

# Submission on the Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026

Guardian for Children and Young People, SA

## Introduction

Thank you for the invitation (dated 15 May 2026) to provide a submission on the Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026.

This submission is provided from a child-centred and rights-based perspective, with particular regard to the safety, wellbeing, identity and lifelong outcomes of Aboriginal children and young people who come into contact with child protection systems.

The protection of children from abuse, neglect and harm is one of the most important responsibilities of governments and communities. However, for Aboriginal children, safety cannot be understood through narrow statutory concepts of risk alone. It must also include identity, kinship, culture, language, Country, belonging and continuity of connection. This submission raises concern that aspects of the Bill may reinforce approaches to child protection that insufficiently recognise Aboriginal understandings of children's safety, wellbeing and belonging, and in doing so risk reproducing forms of systemic harm that child protection systems have historically caused Aboriginal children and families.<sup>i ii</sup>

The key concern raised in this submission is that aspects of the Bill appear to elevate safety, stability and permanency in a way that may unintentionally narrow the way child safety and best interests are understood for Aboriginal children. In particular, the Bill reduces the practical force of the Aboriginal and Torres Strait Islander Child Placement Principle and broader Aboriginal-specific safeguards by repositioning cultural connection, family participation and Aboriginal worldviews as secondary or discretionary considerations within decision-making.

This submission does not suggest that cultural considerations should ever prevent timely protective intervention where a child is unsafe – in fact it argues that cultural consideration increase the safety factors for children. Rather, the submission argues that the best child protection systems are those capable of pursuing both immediate safety and lifelong connection.

Importantly, the Bill engages matters including and broader to the Aboriginal and Torres Strait Islander Child Placement Principle alone. The Bill proposes significant changes relating to:

- the interpretation of children's best interests
- permanency and stability
- family participation
- reunification
- family responsibility frameworks
- early intervention
- placement decision-making
- the role of proactive efforts in child protection practice.

Many of the concepts embedded throughout the Bill - including safety, permanency, stability, family functioning and successful outcomes - are presented as though they are culturally neutral concepts. They are not. These concepts are interpreted through statutory systems and professional frameworks that have historically been shaped by non-Aboriginal assumptions

regarding family, caregiving, attachment and child development. The way they are interpreted within legislation, policy and operational systems can significantly shape outcomes for Aboriginal children and families.

If systems are struggling to safely preserve connection for Aboriginal children, the appropriate response is to strengthen capability, accountability and support - not reduce the protective framework itself.<sup>iii</sup> The practical effect of the Bill risks shifting responsibility for systemic implementation failure onto Aboriginal children and families themselves. Difficulties in identifying kinship placements, maintaining cultural connection or supporting reunification are treated implicitly as reasons to weaken Aboriginal-specific safeguards, rather than indicators that systems themselves require greater investment, capability and accountability.

## About the Guardian and Basis for Comment

The Guardian for Children and Young People is an independent statutory office established under the South Australian *Children and Young People (Oversight and Advocacy Bodies) Act 2016* to promote and protect the rights, safety and wellbeing of children and young people under the guardianship or custody of the state. The role includes monitoring the circumstances of children in care and detention, advocating for systemic reform, undertaking inquiries, and providing independent advice to government and Parliament. These comments are informed by direct oversight of child protection and youth justice systems, extensive engagement with children and young people with lived experience, and ongoing analysis of the factors that contribute to safety, stability, connection, identity and long-term wellbeing for children in state care.

While this submission relates to proposed legislation in the Northern Territory, it is both appropriate and important to contribute to discussions about legislative reform in other jurisdictions where those reforms engage nationally recognised child rights principles, child protection practice, and the experiences of Aboriginal children and young people in state systems. Child protection systems across Australia are interconnected through shared legislative concepts, national frameworks, interjurisdictional practice developments, and common obligations arising under international human rights instruments, including the United Nations Convention on the Rights of the Child.

The proposed amendments raise issues of broader national significance relating to cultural safety, permanency, family preservation, and the application of the Aboriginal and Torres Strait Islander Child Placement Principle. In this context, and noting the invitation extended by the Committee, it is appropriate to provide observations informed by statutory oversight experience and broader national reform discussions concerning the safety, wellbeing and identity of Aboriginal children in care systems across Australia.

## Executive Summary

The Bill is framed around objectives including child safety, permanency, stability and early intervention. However, significant concerns arise regarding the way these concepts are constructed, prioritised and operationalised in relation to Aboriginal children and families..

Specifically,, the Bill also raises significant concerns regarding its impact on Aboriginal children's rights, safety and wellbeing, particularly in relation to:

- the interpretation of best interests
- cultural continuity

- family participation
- reunification
- proactive efforts
- and the practical operation of the Aboriginal and Torres Strait Islander Child Placement Principle.

The submission raises six central concerns.

First, the proposed hierarchy of best interests considerations in new section 8 places safety, protection from harm and permanency at the centre of decision-making while moving Aboriginal culture, tradition, family contact, Country and language into “additional matters” that may be relevant. This risks diminishing the significance of culture and identity as central components of best interests for Aboriginal children and indeed it does not acknowledge that Aboriginal culture, tradition, family contact, Country and language are in fact safety and protective factors for Aboriginal children and young people.

Second, many of the Bill’s concepts - including permanency, stability, successful placement outcomes and family functioning - appear to be framed primarily through mainstream statutory child protection assumptions that may insufficiently recognise Aboriginal understandings of kinship, caregiving, belonging and relational continuity. Including that Aboriginal kinship, caregiving, belonging and relational continuity are in fact safety and protective factors for Aboriginal children and young people.

Third, the proposed broad child placement principle in section 12B risks substituting a generic placement framework for the specific protections required by Aboriginal children. Stability and permanency are important, but for Aboriginal children they must include continuity of identity, kinship, culture and belonging. Which are in fact safety and protective factors for Aboriginal children and young people.

Fourth, the new section 12C appears to weaken the Aboriginal Child Placement Principle by making Aboriginal-specific principles subject to the broader placement principle in section 12B. It also shifts participation language from a stronger rights-based formulation toward an “opportunity” to participate, which counters the objectives of the Bill to increase safety.

Fifth, while the inclusion of “proactive efforts” in section 12D is potentially positive, the proposed two-year timeframe for reunification or family placement may narrow the obligation to continue working with families over time.

Sixth, the family responsibility agreement and family responsibility order provisions risk creating a coercive framework for families experiencing complex disadvantage unless accompanied by culturally safe and accessible supports.

From a child rights perspective, the Bill may support aspects of children’s rights relating to protection from harm. However, holistic compliance with children’s rights principles requires more than safety language. It requires strong protection of identity, family relations, participation, cultural continuity and Aboriginal children’s rights to maintain connection to family, community and culture.

These concerns are not theoretical. Their practical impact is such that will undermine the very objectives of the Bill.

For these reasons, this submission recommends that the Bill not be passed. In its current form, the Bill raises substantial concerns regarding its likely impact on Aboriginal children, families and

communities and should not proceed without significant reconsideration of its underlying assumptions, safeguards and practical operation.

I also support calls that have already been made for an independent review of the Northern Territory child protection and out-of-home care systems to better inform reforms of this significance, noting the last comprehensive system-wide review was in 2010. Given the profound complexity and intergenerational consequence of child protection intervention, any contemporary review should be genuinely independent and led by people with recognised expertise across child protection, out-of-home care, Aboriginal affairs, trauma, community-led practice and broader social systems reforms.

## The Aboriginal and Torres Strait Islander Child Placement Principle is a whole-system framework

A central concern with the Bill is that public and legislative discussion appears to risk reducing the Aboriginal and Torres Strait Islander Child Placement Principle to a question of placement order. That is too narrow.

The Principle is not simply about where a child lives, rather, it is a whole-system framework for how governments, statutory authorities and child protection systems should behave toward Aboriginal children, families and communities. The Principle is commonly understood through five interrelated elements<sup>iv</sup>:

- Prevention
- Partnership
- Participation
- Placement
- Connection

The Principle exists because mainstream child protection systems have historically demonstrated an insufficient capacity to understand Aboriginal children's belonging, kinship structures, caregiving systems and cultural identity within statutory decision-making. Its purpose is not symbolic. It is protective.

The Principle does not require a child to remain in an unsafe placement. It does not place culture above safety. Rather, it requires child protection systems to pursue safety in a way that does not unnecessarily sever children from the relationships and identity that sustain their wellbeing.

Importantly, the Principle also recognises that child protection systems themselves must be accountable for the way they engage with Aboriginal children and families. It is therefore not merely a placement framework, but a framework for system behaviour, cultural capability and decision-making accountability.

## Legislative Analysis

### New section 8 - Best interests of the child

The Bill proposes to reorder the best interests considerations by placing safety, protection from harm, stability and permanency at the front of the hierarchy. There is no concern with safety being central, safety must always be a fundamental consideration and in fact Aboriginal culture,

tradition, family contact, Country and language are safety and protective factors for Aboriginal children and young people.

The concern is that Aboriginal culture and tradition, including the need to maintain contact with family, Country and language, appears to be moved into a secondary category of “additional matters” that may also be relevant. This is a significant shift and one that increases the likelihood of poor safety and wellbeing outcomes for Aboriginal children and young people. For Aboriginal children, culture is not an optional additional consideration. It is part of identity, belonging, continuity and wellbeing. It is relevant to the child’s best interests in a direct and substantive way.

A more balanced formulation would ensure that Aboriginal children’s right to culture, family connection, Country and language remains embedded within the core best interests considerations, rather than being treated as supplementary matters.

The issue is whether statutory systems are defining safety through culturally narrow frameworks that insufficiently recognise Aboriginal children’s relational, cultural and community contexts. A narrow understanding of safety may in fact expose children and young people to significant harms in the short and long-term

### **Section 12A - Role of family**

The proposed amendments to section 12A appear to strengthen language requiring removal where there is a significant and likely risk of harm. The Bill also removes the existing provision referring to the eventual return of a child to family. Where a child is unsafe, removal of a child may be necessary. However, the removal of the provision concerning eventual return to family is concerning.

A child protection system should maintain a clear orientation toward safe restoration and family connection wherever possible; this is well evidenced across national and international jurisdictions. This does not mean returning children to unsafe circumstances. It means ensuring the system does not lose sight of reunification, family finding, kinship support and relational continuity once a child has entered care.

For Aboriginal children, the removal of reunification-oriented language risks weakening active efforts to maintain family connection and may contribute to longer-term disconnection.

### **Section 12B - Placement of children**

The Bill introduces a broad placement principle for all children, with a focus on stable living arrangements, permanency, long-term stability and relationships with significant people. These are important considerations. However, there is concern that a generic child placement principle may not adequately reflect the specific rights and needs of Aboriginal children.

For Aboriginal children, permanency should not be understood only as placement duration or legal certainty. Permanency also includes continuity of identity, kinship, cultural belonging, language and connection to Country. A child may be physically stable in a placement but still experience profound instability through disconnection if their family, culture and identity are not actively maintained.

Accordingly, section 12B should not operate in a way that overrides or diminishes the Aboriginal-specific protections in section 12C. The two provisions should work together, with section 12C operating as a specific safeguard for Aboriginal children.

### **Section 12C - Aboriginal children**

Section 12C is one of the most significant provisions in the Bill.

The provision recognises that kinship groups and Aboriginal communities have a major role, through self-determination, in promoting the wellbeing of Aboriginal children. That recognition is important. The drafting raises concerns.

First, the provision shifts from stronger rights-based participation language to language that children and families should be given the “opportunity” to participate in administrative or judicial decision-making.

Participation should not be treated as a procedural courtesy.<sup>v</sup> For children, families and communities, participation is central to good decision-making. For Aboriginal children, family and community participation may also identify kinship options, cultural obligations, supports and relationships that statutory systems may otherwise miss.

Second, section 12C is made subject to section 12B. This risks subordinating Aboriginal-specific safeguards to the broader generic placement principle. This is problematic because the Aboriginal and Torres Strait Islander Child Placement Principle exists precisely because generic child protection decision-making has historically failed to adequately protect Aboriginal children’s connection to family, community, culture and identity. The practical effect of subordinating Aboriginal-specific safeguards to a broader generic placement framework risks reasserting mainstream statutory assumptions as the primary lens through which Aboriginal children’s best interests are interpreted.

The Bill should not merely acknowledge culture and kinship; it should require active, demonstrable and accountable efforts to preserve them.

### **Section 12D - Proactive efforts**

The inclusion of proactive efforts is potentially positive. It recognises that the State should act early to address risks to children and should make efforts to prevent removal, support reunification and identify safe family placements. However, whilst the proposed two-year timeframe for reunification or family placement may support timely permanency planning,, it may also create an unintended risk that efforts toward reunification or family placement reduce after two years.

For Aboriginal children, active efforts should not expire. Even where reunification is not possible within a particular timeframe, the obligation to maintain connection, support family relationships, identify kinship options and preserve cultural identity should continue.

Proactive efforts should be defined in a way that requires more than procedural activity. They should require meaningful, culturally safe, sustained and documented efforts to:

- engage families
- address the reasons for removal
- identify kinship and community supports
- involve Aboriginal organisations
- support reunification where safe
- maintain connection where reunification is not possible.

Without clear standards and accountability, proactive efforts risk becoming a procedural requirement rather than a substantive safeguard.

### **Family responsibility agreements and orders**

The Bill introduces family responsibility agreements and family responsibility orders, with the stated aim of increasing parental engagement and accountability. The objective of early

intervention is important. Families should be supported to address concerns before matters escalate into statutory child protection proceedings.

However, the proposed framework risks becoming coercive if accountability is not matched by meaningful support. Many families involved with child protection systems experience poverty, trauma, family violence, disability, housing insecurity, limited access to supports due to remoteness, service scarcity and historical mistrust of government systems. These factors can affect engagement with services.

The risk is that non-engagement may be interpreted as unwillingness, when in practice it may reflect fear, trauma, practical barriers, government service inefficiencies, previous negative experiences or lack of culturally safe support.

The inclusion of matters such as school attendance, anti-social behaviour or referrals connected to youth justice concerns also requires caution. There is a risk that child protection responses become increasingly entangled with punitive or surveillance-based approaches to family life.

## Cultural Frameworks and the Interpretation of Children's Best Interests

An additional concern arising from the Bill is that a number of key concepts - including safety, stability, permanency, best interests and successful placement outcomes - appear to be framed primarily through mainstream statutory child protection assumptions.

This is not necessarily explicit within the drafting itself. However, legislative concepts are interpreted within institutional systems, professional cultures and operational frameworks that are shaped by underlying assumptions about family structures, caregiving arrangements, attachment, independence, permanency and child development.

Mainstream statutory child protection systems often position their concepts of safety, attachment, permanency and family functioning as objective and universal. However, these frameworks are themselves culturally constructed and reflect particular historical and institutional understandings of children, family and care.

For Aboriginal children and families, these concepts may be understood differently and within broader relational, kinship and community contexts.

For example, permanency within mainstream statutory systems is often understood through placement continuity, legal certainty and long-term placement stability within a single caregiving environment. For many Aboriginal families and communities, however, children's belonging, safety and identity may be experienced through broader kinship systems, shared caregiving relationships, ongoing community connection, cultural continuity and relational belonging across multiple family structures.

Similarly, concepts such as stability may risk being interpreted narrowly if they prioritise placement duration over continuity of identity, kinship, language, community and Country.

This does not mean Aboriginal children should remain in unsafe circumstances. Nor does it diminish the importance of children experiencing secure, stable and nurturing relationships. Rather, it highlights the importance of ensuring that statutory interpretations of safety and wellbeing are not treated as culturally neutral or universally understood concepts.

A framework that is experienced as culturally neutral may, in practice, reflect dominant institutional assumptions that insufficiently recognise Aboriginal child-rearing practices, kinship systems, cultural authority and collective caregiving structures.

This is particularly significant in the context of child protection decision-making because assessments regarding neglect, parental capacity, permanency, attachment and best interests are often deeply influenced by cultural assumptions regarding what constitutes a “normal”, “stable” or “successful” family environment.

The practical risk is that Aboriginal children may continue to be assessed against frameworks that insufficiently recognise Aboriginal ways of understanding children’s belonging, relationships and wellbeing.

For this reason, strengthening cultural capability within legislation, policy and operational practice is not ancillary to child safety. It is central to ensuring that decision-making processes are capable of understanding Aboriginal children’s circumstances holistically and fairly.

The challenge for contemporary child protection systems is therefore not only whether Aboriginal children are safe, but whether the systems themselves are sufficiently capable of understanding Aboriginal concepts of safety, family, identity and belonging within statutory decision-making.

## Rights Analysis - United Nations Convention on the Rights of the Child

The Bill should be considered against the United Nations Convention on the Rights of the Child (UNCRC).

The UNCRC does not require governments to choose between safety and culture. It requires a holistic approach to children’s best interests.<sup>vi</sup> The Bill’s emphasis on protection from harm reflects the importance of child safety. However, holistic compliance with children’s rights principles requires more than protection from immediate harm alone.

Children’s rights also include:

- preservation of identity
- family connection
- participation in decision-making
- cultural continuity
- and special safeguards for children removed from their family environment.

These rights are particularly significant for Aboriginal children. A child-rights assessment of the Bill should therefore consider not only whether the legislation strengthens protection from harm, but also whether it adequately protects:

- identity
- family relations
- kinship
- culture
- language
- participation
- connection to community and Country.

The current drafting raises concern because it appears to:

- move culture and connection into a less prominent position within the best interests framework
- subordinate Aboriginal-specific safeguards to a generic placement principle
- weaken participation language
- potentially narrow long-term obligations regarding reunification and family connection.

Regardless of stated intention, the practical operation of legislative frameworks must be assessed according to their likely impact on children and families, particularly where Aboriginal children are already significantly overrepresented within child protection systems.<sup>vii</sup> Currently there is a lack of regard for the full scope of children's rights and the distinct rights and needs of Aboriginal children.

## Safety, culture and the false binary

One of the most difficult aspects of public debate about this Bill is the suggestion that child safety and Aboriginal cultural connection are competing objectives.

This is a false binary.

An important issue that warrants stronger recognition within the Bill is that cultural considerations are not separate from child safety. For many Aboriginal children, cultural connection, kinship relationships, family belonging, language, community and connection to Country can themselves operate as protective factors that strengthen children's safety, resilience and long-term wellbeing.

Contemporary evidence and the lived experiences of many Aboriginal children, families and communities suggest that connection to identity and culture contributes positively to children's emotional wellbeing, relational stability, resilience, sense of belonging and capacity to maintain enduring support networks across their lives.

Protective factors for children are not limited to the absence of immediate physical harm – which is what is assessed through western models. Protective factors also include strong relationships, trusted adults, community belonging, positive identity formation, emotional security, continuity of connection and access to supportive cultural networks. For Aboriginal children, these factors are often deeply interconnected with family, kinship systems, culture and Country.

This is particularly significant in the context of child protection systems because children who experience disconnection from identity, community and belonging may experience additional forms of harm associated with isolation, identity disruption, relational loss and cultural dislocation. Maintaining cultural connection can therefore contribute to strengthening children's protective environments rather than weakening them.

Importantly, recognising culture as protective does not mean children should remain in unsafe circumstances. Rather, it means child protection systems should seek, wherever safely possible, to preserve and strengthen the relationships, identity and cultural continuity that support children's long-term wellbeing.

For this reason, cultural considerations should not be viewed as peripheral to safety assessment and permanency planning. They should form part of a holistic understanding of what contributes to children's safety, resilience, recovery and long-term developmental outcomes.

The task of legislation is not to choose between safety and culture. The task is to require systems to do the more difficult work of achieving both wherever possible.

Where there are failures in implementation, the answer should be better implementation. Where there are delays, the answer should be stronger family finding and kinship support. Where there are shortages of Aboriginal carers, the answer should be investment and support. Where families are struggling, the answer should be practical and culturally safe early intervention.

Weakening the Aboriginal and Torres Strait Islander Child Placement Principle because systems have not been adequately equipped to implement it risks transferring system failure onto children.

## Recommendation

It is recommended that the Bill not be passed.

The submission raises substantial concerns regarding the conceptual framing, practical operation and likely impact of the Bill on Aboriginal children and families. In its current form, the Bill risks weakening important safeguards relating to cultural continuity, participation, reunification and Aboriginal self-determination within child protection decision-making.

I support calls for an independent review of the NT child protection and out-of-home care systems to better inform reforms of this significance. Noting the last comprehensive system-wide review was in 2010,<sup>viii</sup> given the profound complexity and intergenerational consequences of child protection intervention (individuals, systems and the economy), any contemporary review should be genuinely independent and led by people with recognised expertise across child protection, out-of-home care, Aboriginal affairs, trauma, community led practice and broader social systems.

## Conclusion

The Bill is directed toward important objectives. Children must be safe. They need stability, nurturing relationships and timely decision-making. These are legitimate and necessary aims of any child protection system. However, for Aboriginal children, safety cannot be understood in isolation from identity, family, culture, language, Country and belonging.

A legislative framework that protects children from immediate harm but weakens safeguards around connection risks falling short of a holistic understanding of children's wellbeing and long-term best interests.

The Bill treats western statutory understandings of safety and permanency as objective and culturally neutral, when they are themselves culturally constructed

The concerns raised in this submission are not solely about the Aboriginal and Torres Strait Islander Child Placement Principle itself. They relate more broadly to how the Bill conceptualises:

- safety
- permanency
- stability
- family
- participation
- reunification
- successful outcomes for children.

These concepts are not culturally neutral, they are interpreted through institutional systems, professional practice frameworks and legislative assumptions that have historically been shaped primarily through mainstream statutory child protection approaches.

The history of child protection intervention involving Aboriginal children in Australia demonstrates the profound harm that can occur when systems prioritise administrative notions of safety, permanency and stability while failing to adequately protect children's identity, kinship, culture and belonging.<sup>ix</sup> The risk arising from the current Bill is not only that cultural considerations become secondary within decision-making, but that statutory systems continue to operate through frameworks that insufficiently recognise Aboriginal ways of understanding children, family, care and safety.

Without careful safeguards, there is a risk that Aboriginal children continue to be assessed against frameworks that insufficiently recognise Aboriginal understandings of kinship, caregiving, belonging, relational continuity and collective responsibility for children.

This does not diminish the importance of protecting children from harm. Rather, it recognises that for Aboriginal children, connection to family, community, culture and Country may itself be protective and central to lifelong wellbeing.

The Aboriginal and Torres Strait Islander Child Placement Principle should therefore not be understood as an obstacle to child safety. Properly implemented, it is one of the mechanisms through which long-term safety, identity and wellbeing are protected together.

The challenge for contemporary child protection systems is not whether to choose between safety and culture. The challenge is whether systems are sufficiently capable, culturally informed and appropriately resourced to achieve both.

Where there are implementation difficulties, delays or placement shortages, the answer should be stronger investment, better support, improved cultural capability, greater Aboriginal participation and more accountable systems<sup>x</sup> - not a reduction in the protective framework intended to preserve Aboriginal children's identity and belonging.

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<sup>i</sup> Australian Human Rights Commission. (1997). Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families.

<sup>ii</sup> Australian Institute of Health and Welfare. (2025). Child protection Australia 2023-24.

<sup>iii</sup> Family Matters. (2024). The Family Matters report 2024: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia.

<sup>iv</sup> SNAICC. (2018). Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle. Melbourne: SNAICC - National Voice for our Children.

<sup>v</sup> United Nations. (2007). United Nations Declaration on the Rights of Indigenous Peoples.

<sup>vi</sup> United Nations. (1989). Convention on the Rights of the Child.

<sup>vii</sup> Family Matters. (2024). The Family Matters report 2024: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia.; Australian Institute of Health and Welfare. (2025). Child protection Australia 2023-24.

<sup>viii</sup> Northern Territory Government. (2010). Growing them strong, together: Promoting the safety and wellbeing of the Northern Territory's children.

<sup>ix</sup> Australian Human Rights Commission. (1997). Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families.

<sup>x</sup> United Nations. (2007). United Nations Declaration on the Rights of Indigenous Peoples.