

Commissioner Natalie Lewis
Office of the Aboriginal and Torres Strait Islander Children's Commissioner

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

22 May 2026



Acknowledgement of Country

The Office of the Aboriginal and Torres Strait Islander Children's Commissioner acknowledge Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies where we walk, live and work.

We recognise Aboriginal and Torres Strait Islander people as two unique peoples, with their own rich and distinct cultures, strengths and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to Elders past, present and emerging.

We acknowledge the important role played by Aboriginal and Torres Strait Islander communities and recognise their right to self-determination, and the need for community-led approaches to support healing and strengthen resilience.

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Queensland Family and Child Commission**

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Introduction

The Queensland Aboriginal and Torres Strait Islander Children's Commissioner (the Commissioner) strongly rejects the Northern Territory (NT) Governments Bill which recasts the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) as a discretionary placement tool rather than a comprehensive protective framework. The Legislative Assembly should reject all elements of the Bill which stand to severely impact the lives of Aboriginal children, families and communities in the NT.

Aboriginal children remain profoundly overrepresented within the NT child protection system. They are removed from their families and enter care at rates 11.2 times higher than non-Indigenous children.ⁱ The NT records the nation's highest proportion of Aboriginal children in out-of-home care living with non-Indigenous non-relative carers (74.3 per cent) and the lowest proportion placed with Aboriginal relatives or kin nationally (16.7 per cent).ⁱⁱ The scale and persistence of Aboriginal children's overrepresentation in the NT child protection system is not a neutral statistical outcome, but a warning sign of systemic failure and an indicator that the system itself may be contributing to harm experienced by Aboriginal children, families and communities.

A substantial body of evidence demonstrates that child protection intervention itself can create serious and foreseeable harm for children and families.^{iii iv v} This harm is not limited to individual decision-making but can arise from the design and operation of the system itself, including governance arrangements, funding models, policies and risk settings that cumulatively produce harmful outcomes.^{vi} Current child protection frameworks focus almost exclusively on assessing parental risk, with no equivalent mechanism requiring the State to identify, assess or remediate harm caused by its own interventions.

Any proposed legislative amendments should ensure the State, as corporate parent, assumes responsibility for meeting a child's safety, developmental, cultural and emotional needs. Yet, these proposed amendments further weaken core human rights, rule of law and best interests safeguard that guides how the State enacts power in the lives of Aboriginal children and families. This creates a significant accountability gap within a system where the State is both decision-maker and service provider, despite clear obligations under the Convention on the Rights of the Child to prevent foreseeable harm, including harm arising from its own systems and practices. Concerningly, the reforms appear predicated on a fundamental misunderstanding and misrepresentation of the core purpose and intent of the Aboriginal and Torres Strait Islander Child Placement Principle.

The ATSICPP was developed precisely because of the known harms caused by the unnecessary separation of Aboriginal children from kinship, culture and Country. It is not a discretionary placement preference. In a system marked by extreme overrepresentation, the nation's lowest kinship placement outcomes and longstanding evidence of systemic harm, the evidence-based response must be to strengthen the implementation and enforceability of **all five elements of the ATSICPP** in NT legislation, not further erode the already limited representation (ie being simply oriented towards a preferred placement hierarchy) of the ATSICPP that currently exists at law in the Northern Territory.

Why the Aboriginal Child Placement Principle Exists

The ATSI CPP developed incrementally through comparative research, intergovernmental policy deliberation, and legislative adoption over several decades. Its conceptual origins can be traced by the NSW Law Reform Commission to the United States Indian Welfare Act,^{vii} which itself was enacted in response to disproportionate systemic removals of Native Indian children. Analogous principles were proposed in Australia as early as 1979 and first legislated in NSW in 1987.^{viii}

Aboriginal and Torres Strait Islander children have the right to grow up safe, loved and connected to their families, communities and culture. The principle is a critical safeguard designed to protect that right and must not be weakened.

The Aboriginal and Torres Strait Islander Child Placement Principle (ATSI CPP) is a nationally recognised statutory framework that structures the exercise of child protection powers in relation to Aboriginal and Torres Strait Islander children. It emerged in response to documented systemic over-removal of Aboriginal and Torres Strait Islander children and is designed to ensure that welfare decision making properly accounts for kinship systems, cultural identity and connection to Country as legally relevant components of long-term wellbeing.

The principle is built on **five connected elements** that operate together:

- **Prevention:** supporting families early to prevent unnecessary removal
- **Partnership:** genuine collaboration with Aboriginal and Torres Strait Islander communities and organisations
- **Placement:** prioritising care with family, kin or community where removal is necessary
- **Participation:** ensuring children, families and communities have a voice in decisions
- **Connection:** maintaining ongoing connection to culture, identity, family and Country.

The ATSI CPP operates within, not as an exception, to the paramountcy of safety and best interests. Appellate authority confirms that placement principles operate as integrative, not hierarchical. In *Hackett (a pseudonym) v Secretary, Department of Communities and Justice* [2022] NSWCA 170, the NSW Court of Appeal held that Aboriginal placement principles must be applied, but best interests remain paramount where a true conflict arises. The ATSI CPP therefore refines and informs the best interests inquiry by identifying the cultural, relational and identity-based factors that are relevant to long-term welfare and stability. Its application does not displace or dilute the primacy of a child's safety and best interests. **It operates as a structured means to achieve that end, not as an end in and of itself.**

Removing the ATSI CPP would not 'restore' best interests. Rather, it would widen the scope for unstructured discretion in determining what best interests require. Without it, a decision maker could satisfy an abstract best interests test while authorising placement that severs a child's connection to family, community and culture. The principle functions to ensure that those dimensions of wellbeing are expressly and systematically considered within the best interests analysis.

Consistently with Australian jurisprudence recognising Indigenous identity, customary systems and connection to land as legally cognisable, cultural identity is not ancillary to welfare but central to long-term stability and wellbeing. The ATSI CPP ensures those legally relevant considerations are brought into view and weighed in a consistent, reviewable way. Its removal would not strengthen the best interests standard; it would treat Aboriginal and Torres Strait Islander children as culturally indistinguishable within a system that has already demonstrated the consequences of that assumption.

The ATSI CPP does not mandate outcomes. It does not create a veto, prohibit removal, or prevent adoption. Its function is structural: to guide discretion and improve decision quality in high-stakes, potentially irreversible determinations by ensuring that culturally sustaining options are systematically considered. While placement sequencing is an important operational component, it is only one element of a broader framework that emphasises prevention, participation, partnership and connection. Properly understood, the Principle is a decision-structuring safeguard, not a barrier to lawful intervention or permanency.

Human Rights Safeguard

The ATSI CPP embeds self-determination into child protection by requiring governments to work in genuine partnership with Aboriginal and Torres Strait Islander families and communities, and to recognise their authority in decisions about their children. As an essential safeguard grounded in the right of Aboriginal and Torres Strait Islander peoples to care for and raise their own children, it provides a framework for child protection that prioritises children's safety while preserving identity, belonging and long-term wellbeing.

The ATSI CPP operates as a critical human rights safeguard within the child protection system by recognising that the safety, wellbeing and best interests of Aboriginal children cannot be separated from their rights to family, culture, identity and self-determination. Grounded in the principles of the Convention on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous Peoples, the ATSI CPP seeks to protect Aboriginal children from the known harms of unnecessary separation from family, community and Country by requiring prevention, participation, partnership, cultural connection and placement with kin wherever possible. In this way, the ATSI CPP is not ancillary to a child's safety, but one of the primary mechanisms through which child protection systems can intervene in a manner that is lawful, culturally safe and compatible with the human rights of Aboriginal children and families.

The ATSI CPP does not create special or additional rights for Aboriginal children; it recognises and gives practical effect to rights that have been consistently ignored and denied throughout Australia's history of removing Aboriginal children from their families, cultures and Countries.

Rule of Law Safeguard

The ATSICPP can be best understood to have emerged as a direct legal response to identified systemic failure in child welfare systems. Throughout much of the twentieth century, Aboriginal and Torres Strait Islander children were removed under welfare standards then understood to reflect their best interests. Subsequent inquiries that removals often occurred without adequate inquiry into kin or community alternatives, that kinship systems and cultural identity were disregarded, and that welfare standards were applied without cultural contexts.^{ix}

Under established principles of interpretation and administrative law, statutory powers must be exercised for the purposes for which they are conferred and having regards to legally relevant considerations.^x Parliament is presumed not to abrogate or dilute fundamental rights or established protections without clear intention.^{xi} The ATSICPP performs precisely that rule of law function. By prescribing mandatory consideration, sequencing requirements and participatory obligations, the ATSICPP contains discretion, enhances transparency of reasoning, and renders decisions more reviewable against articulated statutory criteria. It does not provide immunity from intervention. It regulates how intervention is structured and justified.

It is important to acknowledge that there is no requirement for the proposed amendments to provide identical treatment to children in the child protection system where there are materially different circumstances. Rather, it requires equal protection of the law. Substantive equality recognises that materially different contexts may warrant differentiated statutory considerations. Indeed, equal treatment in materially unequal circumstances can entrench, rather than remedy, inequality.

As discussed above, Aboriginal children are disproportionately over-represented in the NT child protection system. That over-representation is a legally and socially relevant difference. Australian law has long recognised that relevant difference may warrant differentiated statutory treatment. For example, native title jurisprudence recognises the juridical significance of tradition laws and customs; and cultural heritage legislation affords distinct protection to Aboriginal cultural sites and objects. In each of these areas, Parliament has acknowledged legally relevant difference to secure equal protection of the law. The ATSICPP reflects the same orthodox legislative technique. It does not create exceptionalism; it gives structured recognition to difference that is already acknowledged in Australian jurisprudence, ensuring that best interests decision making is responsive to the lived and legal realities of Aboriginal and Torres Strait Islander children. Treating them as culturally indistinguishable from non-Indigenous children risks erasing legally relevant difference.

Equality before the law is weakened by removing Aboriginal-specific safeguards from a system in which Aboriginal children are overwhelmingly overrepresented.

Best Interests Safeguard

The ATSICPP operates within, not as an exception to the paramountcy of best interests. Appellate authority confirms that the principle operates integratively, not hierarchically. In *Hackett (a pseudonym) v Secretary, Department of Communities and Justice* [2022] NSWCA 170, the NSW Court of Appeal held that Aboriginal placement principles must be applied, but best interests remain paramount where a true conflict arises.^{xii} The ATSICPP therefore refines and informs the best interests inquiry by identifying the cultural, relational and identity-based factors that are relevant to long-term wellbeing and stability. Its

application does not displace or dilute the primacy of best interests. It operates as a structured means to achieve that end, not as an end in and of itself.

The current amendments by the NT government does not restore best interests. Instead, it stands to widen the scope of unstructured discretion in determining what best interests require for Aboriginal children in the NT. In fact, the amendments further weaken already weak legislation that enables decision-makers to satisfy an abstract best interests test while authorising placement that severs a child's connection (outcome) by means that effectively eliminates the need for Aboriginal self-determination through participation, partnership and opportunity for meaningful prevention (process). Current outcome data already demonstrates the consequences of failing to properly implement the ATSI CPP in practice; the solution is not to weaken or remove the principle from legislation, but to fully implement its intended safeguards through all five elements.

Australian jurisprudence consistently recognises Indigenous identity, customary systems and connection to land as legally cognisable, cultural identity is not ancillary to wellbeing but central to long-term stability and wellbeing.^{xiii} The principles therefore ensures those legally relevant considerations are established in the fabric of child protections systems and ensure these are brought into view and weighed in a consistent, reviewable way. Its removal weakens the best interest standard by treating Aboriginal children as culturally indistinguishable within a system that has already demonstrated the consequences of that assumption.

The ATSI CPP is not a discretionary placement preference. It is a core human rights, rule of law and best interests safeguard that guides how the State enacts child protection powers in the lives of Aboriginal children and families. In a system where Aboriginal children remain profoundly overrepresented, the ATSI CPP helps ensure decisions are culturally safe, accountable and responsive to children's rights. The proposed amendment further weakens these safeguards by reducing the ATSI CPP to a simplistic placement consideration, rather than implementing them as a comprehensive framework designed to keep children safe without severing their cultural foundations.

The ATSI CPP is the mechanism that gives substantive meaning to safety and enduring best interests for Aboriginal children.

Analysis of the Bill

The following section analyses those sections of the Bill which stand to negatively and disproportionately affect Aboriginal children living in the NT.

Permanency, stability and the risk of cultural harm

I am concerned by the Bill's strong emphasis on permanency and stability without sufficient recognition that, permanency is multi-dimensional (relational, physical and legal) and that for Aboriginal children, long-term wellbeing cannot be separated from safe and sustained connection to family, culture, community and Country. Stability is important for all children. However, a placement that disconnects an Aboriginal child from their identity, kinship and culture cannot automatically be assumed to be in their long-term best interests.

There is longstanding evidence that identity, belonging and emotional wellbeing for Aboriginal peoples are fundamentally grounded in kinship, culture and Country. Anthropologists documented this many decades ago, and Australian courts continue to recognise it today. In *Mabo v Queensland (No 2)*, the High Court recognised the deep and enduring connection between Aboriginal peoples and Country as central to identity and belonging. More recently, *Re Malakhai* [2022] NSW ChC 6 recognised that cultural connection and kinship are integral to the long-term welfare of Aboriginal children, not secondary considerations.

There is also substantial evidence that removing Aboriginal children from family, culture and community can cause serious and lifelong harm. This includes identity disruption, trauma, loss of belonging and disconnection from culture and community. The Bringing Them Home Report found that the effects of separating Aboriginal children from family and culture were multiple and profoundly disabling. Contemporary First Nations scholars continue to warn that child protection systems themselves can become sites of structural and cultural harm where cultural continuity and self-determination are not properly protected.

In this context, the principle is a critical safeguard. It exists to ensure that decisions about Aboriginal children properly consider the lifelong importance of identity, culture and belonging, rather than relying on narrow concepts of placement stability alone. I am concerned that the proposed amendments do not strengthen implementation of the ATSI CPP, but instead risk legislating and reinforcing existing practice where the principle is already treated primarily as a broad placement consideration, rather than as a comprehensive safeguard against the unfettered government control over Aboriginal lives.

The NT government should fully implement the principle and address the systemic failures that are placing children and families at risk, rather than altering the framework designed to prevent harm. Removing or weakening the principle shifts the focus away from strengthening self-determination, community leadership and shared decision-making, and toward centralised control, despite evidence that culturally grounded approaches improve safety, stability and long-term wellbeing.

There is substantial evidence demonstrating that identity, social existence and emotional wellbeing for Aboriginal peoples are fundamentally grounded in kinship, culture and Country.^{xiv xv xvi} The psychological harm arising from the removal of Aboriginal children is not unforeseeable.

The current legislative environment in the NT

The NT already operates within one of the weakest legislative environments in Australia for the implementation of the ATSICPP, with existing provisions remaining heavily weighted toward placement considerations rather than embedding the comprehensive five-element framework as agreed by all signatories to the National Framework for Protecting Australia's Children – Safe and Supported. Key gaps have endured in the NT in relation to implementation of the Prevention, Partnership and Participation elements of the ATSICPP. **Legislating the ATSICPP, incorporating all 5 constituent elements (being Prevention, Partnership, Participation, Placement and Connection) presents as a far more comprehensive and effective action to achieve the stated objects of the Bill.**

These legislative and implementation gaps limit self-determination and have contributed to the continued failure of the NT child protection system to sufficiently recognise, protect and uphold the rights of Aboriginal children, families and communities. Reviews have identified insufficient investment in culturally safe, community-controlled early intervention and family support services, alongside limited statutory mechanisms requiring shared decision-making or genuine transfer of authority to Aboriginal community-controlled organisations.^{xvii}

Nationally consistent implementation is essential to ensure every Aboriginal and Torres Strait Islander child, regardless of where they live, can grow up **safe, connected to culture and supported by an effective system.**

I am concerned that the proposed reforms do not address these underlying implementation and accountability gaps. Instead of strengthening the ATSICPP as a rights-based, equality before the law and best interests safeguard within a system already marked by extreme overrepresentation and poor cultural placement outcomes, aspects of the Bill risk further diluting the limited protections that currently exist. In my view, the proposed amendments risk codifying the existing culture and operational practice of the NT child protection system, where the ATSICPP is already applied narrowly and inconsistently, rather than strengthening the implementation, accountability and enforceability of all five elements as intended (and agreed under Safe and Supported).

Mainstreaming or specialised focus

The previous section gives rise to concerns about the ability of the current child protection system in NT to respond to the best interests of Aboriginal children through a mainstreaming approach. Yet, the claim made by the proposed amendments is that there is no need for a specialised focus for Aboriginal children and families in the proposed legislation changes. The amendments propose that First Nation's child protection matters are everybody's responsibility. However, the notion that there is sufficient cultural safety across the system for First Nations children and families to be mainstreamed into the child protection system is untenable.

Mainstreaming is defined by the Organisation for Economic Co-operation and Development (OECD) as a strategy to make that theme an integral dimension of the organisation's design, implementation, monitoring and evaluation of policies and programmes.^{xviii} Adoption of mainstreaming implies that such integration is based on analysis and evidence that the depth of transformation within an organisation has integrated the issue into its policies, practices, and people. Drawing on systematic analysis of mainstreaming cross cutting issues, the OECD highlights a number of considerations^{xix} that should be

considered in these legislative amendments. These include the need for consistent leadership and sustained commitment, having specialist individuals or teams embedded to support transformation, appropriate resourcing, policy alignment, cultural change, and accountability.

When an organisation has not achieved the depth of structural transformation necessary, mainstreaming contributes to fragmentation, contextual blindness, invisibility, loss of self-determination, and becomes re-coded assimilation:^{xx xxi xxii xxiii}

“In becoming the responsibility of everyone it becomes the responsibility of no-one.”

Reviews of the NT child protection system demonstrates the system is not ready for mainstreaming Aboriginal child protection.^{xxiv} The deep structural and cultural change needed to ensure that progress is sustained and accelerated has not yet occurred across the system. The move from specialised focus to mainstream requires integration through a willingness of the system to learn and adapt. Maintaining a specialised focus through embedded leadership and representation at individual and systemic levels is necessary for the ongoing facilitation required to create sustainable change in child protection outcomes for Aboriginal children in the NT.

Conclusion

The NT child protection system is already characterised by profound Aboriginal overrepresentation, low rates of kinship placement, longstanding concerns regarding cultural disconnection and systemic harm and demonstrably poorer long-term outcomes for children subject to statutory *care*. These outcomes do not demonstrate over-implementation of the ATSICPP. They do not demonstrate the principle is inhibiting the ability of the system to place an Aboriginal child outside of kinship, culture or Country. Rather, they demonstrate the consequences of failing to *fully implement* the principle as intended.

Throughout this submission, I have emphasised that the ATSICPP is not merely a list of placement preferences. It is a critical human right, rule of law and best interest's safeguard. It is designed to regulate how the State intervenes in the lives of Aboriginal children and families to *achieve safety*, to *preserve the paramountcy of a child's best interests*, in *all* significant decisions, across the continuum of statutory child protection intervention. The ATSICPP recognises that the safety and wellbeing of Aboriginal children cannot be separated from identity, kinship, culture and Country, and that child protection intervention itself can create serious and foreseeable harm where these connections are disrupted. The ATSICPP does not displace, dilute or override a child's right to safety. Connection and safety are not mutually exclusive they are mutually reinforcing.

There is longstanding evidence demonstrating that identity, belonging and emotional wellbeing for Aboriginal peoples are fundamentally grounded in kinship, culture and Country. Australian courts consistently recognise the centrality of these relationships, while inquiries such as the Bringing Them Home Report documented the profound and enduring harm caused by separating Aboriginal children from kinship, culture and Country. The ATSICPP exercises precisely this role of a safeguard against these known harms.

Reviews of the NT child protection system demonstrates the system is not ready for mainstreaming Aboriginal child protection. Current outcomes already demonstrate the NT child protection system is not culturally safe, sufficiently accountable or appropriately capable to respond to Aboriginal child protection

matters into a generic framework without risking further disproportionate effects, invisibility, fragmentation and loss of self-determination. There is an evidence-based argument to demonstrate the need for expanding the discrete focus through further embedded Aboriginal leadership, representation and accountability mechanisms. This should be understood as critical to drive the sustained cultural and systemic change required to improve outcomes for Aboriginal children in the NT.

I am deeply concerned that aspects of the Bill risk reinforcing the existing culture and operational practice of the NT child protection system, where the ATSI CPP is already applied narrowly and inconsistently. In particular, those amendments which attempt to recast the principle as a broad and discretionary placement consideration should be outright rejected. Rather, the efforts of the Assembly should be focussed on further expanding the intended role of the ATSI CPP as a comprehensive protective framework grounded in Prevention, Partnership, Participation, Placement and Connection.

I support efforts to improve child safety, strengthen early intervention and promote accountability within the NT child protection system. However, these objectives cannot be achieved by weakening safeguards for the very cohort of children most affected by statutory intervention. In a system where Aboriginal children account for approximately 90 per cent of children in out-of-home care, the response to ongoing system failure should be to strengthen the implementation, accountability and enforceability of the principle rather than dilution of its operation within legislation.

Ultimately, the ATSI CPP is not an obstacle to protecting Aboriginal children. It is one of the primary mechanisms through which the NT can ensure child protection intervention occurs in a manner that is lawful, culturally safe and responsive to the rights, safety and best interests of Aboriginal children and families. **If the driving motivation is indeed the safety and wellbeing of all children, then the objects of the bill can best be achieved by enshrining each of the 5 elements of the ATSI CPP in legislation, requiring full and faithful implementation to the standard of active efforts for every decision for every child.**

References

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- ^x Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1986) 162 CLR 24.
- ^{xi} Coco v The Queen (1994) 179 CLR 427, 437.
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- ^{xiii} Mabo v Queensland (No 2) (1992) 175 CLR 1. See, for example, Re Malakhai [2022] NSWchC 6, where the Children's Court recognised that connection to culture and kinship is directly relevant to a child's long-term welfare. The Court treated cultural placement not as a competing value but as an aspect of what stability and wellbeing mean for an Aboriginal child.
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