings to challenge parties' access to this material. Noting the nature of this material, the Society also suggests that such provisions may be contrary to Commonwealth legislation such as the *Privacy Act 1988* (Cth) and may give rise to challenges in higher courts.

Recommendations:

The Society considers there are significant risks regarding multiple aspects of the proposed amendments creating legal uncertainty and a higher risk of long-term to children and families.

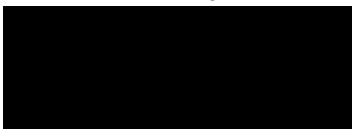
The Society recommends the Bill is not passed in its current iteration. It further recommends the following:

1. The NT Government hold a public inquiry on all proposed amendments to the *Care and Protection of Children Act 2007* (NT) as a matter of urgency, to allow for proper consultation to take place.
2. The Bill be amended so that:
 - a. the threshold test for removal of children is not amended from its current form;
 - b. additional provisions are included to allow parents to apply to the Court to revoke or vary care orders without onerous or restrictive qualifications to those applications;
 - c. prioritisation of best interest principles is removed;
 - d. the ATSI CPP is included in ongoing legislation;
 - e. the discretionary decision making by the CEO with respect to reunification in the first 6-months following a care order being made is removed;
 - f. mandatory steps the CEO must take when attempting reunification with a family are included; and
 - g. mandatory alternative dispute resolution processes are included; and
 - h. a review mechanism for a change in circumstances for a child subject to a care order is added.

3. If the NT Government intends to keep the provisions regarding family responsibility agreements and orders, the Society recommends the following additional amendments to the Bill:
- a. a requirement that the CEO refer families for independent legal advice before entering into a family responsibility agreement; and/or
 - b. a requirement that the CEO be satisfied that parties to a family responsibility agreement understand its nature and effect before entering into it; and
 - c. the inclusion of provisions requiring third party service providers and the CEO who are parties to a family responsibility agreement to comply with its terms, with consequences for non-compliance; and
 - d. the narrowing of the definition of “event of concern” to exclude circumstances outside of a parent’s or family’s control; and
 - e. the removal of the mandatory obligation on the CEO to invite a parent to enter a family responsibility agreement where the only basis is a *risk* of an event of concern occurring; and
 - f. a requirement that the CEO ensure adequate and culturally appropriate services are reasonably available to the family before entering into a family responsibility agreement, including access to interpreters independent of the family; and
 - g. a requirement that family responsibility orders be personally served on parents.

Please contact Ms Georgia Kalyniuk, Senior Policy and Regulatory Solicitor, on (08) 8981 5104 or at sprs@lawsocietynt.asn.au in the first instance if you require clarification.

Yours faithfully,



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