LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Economic Policy Scrutiny Committee

Inquiry into the Care and Protection of Children Amendment Bill 2019

June 2019

Contents

Chair's Preface

This report details the Committee's findings regarding its examination of the Care and Protection of Children Amendment Bill 2019. The Bill is an integral part of the ongoing reform process initiated by the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory. It gives effect to the intent of 12 of the Royal Commission's recommendations and focuses on mandating early assessment, intervention and support; updating the principles underlying the operation of the Act; strengthening care planning; improving court orders; enhancing legal processes; and formalising the transition to independence.

The Committee received 10 submissions to its inquiry. Although all submissions supported the Bill, a number of submitters recommended additional amendments. For example, the Law Society NT and the NT Legal Aid Commission raised concerns regarding the proposal to provide both parents and carers with the application for a protection order (proposed sections 104A and 124), noting that these applications contain confidential and sensitive information and that their provision to foster carers could have significant negative impacts. Many of the other issues raised in submissions focused on strengthening the provisions proposed in the Bill or on including additional amendments to the Act that are not within the scope of the Bill. A number of these issues can be more appropriately addressed in an operational rather than a legislative context.

Following consideration of the issues raised and the evidence received, the Committee has recommended the Assembly pass the Bill with the proposed amendments as set out in Recommendations 2 to 4.

On behalf of the Committee, I would like to thank all those who made submissions or appeared before the Committee. I would also like to thank the Department of the Legislative Assembly for the support provided to the Committee, and my fellow Committee members for their bipartisan commitment to the legislative review process. The Committee also acknowledges the work of Territory Families in providing advice, both through written responses and attendance at the public hearing.

Mr Tony Sievers MLA

Chair

Committee Members

	**Tony Sievers MLA** Member for Brennan	
	Party:	Territory Labor
	Committee Membership	
	Standing:	House, Public Accounts
	Sessional:	Economic Policy Scrutiny
	Chair:	Economic Policy Scrutiny
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	Sessional:	Economic Policy Scrutiny Social Policy Scrutiny
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	Party:	Independent
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On 22 March 2019, Member for Daly, Mr Gary Higgins MLA, was discharged from the Committee and replaced by the Member for Spillett, Mrs Lia Finocchiaro MLA.		

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Acknowledgments

The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at the public hearing, and Territory Families for providing written comments on concerns raised in submissions.

Acronyms and Abbreviations

CEO	Chief Executive Officer
CAAFLUAC	Central Australian Aboriginal Family Legal Unit Aboriginal Corporation
Congress	Central Australian Aboriginal Congress Aboriginal Corporation
DDHS	Danila Dilba Health Service
Law Society	Law Society NT
LAAC	Legislative Amendment Advisory Committee
NAAJA	North Australian Aboriginal Justice Agency
NTCOSS	Northern Territory Council of Social Services
Royal Commission	Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory
Single Act	Single Act for Children (proposed for the future)
SNAICC	National Voice for Our Children

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

(1) Standing Order 178 is suspended.

(2) The Assembly appoints the following scrutiny committees:

  (a) The Social Policy Scrutiny Committee

  (b) The Economic Policy Scrutiny Committee

(3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.

(4) The functions of the scrutiny committees shall be to inquire and report on:

  (a) any matter within its subject area referred to it:

    (i) by the Assembly;

    (ii) by a Minister; or

    (iii) on its own motion.

  (b) any bill referred to it by the Assembly;

  (c) in relation to any bill referred by the Assembly:

    (i) whether the Assembly should pass the bill;

    (ii) whether the Assembly should amend the bill;

    (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:

      (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and

      (B) is consistent with principles of natural justice; and

      (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and

      (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and

      (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and

      (F) provides appropriate protection against self-incrimination; and

      (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

(H) does not confer immunity from proceeding or prosecution without adequate justification; and

(I) provides for the compulsory acquisition of property only with fair compensation; and

(J) has sufficient regard to Aboriginal tradition; and

(K) is unambiguous and drafted in a sufficiently clear and precise way.

(iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:

(A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and

(B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and

(C) authorises the amendment of an Act only by another Act.

(5) The Committee will elect a Government Member as Chair.

(6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Care and Protection of Children Amendment Bill 2019 with the proposed amendments set out in Recommendations 2 to 4.

Recommendation 2

The Committee recommends that Territory Families undertake a review of the extent to which the Aboriginal Child Placement Principle has been complied with one year after the Bill has come into effect.

Recommendation 3

The Committee recommends that proposed section 85A(4) be amended to remove the second and third instances of the word ‘child’ and replace with terminology that is appropriate to a person aged 18 years or over.

Recommendation 4

The Committee recommends that the Bill be amended to ensure that confidential and sensitive information, such as that which may be contained in an application for a protection order, is not given to any inappropriate persons.

1 Introduction

Introduction of the Bill

1.1 The Care and Protection of Children Amendment Bill 2019 (the Bill) was introduced into the Legislative Assembly by the Minister for Territory Families, the Hon Dale Wakefield MLA, on 20 March 2019. The Assembly subsequently referred the Bill to the Economic Policy Scrutiny Committee for inquiry and report by 20 June 2019.[1]

Conduct of the Inquiry

1.2 On 22 March 2019 the Committee called for submissions by 17 April 2019. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.

1.3 As noted in Appendix A, the Committee received 10 submissions to its inquiry. The Committee held a public hearing in Darwin on 21 May 2019, with 11 witnesses appearing before the Committee.

Outcome of Committee's Consideration

1.4 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:

(i) whether the Assembly should pass the bill;

(ii) whether the Assembly should amend the bill;

(iii) whether the bill has sufficient regard to the rights and liberties of individuals; and

(iv) whether the bill has sufficient regard to the institution of Parliament.

1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with the proposed amendments set out in Recommendations 2 to 4.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Care and Protection of Children Amendment Bill 2019 with the proposed amendments set out in Recommendations 2 to 4.

[1] Hon Dale Wakefield MLA, Minister for Territory Families, Parliamentary Record, *Draft - Daily Hansard – Day 5 – 20 March 2019*, p. 9, http://hdl.handle.net/10070/306552.

Report Structure

1.6 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.

1.7 Chapter 3 considers the main issues raised in evidence received.

2 Overview of the Bill

Background to the Bill

2.1 This Bill is an integral part of the ongoing reform process initiated by the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (the Royal Commission). The Royal Commission was established on 1 August 2016 in response to concerns about the child protection and youth detention systems in the Northern Territory. The final report of the Royal Commission was delivered on 17 November 2017 and included '227 recommendations to address the significant and extensive failings identified in both the child protection and youth justice systems'.[2]

2.2 As noted by the Minister when presenting the Bill to the Assembly:

> The amendments in this Bill aim to address and rectify the historical failures of our child protection system, as highlighted by the Royal Commission into the Protection and Detention of Children in the Northern Territory.[3]

2.3 To date, the Government has introduced three Bills to improve the youth justice system. This Bill is the fourth tranche of legislative reform and the first to focus on improving the responses of the care and protection system to vulnerable children and families. The Bill has been informed by a cross-jurisdictional analysis of Australian state and territory legislation and expert advice from key stakeholders.[4] There has been extensive consultation on the amendments which have been developed in conjunction with the Legislative Amendment Advisory Committee (LAAC) comprising Northern Territory Government and community sector representatives.[5]

2.4 Territory Families' plan for implementing the recommendations of the Royal Commission is set out in *Safe, Thriving and Connected: Generational Change for Children and Families, 2018-2023.* It is important to note that reforms are ongoing and that recommendations will be implemented across a range of systems only some of which are legislative in nature. Many of the recommendations will be implemented through other avenues such as service provision, operational guidelines and program development.

Purpose of the Bill

2.5 As noted in the Explanatory Statement, the purpose of the Bill:

> is to give effect to the intent and direction of 12 Royal Commission Recommendations and further technical amendments across the following themes:

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[2] Northern Territory Government (NTG), *Safe, Thriving and Connected: Generational Change for Children and Families, 2018-2023,* p. 6.
[3] Hon Dale Wakefield MLA, Minister for Territory Families, Parliamentary Record, *Draft - Daily Hansard – Day 5 – 20 March 2019*, p. 7, http://hdl.handle.net/10070/306552.
[4] Hon Dale Wakefield MLA, Minister for Territory Families, Parliamentary Record, *Draft - Daily Hansard – Day 5 – 20 March 2019*, p. 8, http://hdl.handle.net/10070/306552.
[5] NTG, *Safe, Thriving and Connected: Generational Change for Children and Families, 2018-2023*, p. 26.

- mandating early assessment, intervention and support;
- updating the principles underlying the operation of the Act;
- strengthening care planning;
- improving court orders;
- enhancing legal processes; and
- formalising the transition to independence[6]

[6] Explanatory Statement, *Care and Protection of Children Amendment Bill 2019 (Serial No. 82)*, p. 1, https://parliament.nt.gov.au/committees/EPSC/82-2019.

3 Examination of the Bill

Introduction

3.1 All 10 of the submissions received by the Committee were strongly supportive of the Bill. The Department of Local Government Housing and Community Development expressed unqualified support while the remaining submissions suggested a range of amendments. Issues raised in submissions, and their correspondence with various clauses in the Bill, are set out in Table 1 and discussed below.

Table 1: Issues raised in submissions

Clause/sections	Section title/focus of amendment
cl 4; s8(3)	The Role of family – unacceptable risk of harm
cl 5; s10	Best interests of the child – emphasis on reunification
cl 7; s12	Aboriginal children
cl 8; s42	What CEO may do generally
cl 13; s74	Review of care plan
cl 15; s85A	Transition to independence
cls 17 & 22; s104A & 124	Notice of applications (temporary protection and protection orders)
cl 18; s106	Notice of order (temporary protection orders)
cl 19, s121; cl 24, s129	Notice of application (Protection orders) & when court must make an order
cl 21; s123	Directions in protection order
	Issues not directly within scope of the Bill

Clause 4 - Section 8 amended - s8(3) unacceptable harm to the child

3.2 The Bill amends s8(3) to provide that a child may only be removed where there is an unacceptable risk of harm to the child, reflecting the principle that harm to a child does not always warrant removal from their family and that unnecessary removal can lead to worse outcomes.

3.3 The Central Australian Aboriginal Family Legal Unit Aboriginal Corporation (CAAFLUAC) supported proposed s8(3) in principle but commented that the absence of a clear definition for the term 'unacceptable risk of harm' could lead to inconsistent interpretations by staff.[7] They drew attention to the fact that in cases where there is cumulative harm it is more difficult to assess whether there is an 'unacceptable risk of harm' and described how:

> With cumulative harm cases, it is often quite difficult because you might have repeated notifications that are quite minor, but over a longer period of time they have a serious impact on the child.[8]

3.4 The importance of clearly defining cumulative harm is reflected in Royal Commission Recommendation 32.6 which states that Territory Families should 'adopt a consistent definition of cumulative harm and develop internal guidance for practitioners

[7] Central Australian Aboriginal Family Legal Unit Aboriginal Corporation (CAAFLUAC), Submission 4, p. 2.
[8] Anna Potter, Legal Practitioner, CAAFLUAC, Committee Transcript, p. 13.

regarding the assessment of cumulative harm'.[9] Consequently, the Royal Commission does not require a definition of cumulative harm to be embedded in legislation. Although this is not one of the recommendations being implemented by the Bill, it clearly has relevance for the ability of staff to make effective decisions about whether there is an unacceptable risk of harm.

3.5 The Committee notes that the Department is addressing the Royal Commission recommendation on cumulative harm through clinical practice and case management, as indicated during the public hearing on the Bill[10] and in their implementation plan, *Safe, Thriving and Connected: Generational Change for Children and Families, 2018-2023.*[11]

3.6 The Committee sought clarification from the Department as to the effect on the operation of the Bill of defining the term 'unacceptable risk of harm' and was advised that:

> 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.[12]

3.7 The Committee sought further clarification regarding how the term 'unacceptable risk of harm' would be defined and operationalised and was advised that:

> In terms of policy and training, it is clearly part of the implementation plan, but it absolutely has to be essential practice guidelines policy on definitions of what the words could mean, examples case plans, case mapping et cetera.[13]

3.8 In response to a query regarding whether a standard screening tool was used to identify unacceptable risk, the Department advised that:

> The definition that is proposed here is specifically in relation to the principles part of the act and only applies to the test or the question on removal of a child. At intake there are very clear thresholds on whether to investigate or not investigate using structured decision-making tools. They are an actuarial tool that is recognised internationally and has grown out of child protection practice over many years.
>
> The decision and the threshold that we will, as a department, respond to a concern, is one that is strictly defined. What would flow from that then is an investigation and exploration of the child's circumstance, what is occurring within

[9] Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Findings and Recommendations*, p. 48, https://www.royalcommission.gov.au/sites/default/files/2019-01/rcnt-royal-commission-nt-findings-and-recommendations.pdf.

[10] Joy Simpson, Senior Practice Leader, Clinical and Professional Practice Leadership Directorate, Territory Families, Committee Transcript, p. 34.

[11] Northern Territory Government (NTG), *Safe, Thriving and Connected: Generational Change for Children and Families, 2018-2023*, https://rmo.nt.gov.au/__data/assets/pdf_file/0006/498174/Safe,-Thriving-and-Connected-Overview-of-the-Plan.pdf.

[12] Territory Families, *Responses to Written Questions,* 17 May 2019, p. 1, https://parliament.nt.gov.au/committees/EPSC/82-2019.

[13] Jeanette Kerr, Deputy Chief Executive Officer, Territory Families, Committee Transcript, p. 31.

> the family. This test proposed to change is one that is applied at the decision point of whether or not a removal is necessary.
>
> It is also important to note that other jurisdictions use this terminology. By making this change we are aligning ourselves to other jurisdictions and are able to draw on their expertise, their lessons learned and their best practice models. The sharing of the common language enables that ability to draw on practitioners and expertise from those partnering jurisdictions.[14]

3.9 In response to concerns about the consistency with which the term would be applied, given there is no legal definition, the Department advised that:

> No one individual practitioner will make a decision to remove a child. It actually goes through a process following family meetings, safety planning and planning for what will happen in the removal. That is a decision that will be undertaken in a group—probably a case conference meeting which involves managers, practice leaders and Aboriginal practice leaders in the decision.[15]

3.10 CAAFLUAC also commented that it was unclear as to whether the test for an 'unacceptable risk of harm' is intended to be an objective test of the 'reasonable person' or a subjective test from the perspective of the case manager.[16]

3.11 The Committee sought clarification from the Department and was advised that:

> 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.[17]

Committee's Comments

3.12 The Committee considers that CAAFLUAC's concerns regarding the capacity of staff to apply a consistent interpretation of the term 'unacceptable risk of harm' in the absence of a clear definition are justified. This is particularly the case due to the potential for unrecognised cumulative harm to impede recognition of an 'unacceptable risk of harm'. For example, in cases where one minor notification is not considered in conjunction with multiple previous minor notifications.

3.13 The Committee is, however, satisfied with the Department's rationale for not defining 'unacceptable risk of harm' in legislation, and notes that definitions of both 'unacceptable risk of harm' and cumulative harm are being provided in policy and operational guidelines.

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[14] Luke Twyford, Executive Director Strategy, Policy & Performance, Territory Families, Committee Transcript, p. 32.
[15] Jeanette Kerr, Deputy Chief Executive Officer, Territory Families, Committee Transcript, p. 32
[16] CAAFLUAC, Submission 4, p. 2.
[17] Territory Families, *Responses to Written Questions,* 17 May 2019, p. 1, https://parliament.nt.gov.au/committees/EPSC/82-2019.

Clause 5 – Section 10 amended – Best Interests of child

3.14 Section 10 states that one of the underlying principles of the Act is that the best interest of the child is paramount. This amendment introduces additional matters to consider when determining what is in the child's best interest, with a focus on the child's connection to family, culture, and language. In addition, proposed sub-section (2)(cb) explicitly states that if the child has been removed from their parents then all possibilities related to reunifying the child with their parents must be considered.

3.15 A National Voice for our Children (SNAICC) expressed support for the provisions amending s10 but commented that 'the amendments do not include language that signifies that reunification should be the first priority when a child has been removed'.[18]

3.16 CAAFLUAC raised concerns that some sub-sections in amended s10 could be perceived as competing against each other and commented that there is no clear prioritisation of the factors to be considered. As Ms Potter noted in the hearing:

> For example, under the current legislation, Best interest of the child at section 10(2)(e), it says:
>
> … the child's need for permanency in the child's living arrangements …
>
> And in (2)(f):
>
> … the child's need for stable and nurturing relationships …
>
> We have encountered cases before where that is used as a justification to keep children with non-family carers to create that permanency and stability for the child. If we are now including those factors about the importance of family connection and culture, they could potentially be perceived as conflicting but, hopefully, in the broader interpretation of the legislation that is now reinforcing the importance of connecting with family, that will not occur.[19]

3.17 The Committee sought clarification from the Department regarding the prioritisation of the matters that must be considered when determining the best interests of the child and was advised that:

> The considerations under section 10 are all factors relevant in determining the best interests of the child. They should not be prioritised in any particular order as the importance of the factors will vary on a case by case basis. The Court has stated that there is no priority when considering those provisions and the factors need not be considered in any particular order.[20]

Committee's Comments

3.18 The Committee is satisfied with the Department's advice.

Clause 7 – Section 12 amended – Aboriginal children

3.19 This clause amends s12 to state that the Aboriginal child, in addition to their family, has the right to nominate a kinship group, representative organisation or community

[18] National Voice for Our Children (SNAICC), Submission 10, p. 6.
[19] Anna Potter, CAAFLUAC, Committee Transcript, p. 13.
[20] Territory Families, *Responses to Written Questions*, 21 May 2019, p. 8, https://parliament.nt.gov.au/committees/EPSC/82-2019.

to participate in decisions involving the child. Sub-section (3), which identifies the order of priority of placement, has not been amended by the Bill.

3.20 The Central Australian Aboriginal Congress Aboriginal Corporation (Congress) recommended that sub-section (3) of section 12 also be amended to state that the order of priority of placement should be observed at all times rather than 'as far as practicable'.

3.21 The Committee sought clarification from the Department as to the effect this would have on the operation of the Bill and was advised that:

> 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.[21]

3.22 CAAFLUAC commented that the Bill does not contain provisions to ensure that the Aboriginal Child Placement Principle has been complied with and recommended that, when making applications to the Court, Territory Families should be required to file a comprehensive report of efforts made towards such compliance.

3.23 The Committee sought clarification from the Department regarding current mechanisms in place to ensure compliance with this principle and was advised that:

> The Aboriginal Child Placement Principle is critical to decisions about the placement of a child. The process of placing a child in care is that a case manager makes an application to an independent decision maker within Territory Families who approves the placement. Through that process, the person making the placement decisions will identify the most appropriate placement in accordance with the order of priority set out in the Aboriginal Child Placement Principle in the Act.
>
> To support that work during the child protection investigation and during the case management of a child that has entered care, our staff maintain a genogram, which is a picture of the family kinship network. The genogram helps the placement decision making and is pre-emptive to the identification, recruitment, registration and approval of any one of those family members as a kinship carer. It is a system that is not a lineal decision-making process. It is one that starts from the commencement of a child protection investigation where it is indicated that a child might come into care.
>
> Additionally, Territory Families has recently released an Aboriginal Cultural Security Framework, which commits Territory Families to design and deliver services that honour the rights, values and expectations of Aboriginal people.
>
> Territory Families has prioritised kinship care recruitment and have partnered with Aboriginal organisations Tangentyere, Mutiljulu and Larrakia Nation. The number of Aboriginal children placed with Aboriginal carers has increased significantly in the last 12 months.[22]

[21] Territory Families, *Responses to Written Questions*, 17 May 2019, p. 2, https://parliament.nt.gov.au/committees/EPSC/82-2019.
[22] Territory Families, *Responses to Written Questions*, 21 May 2019, p. 2, https://parliament.nt.gov.au/committees/EPSC/82-2019.

3.24 The Committee sought additional information from the Department regarding the extent to which compliance is ensured through the information required by the Court and was advised that:

> Ensuring compliance with the Aboriginal Child Placement Principle requires a combination of strong legislation, policy, training and practice culture. The amendments to section 70 of the Act require all care plans to include the cultural needs of a child. If the child is Aboriginal, the care plan must include actions to maintain and develop the child's Aboriginal identity and encourage the child's connection to the Aboriginal culture, tradition, language and country of the child. Section 72A requires that members of the child's kinship group or Aboriginal representative organisations nominated by the child or child's family are encouraged to participate in the preparation or modification of care plans. The Court must then not make an order unless a care plan has been provided to them. The amendments, therefore, support compliance with the Aboriginal Child Placement Principle in tandem with policy, training and practice reform.[23]

Committee's Comments

3.25 The Committee is satisfied with the Department's response, however, as a number of the mechanisms to ensure compliance, both at the operational level and through the Court, have only been recently introduced or are not yet in effect, the Committee considers that a review of the effectiveness of these measures should be undertaken one year after the Bill has come into effect.

Recommendation 2

The Committee recommends that Territory Families undertake a review of the extent to which the Aboriginal Child Placement Principle has been complied with one year after the Bill has come into effect.

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

3.26 Amendments to s42 primarily operate to place an obligation on the CEO to provide or facilitate relevant, culturally responsive and meaningful preventative and support services to vulnerable families in a way that is accessible and engaging. These amendments aim to: highlight that the agency is not the sole provider of services but also has an obligation to facilitate service provision and supports through external organisations; embed the principle of least intrusive intervention by prioritising preventative and proactive responses to prevent reactive and crisis-driven responses; and to address lack of understanding and feelings of distrust experienced by families interacting with the child protection system by ensuring that families are engaged in a relevant and appropriate manner.[24]

3.27 Proposed sections 42(3) and (4) require that the CEO must take 'reasonable steps' to provide preventative, support and protective services in a way that involves meaningful engagement with families, is culturally responsive and holistic and which

[23] Territory Families, *Responses to Written Questions*, 21 May 2019, p. 2, https://parliament.nt.gov.au/committees/EPSC/82-2019.
[24] Explanatory Statement, *Care and Protection of Children Amendment Bill 2019 (Serial No. 82)*, pp. 3-4, https://parliament.nt.gov.au/committees/EPSC/82-2019.

promotes decision making processes that empower families and actively involve children, parents, family members and members of the relevant kinship group. Two submitters did not consider the term 'reasonable steps' to provide a sufficiently high threshold and would prefer this term to be replaced with something stronger such as 'all steps necessary' or 'every effort'.

3.28 Danila Dilba (DDHS) commented that use of the term 'reasonable steps' 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'.[25] They pointed out that:

> The word 'reasonable', in 'reasonable steps to ensure services' is not as high a threshold as 'all steps necessary' which was the wording preferred by DDHS, Legal Aid and NAAJA in the LAAC [Legislative Amendment Advisory Committee].[26]

3.29 SNAICC expressed similar concerns regarding proposed section 42(3), noting that:

> The requirement to take "reasonable steps" is not fully aligned with best practice provisions nationally and internationally that have sought to ensure that every effort is made to provide preventative and support services to families so that they can address identified concerns to prevent harm before a child is removed from their care.[27]

3.30 On requesting clarification from the Department as to the reason for only requiring 'reasonable steps' the Committee was advised that:

> 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.[28]

3.31 The Legal Aid Commission recommended that the words 'Aboriginal communities' be removed from proposed s42(1(cb), commenting that such wording was discriminatory and that the section should apply to the community as a whole.[29]

3.32 The Committee sought clarification from the Department as to whether the intent of proposed s42(1)(cb) is to specifically address the needs of Aboriginal communities or to operate across the whole community and was advised that:

> 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(l)(f) of Queensland's *Child Protection Act 1999*.

[25] Danila Dilba, Submission 8, p. 10.
[26] Danila Dilba, Submission 8, p. 8-9.
[27] SNAICC, Submission 10, p. 4.
[28] Territory Families, *Responses to Written Questions*, 17 May 2019, p. 1, https://parliament.nt.gov.au/committees/EPSC/82-2019.
[29] Northern Territory Legal Aid Commission, Submission 9, p. 6.

> 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(l)(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.[30]

Committee's Comments

3.33 The Committee is satisfied with the Department's advice in relation to both the use of the term 'reasonable steps' in proposed sections 42(3) and (4) and the specification of 'Aboriginal communities' in proposed section 42(1)(cb).

Clause 13 – Section 74 amended – Review of care plan

3.34 This amendment adds the making of a significant medical diagnosis for the child as a circumstance which triggers a review of the care plan by the CEO and requires the CEO to facilitate the participation of relevant people, including the child.

3.35 Danila Dilba commented that in view of the instability often associated with placements for children in out of home care, future reforms should also include a placement change as a trigger for review of the care plan.[31] In addition, they recommended that a review of the care plan should also be triggered in circumstances where the person caring for the child experiences a substantial change in their living arrangements. The Committee heard that a substantial change in a carer's living arrangements could:

> place children at risk or in a worse situation. For example, if the family was to move to a different location that was less amenable to keeping the child in contact with his or her family, if the family's income or work arrangements were to suffer some dramatic downturn, that might affect the child.[32]

3.36 The Department advised the Committee that s74(2)(c) already provides for a placement change to trigger a review of the Care Plan.[33] With regard to also including a change in the carer's living arrangements as a trigger, the Department advised that:

> 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).

[30] Territory Families, *Responses to Written Questions*, 17 May 2019, pp. 3-4, https://parliament.nt.gov.au/committees/EPSC/82-2019.
[31] Danila Dilba, Submission 8, pp. 10-11.
[32] Joy McLaughlin, Danila Dilba, Committee Transcript, p. 15.
[33] Territory Families, *Responses to Written Questions*, 17 May 2019, p. 4, https://parliament.nt.gov.au/committees/EPSC/82-2019.

3.37 The Committee sought further clarification from the Department regarding whether there were any procedures in place that would ensure that the updating of a Care Plan would adequately address any risks arising from a change in the carer's living arrangements and was advised that:

> Territory Families' policy requires that care plans be reviewed when there is a significant change in the circumstances of a child or every 6 months. In response to the specific question if a carer was to change their residence, it would be a condition of their registration as a carer that they inform Territory Families. Territory Families would then, through case management, be talking to the child and other related people to the child about the proposed move and it would be a case-by-case decision to approve the child's move depending on matters such as schooling, distance, connection to friends and family. Separately, if there are additions to the household, that would trigger a carer re-registration assessment process for that household.

Committee's Comments

3.38 The Committee is satisfied with the Department's advice.

Clause 15 – Section 85A – Assistance for child or young person

3.39 The Bill inserts new section 85A which formalises the CEO's obligation to provide assistance to support a young person's transition to independence. A young person who has left the CEO's care is defined as between 15 and 25 years of age (s68 of the Act).

3.40 Several submitters expressed concern regarding the discretionary nature of proposed s85A(3) which provides that the CEO *may* assist the child or young person to obtain a range of services such as education and training, employment, financial security, accommodation and so on. This sub-section is contrasted with proposed s85A(4) which requires that the CEO *must* provide the assistance required to maintain living arrangements to a child who turns 18 while attending educational or training courses, and that this must be provided until they have completed the course.

3.41 NAAJA commented that the government's obligation to support young people transitioning from care should not be tied to educational enrolment and recommended that ongoing assistance should be provided until age 25.[34] The Create Foundation held similar views but recommended support be continued until age 21 and that this should be explicit in the legislation.[35] NTCOSS recommended that proposed s85A be further strengthened to:

> include an obligation to provide or arrange financial assistance to access education, training, housing and health care, through the insertion of 'must rather than 'may in Clause 15 Part 2.2, Division 5, section 85A sub-section 5.[36]

3.42 The Committee sought clarification from the Department as to why the provision of the supports specified in proposed s85A(3) are at the CEO's discretion while the

[34] NAAJA, Submission 2, p. 4.
[35] Create Foundation, Submission 6, pp. 7-8.
[36] Northern Territory Council of Social Services (NTCOSS), Submission 7, p. 3.

provision of supports to a child turning 18 years while attending a course of education or training is mandatory and was advised that:

> 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.[37]
>
> Section 85A(4) goes further by requiring Territory Families to provide the assistance necessary to support a child or young person who turns 18 while attending a course of education or training so that their living arrangements are maintained until they complete the course or training. The Minister referenced 'Horror Stories' within her explanatory speech when introducing this Bill. This refers to situations where funded providers ask children to leave the placement on the day of their eighteenth birthday. This amendment is important to ensure that children or young people in care do not experience disruptions in their living arrangements if they turn 18 while trying to complete a course of education or training – most likely year 12 in high school.[38]

3.43 NTCOSS further recommended that, in line with Royal Commission Recommendation 33.23, 'consideration be given to including a provision under section 85A to oblige the CEO to implement a follow up procedure for a young person who has left the care of the CEO'.[39]

3.44 The Department advised that:

> It is not necessary or desirable to legislate the practice sought by recommendation [33.23]. 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.[40]

Committee's Comments

3.45 The Committee is satisfied with the Department's advice regarding proposed sections 85A(3) and (4). It notes that many of the Royal Commission recommendations can be implemented at the operational level and is satisfied with the Department's advice that this is the case for Royal Commission Recommendation 33.23.

3.46 The Committee notes that in proposed s85A(4) there is a definitional problem with using the term 'child' to refer to the young person even after they have turned 18 and are therefore no longer a 'child'. The Committee recommends that this section be amended accordingly.

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[37] Territory Families, Responses to Written Questions, 17 May 2019, p. 4, https://parliament.nt.gov.au/committees/EPSC/82-2019.
[38] Territory Families, *Responses to Written Questions*, 21 May 2019, p. 4, https://parliament.nt.gov.au/committees/EPSC/82-2019.
[39] NTCOSS, Submission 7, p. 4.
[40] Territory Families, *Responses to Written Questions*, 17 May 2019, p. 5, https://parliament.nt.gov.au/committees/EPSC/82-2019.

Recommendation 3

The Committee recommends that proposed section 85A(4) be amended to remove the second and third instances of the word 'child' and replace with terminology that is appropriate to a person aged 18 years or over.

Clauses 17 and 22, sections 104A and 124 – Notice of Applications

3.47 New section 104A requires that notice of an application for a temporary protection order be given to each parent and carer of a child after an application for a temporary protection order is made, and that this must occur prior to the matter being heard by the Court. This section also provides for a copy of the application to be given to the parent and carer if practicable.

3.48 Proposed s124 relates to a notice of application for a protection order. It specifies that both the notice and the application must be personally served on the parent and the carer unless the Court is satisfied that personal service is impracticable. It further requires that: the duration and effect of the notice must be explained in the person's preferred language or, if this is not practicable, in a language and manner that the person understands; and that the effect of the application and the notice be explained to the child and, if appropriate, a copy of both documents be given to the child.

3.49 Both the Law Society and the NT Legal Aid Commission objected to the requirement that the carer, as well as the parent, be provided with the notice and the application. Key concerns raised include:

- Lack of clarity regarding the definition of the term 'carer'.[41]
- The fact that these proposed sections provide for the documents to be served on the carer and may have the effect of making the carer a party to proceedings.[42]
- Under s125 of the Act, carers are not listed as parties to proceedings and therefore should not have access to application documents;[43]
- Documentation associated with these applications includes an affidavit which contains confidential and sensitive information and may include unproven allegations against the parents. Release of this information to those who are not parties to the proceedings has a range of financial, legal and social implications.[44]

3.50 The Committee notes that the term 'carer', in relation to placement arrangements, is defined in s78(1) and that it includes: a parent of the child; a family member of the child; and an individual approved by the CEO.[45]

[41] NT Legal Aid Commission, Submission 9, p. 4.
[42] Law Society NT, Submission 5, p. 2; NT Legal Aid Commission, Submission 9, p. 4.
[43] Law Society NT, Submission 5, p. 2.
[44] Law Society NT, Submission 5, p. 3; NT Legal Aid Commission, Submission 9, p. 4-5.
[45] *Care and Protection of Children Act 2007,* s78(1) – also refer to s13 (Interpretation).

3.51 Regarding the concern that service of documents could have the effect of making the carer a party to proceedings, the Committee understands that service of documents would not have this effect unless the person has already been listed as a party to proceedings.

3.52 The overriding concern of submitters relates to the potential negative impacts that could arise from the provision of an application containing confidential and sensitive information to a foster or kinship carer, with the NT Legal Aid Commission commenting that:

> Applications are often supported by affidavits containing highly sensitive or even inflammatory material which, if served on foster carers, is apt to cause avoidable and often misplaced concern or distress. They may assume that this untested evidence is true and correct, and potentially feel it is their obligation to intervene in court proceedings, possibly driven by a duty to protect the children entrusted in their care, encourage children to voice their concerns about parents, alienate children from their parents and endeavour to restrict contact between children and parents. It hinders the cooperative relationship a parent may develop with carers and is a missed opportunity for carers who are willing to model appropriate parenting, discipline and routines to parents open to learning the same.[46]

3.53 The Committee sought comment from the Department regarding the concerns expressed by submitters. In relation to proposed s104, the Department noted that 'a child for whom a Temporary Protection Order is sought will not have a foster or kinship carer' and advised that:[47]

> The use of the word 'carer' was intended to ensure we covered the situation when a Temporary Protection Order is sought when the child is not with someone who is defined under the Act as their parent, or someone who holds parental responsibility. Territory Families is preparing an amendment to the Bill to clarify this clause. [48]

3.54 In relation to proposed s124, the Department advised that:

> 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.[49]

3.55 The Committee sought clarification from the Department regarding how these privacy protections would be achieved and was advised that:

> Territory Families is working with key stakeholders, including legal services and staff from the Solicitor for the Northern Territory to consider how best to amend court forms and supporting documents to achieve the intent of this amendment.

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[46] NT Legal Aid Commission, Submission 9, p. 5.
[47] Territory Families, *Responses to Written Questions*, 17 May 2019, p. 5, https://parliament.nt.gov.au/committees/EPSC/82-2019.
[48] Territory Families, *Responses to Written Questions*, 21 May 2019, p. 4, https://parliament.nt.gov.au/committees/EPSC/82-2019.
[49] Territory Families, *Responses to Written Questions*, 17 May 2019, p. 6, https://parliament.nt.gov.au/committees/EPSC/82-2019.

> This proposed amendment to the legislation was intended to recognise the importance of carers in the life of the child, and acknowledge that they often have closest day to day relationship and information about children in out-of-home care. It was not intended to provide carers with significant personal details of third parties and Territory Families is considering possible amendments to this clause to reflect this intent.[50]

Committee's Comments

3.56 The Committee acknowledges submitters' concerns and concurs that it is not appropriate to provide the application for a protection order to foster or kinship carers given the sensitive and confidential information it may contain. The Committee is satisfied with the Department's explanation regarding the primary intent of these amendments and notes their advice that they are currently considering amendments to clarify the intent of both proposed s104A and s124, and to ensure that confidential and sensitive information is not released to inappropriate people.

Recommendation 4

The Committee recommends that the Bill be amended to ensure that confidential and sensitive information, such as that which may be contained in an application for a protection order, is not given to any inappropriate persons.

Clause 18 – Section 106 amended - Notice of Order

3.57 Proposed s106 sets out the provisions for serving a notice of order in regard to temporary protection orders. As noted in the Explanatory Statement, the Royal Commission found substantial evidence to indicate that families often do not understand the child protection system and associated processes, with this resulting in 'distrust, disempowerment and reluctance to engage with Territory Families'.[51]

3.58 The focus of this amendment is to ensure that 'regardless of the circumstances, children and their families are able to understand the reasons for, and the effect and duration of, a temporary protection order'.[52] The amendments require that when the order is given, the duration and effect of the order must be explained in a language and manner that the child understands. In addition, where practicable, the CEO must give a copy of the order to a parent who has been given parental responsibility for the child and explain the duration and effect of the order in the person's preferred language, or in a language and manner that the person understands. The amendment also requires that the parent be given a copy of the application if they have not already received one under proposed s104A(2).

[50] Territory Families, *Responses to Written Questions*, 21 May 2019, p. 5, https://parliament.nt.gov.au/committees/EPSC/82-2019.
[51] Explanatory Statement, *Care and Protection of Children Amendment Bill 2019 (Serial No. 82)*, p. 8, https://parliament.nt.gov.au/committees/EPSC/82-2019.
[52] Explanatory Statement, *Care and Protection of Children Amendment Bill 2019 (Serial No. 82)*, p. 8, https://parliament.nt.gov.au/committees/EPSC/82-2019.

3.59 The Committee understands that this clause implements part of Royal Commission Recommendation 34.15 which states:

> Amend section 106 of the *Care and Protection of Children Act* (NT) to include the requirement that at the time the order is given to a parent of the child, the length and effect of the order, the right of appeal and information about how to appeal must be appropriately explained to the parent in their preferred language.[53]

3.60 Both CAAFLUAC and the NT Legal Aid Commission have drawn attention to the absence of provisions setting out the right to appeal or guidance on how to appeal once an order has been made, with CAAFLUAC commenting that:

> We believe this section should also include a further subsection in accordance with the Royal Commission's recommendation 34.15 so that the CEO has an obligation to explain that the person served has a right of appeal and how to appeal. We would also like this to include a proactive approach to referrals to legal services so that the CEO has an obligation to offer a referral to a relevant legal service as part of the information they are required to provide.[54]

3.61 The NT Legal Aid Commission noted that:

> Section 140 of the Act currently prevents respondents appealing Temporary Protection Orders. We have raised this issue with Territory Families on a number of occasions as a clear denial of natural justice. Temporary Protection Orders can be made consecutively up to two occasions (for a total of 28 days) subsequent to a Provisional Protection Order. This is out of step with other jurisdictions which, for example, provide an appeal mechanism for similar orders, some of only 3 days duration.[55]

3.62 The NT Legal Aid Commission emphasised the importance of an appeal mechanism for Temporary Protection Orders as a means of: giving effect to the Royal Commission's recommendations; improving accountability and transparency of Territory Families; alleviating power imbalances between Territory Families and parents; and encouraging Territory Families to work collaboratively with parents from the outset of proceedings.[56]

3.63 The Committee sought clarification from the Department as to why provisions on the right of appeal, as per Royal Commission Recommendation 34.15, have not been included in the amendment and was advised that:

> 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.[57]

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[53] Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Findings and Recommendations*, p. 48, https://www.royalcommission.gov.au/sites/default/files/2019-01/rcnt-royal-commission-nt-findings-and-recommendations.pdf.

[54] CAAFLUAC, Submission 4, p. 2.

[55] NT Legal Aid Commission, Submission 9, p. 6 (refers to Child Protection Act (1999) QLD S.51AG https://www.leKJslation.qld.Rov.au/view/html/inforce/current/act-1999-010ffsec.51AG and s.ll7 https://www.legislation.qld.Rov.au/view/html/inforce/current/act-1999-010#sec.ll7).

[56] NT Legal Aid Commission, Submission 9, p. 6.

[57] Territory Families, *Responses to Written Questions*, 17 May 2019, p. 6, https://parliament.nt.gov.au/committees/EPSC/82-2019.

Committee's Comments

3.64 The Committee is satisfied with the Department's advice that rights of appeal against Temporary Protection Orders will be considered when developing a single Act.

Clauses 19 and 24 – s121 Applying for Protection Order and Section 129 – When Court must make an order

3.65 Proposed s121 outlines the circumstances under which the CEO may apply for a protection order while proposed s129 outlines the circumstances under which the Court must make a protection order. Currently, a condition of making the decision for both s121 and s129 is that 'the order is the best means of safeguarding the wellbeing of the child'.[58] The amendments replace these subsections with a requirement that the proposed order is '(i) appropriate; and (ii) the least intrusive means to safeguard the wellbeing of the child'.[59] The amendments are in line with Royal Commission Recommendation 34.1 and further embed the principle of least intrusive intervention as set out in proposed s10A.

3.66 These amendments were strongly supported by submitters, however the NT Legal Aid Commission suggested additional amendments to these sections on the basis that:

> The grounds for applying for a protection order in s.l21(1)(a) and when a Court must make an order in s.l29(a) should be simplified to provide for greater clarity and alignment with other jurisdictions by deleting subsections (ii) in both: 'would be in need of protection but for the fact that the child is currently in the CEO's care, and' which is at odds with the definition of when a child is in need of protection in s. 20 and the definition of harm itself.[60]

3.67 The Committee further heard from the NT Legal Aid Commission that the provision was troubling because:

> there may be circumstances where a child may find their way into the care of the CEO but the child may not necessarily have been in need of care and protection or is no longer in need of care and protection, and it may well be that the order is not appropriate.
>
> The way this provision is designed seems to give a lot more latitude to an order or application being made. Some of the examples I am referring to—where temporary protection orders may have been made without involvement of the family with very limited evidence before the court. As you have seen from my submissions, there are no appeal rights from the Temporary Protection Order now to a higher court. That is troubling of and in itself because of the rules of natural justice and the length of the orders that can be made—14 days for a Temporary Protection Order plus a further extension of that to another 14 days, so that is 28 days.
>
> In circumstances where parents or family members may not be aware that this order has been made and there is no other evidence before the court, it may well be that the evidence that has been put before the court was limited. Perhaps

[58] *Care and Protection of Children Act,* s121(b) and s129(b), p. 74.
[59] Care and Protection of Children Amendment Bill 2019 (Serial 82), Clauses 19 and 24, https://parliament.nt.gov.au/committees/EPSC/82-2019.
[60] NT Legal Aid Commission, Submission 9, p. 5.

> Territory Families had very limited evidence itself or incorrect evidence, which was the grounds for the making of the application. Later, with a bit more scrutiny or an opportunity for further evidence to be placed before the Court, perhaps that order was not necessary in the first place.[61]

3.68 The Committee sought comment from the Department regarding these concerns and was advised that:

> 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.
>
> 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.[62]

Committee's Comments

3.69 The Committee is satisfied with the Department's advice.

Clause 21 – Section 123 amended – Directions in protection order

3.70 Proposed s123 provides that the 'CEO must do, or refrain from doing, a specified thing related to the care of the child', thereby clarifying that the CEO is subject to the same level of accountability as that which is currently expected of vulnerable families.

3.71 The NT Legal Aid Commission recommended that the intent of this provision 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'.[63]

3.72 The Committee sought clarification from the Department regarding the effect this would have on the operation of the Bill and was advised that 'Including a note of this type would not affect the meaning of the provision'.[64]

Committee's Comments

3.73 The Committee is satisfied with the Department's advice and considers that the provision is sufficiently clear.

Issues raised but not directly within scope of the Bill

3.74 Submitters raised a number of issues that are not directly within the scope of the Bill but which are related to Royal Commission recommendations. As noted in Chapter 2, reforms recommended by the Royal Commission are being implemented over several years and through a variety of mechanisms not all of which are legislative in

[61] Jaquie Palavra, NT Legal Aid Commission, Committee Transcript, pp. 23-24.
[62] Territory Families, *Responses to Written Questions*, 17 May 2019, p. 6-7, https://parliament.nt.gov.au/committees/EPSC/82-2019.
[63] NT Legal Aid Commission, Submission 9, p. 4.
[64] Territory Families, *Responses to Written Questions*, 17 May 2019, p. 7, https://parliament.nt.gov.au/committees/EPSC/82-2019.

nature. Key relevant issues that have not been addressed in the Bill but which have been raised by submitters are discussed below.

Defining the term 'Aboriginal Kinship Carers'

3.75 Congress recommended that the Bill be amended to more clearly define the term 'Aboriginal Kinship Carers' and proposed that 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'.[65]

3.76 The Department has advised that definitions of key terms and concepts, such as Aboriginal Kinship Carers, are currently being explored with 'key Aboriginal partners, and in consultation with communities, families and Aboriginal practice leaders and staff'.[66] These terms and concepts will be considered as part of the new Single Act for children and through other system reforms. Although there are some issues with providing a strict legal definition, as per Congress's recommendation (it would require a family group conference to occur before anyone would fit the definition of kin), it may be possible to introduce this 'when the system and legislation is rewritten through the Single Act'.[67]

Administrative Review Mechanism

3.77 In line with Royal Commission Recommendation 33.7, both NAAJA and CAAFLUAC recommended an amendment to create an administrative review mechanism, such as the Northern Territory Civil and Administrative Tribunal (NTCAT), to review decisions on child placements and other factors that impact on an Aboriginal child's continued cultural connection.[68]

3.78 The Department has informed the Committee that:

> The Northern Territory Government has committed to exploring a range of review and monitoring mechanisms. This includes the expansion of the role of the Office of the Children's Commissioner and the jurisdiction of the Northern Territory Civil and Administrative Tribunal to review decisions made by Territory Families. This will require complex jurisdictional matters to be further considered and explored. In particular balancing complex social decisions with legal appeal processes so that outcomes remain focussed on the lives of vulnerable families and children requires careful consideration. This will be best delivered through the single Act for children.[69]

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[65] Central Australian Aboriginal Congress Aboriginal Corporation (Congress), Submission 3, p. 3.
[66] Territory Families, *Responses to Written Questions*, 21 May 2019, p. 5, https://parliament.nt.gov.au/committees/EPSC/82-2019.
[67] Territory Families, *Responses to Written Questions*, 17 May 2019, p. 7, https://parliament.nt.gov.au/committees/EPSC/82-2019; Territory Families, *Responses to Written Questions,* 21 May 2019, p. 5, https://parliament.nt.gov.au/committees/EPSC/82-2019
[68] CAAFLUAC, Submission 4, p. 3; NAAJA, Submission 2, p. 6.
[69] Territory Families, *Responses to Written Questions*, 21 May 2019, p. 7, https://parliament.nt.gov.au/committees/EPSC/82-2019.

Family Group Conferencing

3.79 Family group conferencing has been identified as an important mechanism for facilitating appropriate decisions for Aboriginal children, with CAAFLUAC stating that Royal Commission Recommendations 34.7 to 34.10 should be implemented in full.[70] Recommendations 34.7 and 34.9 relate to mediation while 34.8 and 34.10 relate directly to Family Group Conferencing.

3.80 The Department has advised the Committee that:

> The Government has committed to implementing family group conferencing and is in the process of consulting stakeholders and staff on the development of an appropriate model. The model will be developed through consultation with Aboriginal organisations and communities to ensure that the model is flexible and tailored to the Northern Territory context. The model will become operational in 2019-20 as part of the current child protection practice.
>
> Territory Families consideration of Family Group Conference include consideration of the New Zealand model and will also explore other recent pilot programs such as family led decision making models in Aboriginal communities in Queensland.
>
> It is important to distinguish between the process of child protection safety assessment, family involvement in safety planning and court mediation. As a model of engagement, family group conferencing sits within a spectrum of practice, and its formalisation into the law and regulation is not necessary for it to occur as part of good practice. Family Group Conferencing will commence in policy and procedure in 2019-20 and its formalisation into law will be considered as part of the Single Act for Children in 2021.[71]

3.81 The Committee understands that, in relation to legislative change, both Family Group Conferencing and Mediation Conferences will be considered in tandem when developing the Single Act for Children.

Increased role for Aboriginal and Torres Strait Islander Agencies

3.82 Both SNAICC and Danila Dilba advocate for an increased role for Aboriginal and Torres Strait Islander Agencies, particularly as a means to facilitate Aboriginal family-led decision making, such as through Family Group Conferencing.[72] SNAICC recommended that a section be inserted into the Bill 'mandating that the Court cannot make a permanent care order unless it has received a report from an Aboriginal or Torres Strait Islander agency that recommends the making of the order' while Danila Dilba recommended that future reforms 'Begin a transition to Aboriginal Child Care Agencies taking a stronger role in the care and protection assessments and placements of Aboriginal Children'. [73]

3.83 The Department has advised the Committee that:

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[70] CAAFLUAC, Submission 4, p. 3; Congress, Submission 3, p. 3; Danila Dilba, Submission 8, p. 10; Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Findings and Recommendations*, p. 53, https://www.royalcommission.gov.au/sites/default/files/2019-01/rcnt-royal-commission-nt-findings-and-recommendations.pdf.

[71] Territory Families, *Responses to Written Questions*, 21 May 2019, p. 7, https://parliament.nt.gov.au/committees/EPSC/82-2019.

[72] SNAICC, Submission 10, pp. 4-5; Danila Dilba, Submission 8, p. 10.

[73] SNAICC, Submission 10, p. 8.

> 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.[74]

Involving Aboriginal Cultural Authorities

3.84 The Committee considers it important to recognise the role played by Aboriginal cultural authorities and identifies this as a gap in the current Act. Mr Guyula, the Member for Nhulunbuy, notes that Aboriginal children in communities are part of a kinship network and governance structure that is determined by their culture. As such, it would be appropriate to acknowledge authorities from the child's cultural group and include these authorities in the sharing of information for the safety and wellbeing of the child. The Member recommends that future reforms to the Act give consideration to the inclusion of Aboriginal cultural authorities as one of the Information Sharing Authorities set out in Part 5.1A, Division 1, Section 293C(1). An example of an Aboriginal cultural authority, within Yolŋu culture, might be a Märi, Ḏathi, Momu, Märi-mu (maternal and paternal grandparents) or Elder within the child's close kin.

Committee's Comments

3.85 The Committee considers that while the recommendation to include Aboriginal cultural authorities as one of the Information Sharing Authorities listed in s293(c) is outside the scope of the Bill, it is an important matter for consideration in any future reforms to the Act.

[74] Territory Families, *Responses to Written Questions,* 17 May 2019, p. 8, https://parliament.nt.gov.au/committees/EPSC/82-2019.

Appendix A: Submissions Received and Public Hearings

Submissions Received

1. Department of Local Government Housing and Community Development
2. North Australian Aboriginal Justice Agency (NAAJA)
3. Central Australian Aboriginal Congress (Congress)
4. Central Australian Aboriginal Family Legal Unit (CAAFLU)
5. Law Society NT (Law Society)
6. Create Foundation
7. Northern Territory Council of Social Services (NTCOSS)
8. Danila Dilba Health Service (Danila Dilba)
9. Northern Territory Legal Aid Commission (Legal Aid Commission)
10. National Voice for Our Children (SNAICC)

Public Hearing – Darwin - 21 May 2019

North Australian Aboriginal Justice Agency

- Clara Mills: Managing Solicitor, Civil Law

Law Society NT

- Russell Goldflam: Policy Officer

Central Australian Aboriginal Family Legal Unit

- Anna Potter: Legal Practitioner

Danila Dilba Health Service

- Joy Mclaughlin: Senior Policy Officer, Strategy and Reform
- Jackson Bursill: Policy Officer

Northern Territory Legal Aid Commission

- Jaquie Palavra: Managing Solicitor, Family Law Section

Private Individual

- Rose Lanybalanyba

Territory Families

- Jeanette Kerr: Deputy CEO Families and Regional Services
- Luke Twyford: Executive Director Strategy, Policy & Performance
- Seranie Gamble: Director Strategy and Policy
- Joy Simpson: Senior Practice Leader, Clinical and Profession Practice
- Leadership Directorate

Note: Copies of submissions, hearing transcripts and tabled papers are available at: https://parliament.nt.gov.au/committees/EPSC/82-2019.

Bibliography

Care and Protection of Children Act 2007 (NT)

Explanatory Statement, *Care and Protection of Children Amendment Bill 2019 (Serial No. 82)*, https://parliament.nt.gov.au/committees/EPSC/82-2019

Hon Dale Wakefield MLA, Minister for Territory Families, Parliamentary Record, *Draft - Daily Hansard – Day 5 – 20 March 2019*, p. 9, http://hdl.handle.net/10070/306552

Northern Territory Government (NTG), *Safe, Thriving and Connected: Generational Change for Children and Families, 2018-2023*, https://rmo.nt.gov.au/__data/assets/pdf_file/0006/498174/Safe,-Thriving-and-Connected-Overview-of-the-Plan.pdf

Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Findings and Recommendations*, https://www.royalcommission.gov.au/sites/default/files/2019-01/rcnt-royal-commission-nt-findings-and-recommendations.pdf

Statement of Compatibility with Human Rights, *Care and Protection of Children Amendment Bill 2019 (Serial 82)*, https://parliament.nt.gov.au/committees/EPSC/82-2019

Territory Families, *Responses to Written Questions,* 17 May 2019, https://parliament.nt.gov.au/committees/EPSC/82-2019

Territory Families, *Responses to Written Questions,* 21 May 2019, https://parliament.nt.gov.au/committees/EPSC/82-2019