Legislative Scrutiny Committee
Committee Secretariat
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Darwin NT 0801
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Dear Legislative Scrutiny Committee,

I welcome the opportunity to make a submission to the *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026* (the Bill).

This submission addresses the Committee's Terms of Reference namely:

- whether the Assembly should pass the Bill
- whether the Assembly should amend the Bill
- whether the Bill has sufficient regard to the rights and liberties of individuals
- whether the Bill has sufficient regard to the institution of Parliament.

Background

I am an independent statutory officer appointed in accordance with the *Children's Commissioner Act 2013 (NT)* (the Act). The Act articulates the functions, powers and responsibilities of the Children's Commissioner, which include:

- to receive and investigate complaints about services to vulnerable children
- to undertake inquiries related to the care and protection of vulnerable children
- to monitor the administration of the *Care and Protection of Children Act 2007* as it relates to vulnerable children
- to monitor the ways in which the CEO deals with suspected or potential harm or exploitation of children in care
- to promote and advocate for the rights, interests and wellbeing of vulnerable children; and
- to consult with, advise and make recommendations to Ministers and others on the rights, interests and wellbeing of vulnerable children.

As the Children's Commissioner, I believe all children have a fundamental right to safety, protection from harm and to have all they need to reach their full potential. An important part of my role is listening to children and young people with lived and living experience and elevating their voices.

Children have special rights because of their vulnerability, which include (among others) the right to:

- life, survival and development,
- protection from exploitation and abuse,
- be cared for and have a home,
- to have an adequate standard of living,
- be respected and ensured their rights without discrimination,
- have a say in decisions which affect them,
- speak their own language and follow their family's way of life
- have quality healthcare, clean water and good food; and
- to have an education that enables them to reach their potential

These and other children's rights are set out in the United Nation Convention on the Rights of the Child (CRC), which Australia ratified in December 1990.[1] Under the Convention, Australian Governments, including the Northern Territory is required to undertake 'all appropriate legislative, administrative and other measures for the implementation of child rights'.

Each children's right is dependent on the fulfilment of all the other rights, and all rights must be respected, protected and fulfilled. The principle of interrelatedness, interdependence and indivisibility of rights is a central tenet of a child-rights based approach and must therefore guide prospective legislative reform impacting children.

Context

It is clear the Child Protection System requires attention- but rushed legislative reform in the absence of rigorous research, adequate public consultation and expert advice facilitated through a transparent and accountable process, risks setting the system up to fail even further.

I am extremely concerned by the lack of transparency and expedited process that is being undertaken to significant reform that will have serious and deleterious long-term effects. The Bill presents broad sweeping and far-ranging reforms that will have serious implications for families dealing with significant adversity and disadvantage and the broader Child Protection system that is significantly overburdened and under resourced. At no stage prior to the Bill being tabled did the Minister, or Government seek to engage, consult with, or obtain advice from myself, Aboriginal leaders or any other key stakeholders who have decades of expertise on the issues at hand.

Overview

To be given only one week to consider a Bill that completely reorients the architecture of the Child Protection system undermines my ability to provide comprehensive and robust advice and undermines the rule of law. Considering my legislated role to oversight the administration of the *Care and Protection of Children Act 2007*, I had anticipated being engaged at a much earlier stage, to have been briefed, consulted and given the opportunity to meaningfully inform drafting instructions; prior to tabling of the Bill. However, despite my best efforts and multiple requests, neither the Minister nor Government have sought to involve me in this process.

Instead, this Bill has been developed in secrecy, and this process has lacked complete transparency as to the evidence necessitating these reforms. It should be of serious concern to the Committee and the public that significant resources have been spent on the drafting of this Bill, clearly without any consideration to the inherent risks it may create in a Child Protection system that is already clearly at breaking point.

In essence, this Bill erodes the rights of Aboriginal children and increases the opportunities for Government intervention in family life including expediting child removals. To respond to systemic failure by removing legal protections from the very children that the system is failing

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[1] Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990.

is obviously wrong. The Aboriginal Child Placement Principle is not failing Aboriginal children- poor outcomes for Aboriginal children in the NT reflect failures of implementation, investment and accountability. I have attached (*) previous submissions to the Department of Children and Families and Minister that articulate ongoing systemic issues with the Child Protection System that do require attention as part of a comprehensive review and reform agenda.

Of most serious concern is that no evidence has been provided by the Minister or Department on how the Aboriginal Child Placement Principle is undermining the safety of children. The Aboriginal Child Placement Principle is a nationally recognised framework, guiding decision-making for Aboriginal children. It requires children to remain connected to family, community, culture and Country, and is underpinned by five interrelated elements: prevention, partnership, participation, placement and connection.[2] Together, these elements reflect a well-established understanding that cultural identity and community connection are not separate from safety but are central to a child's wellbeing and long-term outcomes.[3]

I acknowledge aspects of the Bill reflect the importance of giving children a voice in decisions that affect their lives, which is a paramount human right. Despite this, the Minister and Government have chosen not to consult children and young people with lived care experience on this Bill. Throughout my submission I have included quotes from care experienced children and young people who attended the 2026 Create Foundation Roundtable – their voices and views must be taken seriously and given weight. They are crucially aware of the challenges and failures of the Child Protection system meaning they are best placed to inform areas for reform.

Whilst there are components regarding Working with Children's Checks and Independent Children's Lawyers that, with robust consultation and further development, may prove positive, the Bill in its entirety presents serious risks for the rights of children and for our Child Protection system.

The Bill does not have sufficient regard to the rights and liberties of individuals, particularly Aboriginal children and young people and it does not have sufficient regard to the institution of Parliament. The Bill does not accurately reflect the full intent of the United Nations Convention on the Rights of the Child, nor does it reflect Australia's endorsement of the United Nations Declaration on the Rights of Indigenous Peoples.

I am pleased to support and endorse **submissions from the National Commission for Aboriginal and Torres Strait Islander Children and Young People** and **the Create Foundation.**

For the serious reasons outlined in my submission, I do not support the Bill and request that the Legislative Assembly decline to pass this Bill.

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[2] Secretariat of National Aboriginal and Islander Child Care (SNAICC) (2017) *Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle*. Melbourne: SNAICC. Available at: https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding_applying_ATSICCP.pdf.

[3] Ibid

I would recommend the Committee hold public hearings for this matter to hear from Aboriginal leaders, legal and sector experts and where possible, children and young people with lived experience of the system.

Yours sincerely,

Shahleena Musk
22 May 2026

* OCC Advice Care and Protection of Children Amendment Bill 2025, 17 January 2025
OCC submission to CAPCA Review 2 May 2025

Submission on the *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026* (Serial 67)

"If these people understood the kinship system, most of us would have been placed with family."

"It's like the people you've known and loved for so long don't exist. You don't see them, you don't hear them [when you're in care]."

1. The Act is not the problem – it is the way it is delivered and resourced

Poor outcomes for Aboriginal children in the NT reflect failures of implementation, investment and accountability. They are not failures of the current legislation.

The numbers speak plainly. Aboriginal children make up 43% of the NT's child population but 89% of children in out-of-home care. The NT removes Aboriginal children at 12.1 times[4] the rate of non-Aboriginal children. In 2024–25, just 16.7% of Aboriginal children in care were placed with Aboriginal relatives or kin — the lowest rate in Australia.[5] As at 30 June 2022, 76.8% of Aboriginal children in out-of-home care who were required to have a cultural support plan did not have one.[6] SNAICC's 2021–23 review of the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle in the Northern Territory found a *"continued and widespread failure to ensure that OOHC care placements adhere to the Child Placement Principle placement hierarchy"*, and concluded that the legislation *"is not actively being applied in practice"*.

"We are quite literally the oldest race on earth, 65,000 years. Even in times of trouble, our culture is strong because we come together to solve problems."

"What I like about culture is how it makes you feel, it gives you strength around you. It makes you feel like the environment is strong."

The Department's own investment pattern explains a great deal of that failure. In 2023–24 the Department spent $34.9 million on Purchased Home Based Care — a high-cost, agency-staffed placement type that almost no Aboriginal carers provide — and $4.1 million on kinship-care services.[7] Of the Department's $223 million child and family services budget, only **7%** was allocated to Aboriginal Community Controlled Organisations (ACCOs).[8] Aboriginal carers provide 85% of family placements and 28% of foster placements, but 0% of Purchased Home Based Care placements.[9]

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[4] Office of the Children's Commissioner (NT), Annual Report 2023–24 (2024) 9, 41. The over-representation rate and Aboriginal share of out-of-home care are reported in the Commissioner's Message and the Children in Care chapter respectively. See also Australian Institute of Health and Welfare, Child Protection Australia 2023–24 (AIHW Cat No CWS 102, 2025), confirming the Northern Territory figures.

[5] Office of the Children's Commissioner (NT), Submission to the Care and Protection of Children Act Review (2 May 2025) 5.

[6] SNAICC — National Voice for our Children, Reviewing Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle — Northern Territory 2021–23 (2024) 6.

[7] Office of the Children's Commissioner (NT), Annual Report 2023–24 (2024) 43 (Purchased Home Based Care and kinship-care expenditure figures for 2023–24).

[8] SNAICC, above n 3, 5.

[9] Office of the Children's Commissioner (NT), Annual Report 2023–24 (2024) 47 (carer composition as at 30 June 2024).

The trend is moving in the wrong direction. SNAICC's 2021–23 review records that the proportion of Aboriginal children in NT out-of-home care placed with Aboriginal relatives or kin fell from 27.3% in 2021 to 23.8% in 2023,[10] and further to 16.7% in 2024–25 — Australia's worst result, and worsening.[11] The Productivity Commission's *Report on Government Services 2025* confirms the NT as the worst-performing jurisdiction against Target 12 of the National Agreement on Closing the Gap.[12]

None of these gaps require a single legislative change to fix. All of them require investment, workforce reform and partnership with Aboriginal organisations.

"I haven't been back to Country for years. The elders I wanted to learn from won't be there forever. Nothing changes in the next ten years, but those elders will be gone."

"Our knowledge comes from our old people."

2. Where families suffer from poverty, poor housing and family violence, the solution is not to remove their children but to address poverty, poor housing and family violence.

We all know that some children in the NT live with serious risks to their safety. The principal causes of those risks are well-known: unsafe and overcrowded housing, intergenerational poverty, and exposure to family and domestic violence. None of those is addressed by removing a child from their family and their community. On the contrary, removal increases trauma, fractures kinship networks, undermines connection with culture and land, with all the suffering that creates for the children who are removed, for their families, for their communities, for their children, and so on. The international and Australian evidence on this is settled.

"Knowing my skin name and where I come from is the best thing in my story."

"We are connected to land and sea, everything is connected to us."

The OCC shares concerns raised by the legal services sector regarding the impact of Family Responsibility Agreements and Orders. Whilst the Bill recognises domestic and family violence as a relevant factor, it does not clearly distinguish between people using violence and victim-survivors experiencing violence and is being introduced at the same time as the NT Government's most recent Budget which has reduced the capacity of the Domestic and Family Violence system. Family responsibility agreements and orders, in a coercive-control context, are capable of being used by a perpetrator against a non-offending parent.

3. The existing Act already requires that the safety of every child be paramount — and safety, properly understood, includes connection to family, community and culture

Section 10 of the existing *Care and Protection of Children Act 2007* already requires that the best interests of the child be the paramount concern in every decision under the Act. There is

[10] SNAICC, above n 3, 6.

[11] Office of the Children's Commissioner (NT), Submission to the Care and Protection of Children Act Review, above n 2, 5.

[12] Productivity Commission, Report on Government Services 2025 (Commonwealth of Australia, 2025) Part F, Ch 16 "Child Protection Services", Tables 16A.21–16A.22 (cross-jurisdictional comparison of Aboriginal child placement and over-representation). See also National Agreement on Closing the Gap (July 2020, updated August 2022) Outcome 12 / Target 12.

no aspect of the existing Act, or of the Aboriginal and Torres Strait Islander Child Placement Principle within it, that accepts unsafe circumstances for any child or prevents the Department from intervening to protect a child from harm.[13] The framing that the OCC observes surrounding these amendments — that the existing Act puts "culture" ahead of "safety" — is not supported by the text of the Act and is not supported by the evidence.

"We're lucky because we live with our Aunty and she teaches us about our culture."

"We live with our family, they take us back to our country every year and can speak language. We go to [NT Aboriginal Community] because that's where my sister is from and we go to [NT Aboriginal Community] because that's where I am from."

The proper framing of safety, for an Aboriginal child, must also include the risks to safety from the loss of family, community, language and country. Decades of research, including, the 2017 Royal Commission into Institutional Responses to Child Sexual Abuse and the international evidence all identify and corroborate connections to family, community and culture as *protective* factors for Aboriginal children's safety and wellbeing — not risk factors. As Professor Paul Gray has observed, "the immediate safety and long-term wellbeing of children is best promoted when we work together with those closest to them — their families and communities".

"Knowing about my culture is what helped me feel connected. Just having the option to connect to it mattered."

"I just want to see my family in community, we've asked my case manager but it's been 8 months."

4. Repealing the Aboriginal Child Placement Principle will have catastrophic consequences for the safety and wellbeing of Aboriginal children

"You are taken away from your Country and your family, and you don't have access for years. And then family says you've just got to come back and start speaking the language, but how am I supposed to come back when I'm in the system? That broke me."

Clause 6 of the Bill repeals the Aboriginal Child Placement Principle (ACPP). It repeals the dedicated placement hierarchy in current s12(3); subordinates the residual Aboriginal-specific principles in new s12C to a generic placement principle in new s12B (new s12C(4)); drops Aboriginal Community Controlled Organisations (ACCO) from the kinship clause in new s 12C(1); downgrades the family's *"right to participate"* in significant decisions to an *"opportunity to participate"* in new s 12C(2)(a); deletes the prescribed categories of decision-makers (cultural authority, kinship group, ACCO member); deletes the trauma-informed and healing-focused principle in current s12(2A); and deletes the express right of an Aboriginal child to be brought up within their own family, community and country (current s12(2B)).

"I came into care when I was 2 and no one made sure that I was connected to my family and my Country."

"A lot of caseworkers don't let the kids in care see where they're from, don't know what their totems are, what bush hunting is, what community is like."

This is not simply watering down the Aboriginal Child Placement Principle but completely dismantling its very existence in the law.

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[13] Section 10, *Care and Protection of Children Act 2007 (NT).*

The categories of "any other Aboriginal person" and "a non-Aboriginal person sensitive to the child's needs and capable of supporting cultural connection" — long present in NT law — disappear from the placement hierarchy entirely.

"Culture and family contact should never be used as punishment."

"She told me that I couldn't see my dad and I wasn't allowed to go visit family because they didn't like how I was acting."

This is reversing 30 years of legislative development built on a substantial body of evidence. It is inconsistent with s10 of the *Racial Discrimination Act 1975* (Cth) because it removes, by reference to race, legal protections currently enjoyed by Aboriginal children.[14] It cannot be saved as a "special measure" under s8 of that Act: s8 is a shield to protect race-based rights, not a sword with which to dismantle them. [15]Substantial parts of the Bill, if enacted, would on commencement be inoperative to the extent of that inconsistency.

The Bill is also directly contrary to the Closing the Gap commitments to which the Northern Territory is a party — in particular, Priority Reform 1 (formal partnerships and shared decision-making), Priority Reform 2 (building the community-controlled sector) and Priority Reform 3 (transforming government organisations)[16] — and it makes Outcome 12 / Target 12, which commits Australian governments to a 45% reduction in the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 2031, materially harder and virtually impossible, to achieve. It creates a barrier to progress towards Closing the Gap, rather than a sustained pathway to achieve meaningful improvement towards targets.

Put simply, the amendments will swiftly entrench high numbers of Aboriginal children in the statutory Child Protection system for generations to come – these amendments will have serious and deleterious long-term effects.

"We should have a cultural support plan, a living, breathing document. Not just a form filled in once and forgotten. Something that grows with them, that holds who they are."

"They had input from not just mum and dad, immediately after that I could do a little talk around my skin group, totem, language group and important ceremonies."

5. The pressure to make early final decisions, and the family responsibility orders, will fall hardest on Aboriginal families

The Bill imposes a two-year reunification timeframe (cl6, new s12D(2)), restricts the Court to a maximum of two short-term parental responsibility directions (cl21, new s128(1B)) and reduces the maximum length of each such direction from two years to one (cl9, s123). Whilst the OCC accepts that indefinite drift through repeated short-term orders has been a problem in the Territory, none of these changes should be considered until it is proven that systemic dysfunction has been identified through an independent Inquiry and systemically remedied. Otherwise, the increased pressure of time to finalise placements is likely to see the easiest

[14] Section 10, *Racial Discrimination Act 1975* (Cth).

[15] Section 8, *Racial Discrimination Act 1975* (Cth).

[16] National Agreement on Closing the Gap (July 2020, updated August 2022) Part 6 (Priority Reforms One, Two and Three). The Northern Territory is a Party to the Agreement through the Coalition of Australian Governments.

administrative route followed – the removal of Aboriginal children from their family and their placement in the care of non-Aboriginal foster carers over placing children with kin.

That destination is itself harmful. A Menzies cohort study of 14,972 NT adolescents found that, after adjustment for confounding, having been placed in out-of-home care was associated with 12.06-times higher odds of hospitalisation for mental-health-related issues (95% CI 5.64–25.53), and was the only category to retain an elevated incidence of repeated such hospitalisations after adjustment (IRR 2.67; 95% CI 1.73–4.11). The harm associated with the destination the Bill's permanency clock accelerates toward is, in the NT, now statistically quantified.[17]

"Culture makes you feel strong in yourself and strong in your environment."

"Our culture is not scary, it's strength within us."

Other jurisdictions have learned this lesson the hard way. The Victorian Government is currently repealing a substantially similar permanency model after evidence it was too rigid, reduced reunification opportunities and did not adequately support the best interests of children. [18]

It is the OCC'S view that Family Responsibility Orders (cl16, new ss102A–102T) are the Bill's most coercive feature. On the CEO's application, a Court may direct that a parent be placed on enhanced income management, that a banned drinker order be sought against them, that information about their conduct be disclosed to the CEO (Housing) for the purpose of an acceptable behaviour agreement, or that the premises where their child resides be declared restricted premises under the *Liquor Act 2019*. Each of those is a public-order measure with discriminatory operational effects in the NT context. None is supported by evidence either that existing procedures are inadequate or that these measures will improve child wellbeing. They should not be made on the application of a child-protection agency through a child-protection order.

"I feel more okay with my culture because my carer is also Indigenous, so she knows how I feel about wanting to learn more instead of just standing there, not knowing what my culture is. She teaches me, and she gets family to come up and speak language with me."

The trigger that allows the CEO to seek a Family Responsibility Order where a child has been found *doli incapax* is particularly troubling: the proper response to a finding of *doli incapax* is therapeutic and developmental, not parental coercion. The escalation pathway — police referral, agreement, order, protection order — places the threshold for moving up each step in the hands of the executive and concentrates that escalation on a cohort that is overwhelmingly Aboriginal. Legislated coercive action dressed up as 'early intervention' will only serve to entrench vulnerable children and families in the statutory system. Early intervention support is

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[17] B Leckning, J R Condon, S K Das, V He, T Hirvonen and S Guthridge, 'Mental health-related hospitalisations associated with patterns of child protection and youth justice involvement during adolescence: A retrospective cohort study using linked administrative data from the Northern Territory of Australia' (2023) 145 Children and Youth Services Review 106771, Table 4 (multivariable analysis).

[18] *Children, Youth and Families Amendment (Stability) Bill 2025* (Victoria).

best delivered by community led organisations on a voluntary basis with a trauma informed, culturally safe and child friendly approach.

6. The "proactive efforts" provisions are dangerously ill-conceived in this context and do not reflect the origins of this well-established framework

The OCC has consistently called for an active-efforts framework in NT child-protection law. Active efforts — defined by SNAICC as efforts that are "purposeful, thorough and timely", and described in Queensland practice as the "gold standard" on the adequacy of service provision — are a powerful tool. We support them. But active efforts elsewhere have not been introduced as a substitute for the Aboriginal Child Placement Principle. They have been introduced precisely to ensure that the ACPP is properly implemented in practice.

"we should be going back for all events and ceremonies, not just funerals."

"I know more about my carers culture, she's [CALD background] and we always go to their celebrations."

That is the structural problem with new s12D. The Bill puts a "proactive efforts" framework into the Act whilst removing at the same time the very principle that active efforts are intended and designed to promote: the ACPP. The active efforts initiatives in New South Wales (s9A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW)) and Queensland (s5F of the *Child Protection Act 1999* (Qld)) were inserted **to support** the ACPP. As the OCC put it in its submission to the initial CaPCA Review: *"For Aboriginal children, active efforts cannot be seen separate from the ACPP. Active efforts underpin and support the ACPP by providing a framework to effectively measure compliance with all five elements"*. Introducing a "proactive efforts" framework into the NT Act while at the same time repealing the ACPP is doubly mistaken: the Bill adopts the architecture of active efforts but discards the very principle those frameworks were designed to promote.

"When I was in care and I was able to see my family, they would take me out to go fishing, teach me about bush tucker, and share cultural things with me. That made me feel more connected. I was kind of lost before that."

The second problem is resourcing. Active efforts are not a paper standard. They require trained child-protection practitioners; ACCO-led kinship care and family-finding services; Aboriginal Family-Led Decision-Making (AFLDM) as an embedded part of practice; and the data infrastructure to report annually against each of the five elements of the ACPP. None of these things is funded or planned for by the Bill. SNAICC's 2021–23 review records that only 7% of the Department's $223 million child and family services budget is allocated to ACCOs — the entities that would be expected to do the bulk of active-efforts work.[19] Without that workforce and that investment, "proactive efforts" will operate as a procedural box-tick that gives the Court and the public the false comfort that systemic reform has occurred when, on the ground, nothing has changed. The OCC further observes there is no clear allocation in the 2026-27 NT budget to support the development of the Child Protection workforce and proactive efforts provisions.

[19] SNAICC, above n 3, 5.

7. The technical reforms that the Bill bundles in should be split out and dealt with separately

Sitting alongside the substantive, problematic amendments to s12 and the Family Responsibility Order regime are a number of technical reforms that the OCC believe could be positive with further consultation and refinement. These include the strengthened child legal representation in long-term proceedings in clause 25 the narrowing of the "child-related employment" contact threshold in clause 36 in line with the 2017 Royal Commission's recommendation; the new powers in clause 41 to suspend a Working with Children Clearance and to impose an interim bar pending assessment; the extension in clause 42 of the WWCC validity period from two to five years (subject to continuous monitoring being operational); and the consequential review and information-sharing provisions in clauses 43 and 48–50.

These reforms should be considered separately after they have been subject to consultation. They do not depend on the dismantling of the ACPP and do not depend on the introduction of family responsibility orders. They should be introduced in a separate, narrowly drafted amending Bill so that they can commence without delay.

8. Position and recommendations

The *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026* in its present form should not proceed. The Commissioner respectfully recommends that the Northern Territory Government:

1. Resource an independent systemic Inquiry as a matter of urgency to identify and understand key issues impacting the performance of the Child Protection system, and to determine whether legislative reform is required.
2. Split out the uncontentious technical reforms (child legal representation, narrowed WWCC contact threshold, suspension/interim bar powers, extended WWCC validity, consequential Teacher Registration amendments) into a separate amending Bill and consult with key stakeholders, including the Commissioner, on these amendments

The Commissioner stands ready to work with the Minister and Government on an independent Inquiry into the Child Protection system to truly uncover what reform is needed. It is essential this work is done in partnership with Aboriginal leaders and communities, children and young people with lived experience, and national child protection experts.

Hon. Robyn Cahill
Minister for Children and Families
Minister for Child Protection
Minister for Prevention of Domestic Violence
Parliament House
Darwin, NT, 0800

Via email: [redacted]
CC: [redacted]

Dear Minister,

RE: Care and Protection of Children Amendment Bill 2025

The Office of the Children's Commissioner (OCC) accepts the opportunity to provide advice in relation to proposed amendments to the Care and Protection of Children Act 2007.

However, I am deeply concerned with the short timeframe in which to provide feedback and the limitations this poses on the ability to facilitate a comprehensive response; particularly given the proposed introduction of 'special/exceptional circumstances' provisions which could effectively permit a court to circumvent compliance with the Aboriginal and Torres Strait Islander Placement Principles (Child Placement Principle).

I understand these amendments have not been requested by the judiciary to address an existing need, nor are the proposed amendments supported by any evidence or justification, particularly not on such an urgent basis.

Genuine and meaningful consultation requires the provision of adequate detail, processes and appropriate timeframes to ensure stakeholders, including child protection practitioners and legal experts, have the opportunity to effectively consider and respond to important reforms that will impact the rights of vulnerable Aboriginal children and families in the Northern Territory.

The provision of this advice is not considered to be the product of adequate consultation nor does it meet the requirements of section 3.2 of the Northern Territory Government legislation handbook to 'consult with other agencies affected by, or with an interest in, a proposal' including Independent Statutory Officers such as myself.

This advice draws on the work of the OCC, including the data and analysis our office and SNAICC have made on the implementation of and adherence to Child Placement Principle in the following:

- SNAICC, Reviewing Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle Northern Territory 2021–23
- Office of the Children's Commissioner, Annual Report 2023-24.

The OCC is an independent oversight body focused on the safety and wellbeing of 'vulnerable children' in the Northern Territory and continuous improvements to policies, practices and services relating to vulnerable children. As the Commissioner, my mandate centres on promotion of child rights through public advocacy, policy and law reform, investigating complaints regarding service provision to vulnerable children, and monitoring of child protection and youth detention services.

The Child Placement Principle is underpinned by 30 years of evidence supporting the importance of distinct child protection responses determined by Aboriginal children's connection to their family, community, culture and country. The development of the Child Placement Principle was a direct response to the devastating effects of past discriminatory laws and policies that saw the mass removal of Aboriginal children and their disconnection from land, culture and language through the separation of families. The Child Placement Principle is embedded in laws and policies across Australia as a core tool to addressing the overrepresentation of Aboriginal children in out of home care and the child protection system. It is a crucial framework to guide care and protection decision-making.

As you are aware, the Child Placement Principle aims to:

- Embed an understanding that culture is integral to the safety and wellbeing of Aboriginal and Torres Strait Islander children and young people
- Recognise and protect the rights of Aboriginal and Torres Strait Islander children, family and communities in child safety matters
- Support self-determination of Aboriginal and Torre Strait Islander people in child safety matters
- Reduce the over-representation of Aboriginal and Torres Strait Islander children in child protection and out-of-home care (OOHC) systems.[1]

Section 12 of the *Care and Protection of Children Act 2007* (NT) embeds the Child Placement Principle and reflects the government's commitment to improve child welfare responses to Aboriginal children and families. The Child Placement Principle reflected in section 12, is focused on reducing the over-representation of Aboriginal children in out of home care, reflects the importance of Aboriginal children's rights to develop and maintain their connection to family, community and culture, and affirms Aboriginal children and their families' rights to participate in significant decisions and administrative or judicial child protection processes.[2]

[1] SNAICC, *Reviewing implementation of the Aboriginal and Torres Strait Islander Child Placement Principle in the Northern Territory 2021-23* (2025) 4.

[2] United Nations Human Rights Commission, *Convention on the Rights of the Child*, E/CN.4/RES/1990/74 (1990) Art 10, Art 12, Art 30; United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295 (2004).

Summary response

Hierarchy of principles
The best interests of the child is paramount in any decision regarding a child by virtue of section 10 of the *Care and Protection of Children Act 2007* (NT), confirmed by the NT Court of Appeal.[i] This is consistent with international law and child rights. Article 2 of the Convention on the Rights of the Child requires acting in the best interests of the child as a guiding principle in every aspect of legislation, policy and practice so that children's unique needs are met.

While the OCC submits no issues with this amendment, which we interpret seeks to reaffirm or make clear the best interests of the child is the ultimate and overriding principle, the specific principles for determining the best interests of Aboriginal children require unique, complementary and parallel consideration as outlined above.

Special or exceptional circumstances
With the limited information provided regarding the evidence or need for this reform, I am seriously concerned how the proposed amendments will affect the Child Placement Principle's importance and centrality in child protection legislation, policy and practice in the Northern Territory.

I acknowledge the drafting instructions do not propose amendments to section 12 itself. Rather, the amendments propose to insert a discretion for the courts to not uphold the principle in 'special/exceptional circumstances' where upholding the Child Placement Principle may adversely impact the safety and wellbeing of children and/or adults within a family or community. This legislated specific discretion does not exist elsewhere in Australia and if introduced would be a regressive step for the Northern Territory.

Notably, this discretion would also only be applied to Aboriginal children via section 12, and would not apply to other principles articulated in Part 1.3 of the Act applicable to all children. Therefore, these amendments appear to be discriminatory towards vulnerable Aboriginal children.

Specifically, the proposed amendments are unnecessarily broad and vague with regard to how 'special or exceptional circumstances' or 'adverse impacts on the safety and wellbeing of children and/or adults within a family or community' would be defined, assessed or applied in practice. In its current form, there is a significant risk that without further defined safeguards, the proposed amendments provide an additional and inappropriate lever for reduced or non-compliance with the Child Placement Principle.

Active efforts to comply with the Child Placement Principle by practitioners throughout child protection proceedings would allow for appropriate placement matching and assessment. This process negates circumstances where a child's placement or connection with family/kin would be considered unsafe for them or others. As such, the OCC considers any concerns

warranting the proposed discretion is a matter for the Department of Children and Families child protection policies and practice.

The need or justification for legislation reform to permit a court to obviate the application of the Child Placement Principle to prevent potential adverse impacts to the safety and wellbeing of children and/or adults within a family or community is not clear. I note that Aboriginal children make up 89% of all children in out of home care in the Northern Territory. In 2022-23, just 23.8% of Aboriginal children were placed with Aboriginal relative or kin, meaning 76.2% were not placed in accordance with the Aboriginal child placement principle (element 5). As reported by SNAICC, the Northern Territory's rate of placing Aboriginal children in care with their Aboriginal kin or other Aboriginal carers has worsened over successive reporting periods. This data indicates "a continued and widespread failure to ensure that OOHC placements adhere to the Child Placement Principle placement hierarchy."[ii]

My office, and other stakeholders, require further information to adequately assess the impact and relevance of the proposed amendments. The OCC seeks clarification on why the courts would need this discretion and examples of circumstances where the Child Placement Principle has been prioritised over the safety of others. Further advice on the Child Placement Principle and detailed information relating to its application in the Northern Territory, along with information relating to the Northern Territory Governments commitments under Closing the Gap and Safe and Supported is outlined for your information at **Appendix 1.**

In light of the summarised concerns, I strongly recommend the proposed amendments do not proceed. Appropriate and comprehensive engagement with the sector, experts and Aboriginal stakeholders should be a priority; noting the current approach is inconsistent with and undermines the Governments Closing the Gap commitments to shared decision-making and work being undertaken to progress the Safe and Supported national plans including specifically the Aboriginal and Torres Strait Islander Action Plan.

In addition to an extended community consultation period, should the government seek to progress these amendments, I recommend and expect these proposed amendments will be referred for assessment by the Legislative Scrutiny Committee.

I would welcome the opportunity for further involvement via my statutory functions to provide advice and make recommendations on matters related to the rights, interests and wellbeing of vulnerable children in the Northern Territory and am happy to meet with you to discuss.

Yours sincerely

Shahleena Musk
Children's Commissioner

Appendix 1

Aboriginal Child Placement Principle

The Aboriginal Child Placement Principle[iii] recognises the importance of Aboriginal children's connections to family, community, culture and country and asserts that self-determining communities are central to supporting and maintaining those connections.[iv] It guides child protection legislation, policy, and practice in Australia.

The Aboriginal Child Placement Principle aims to:

- reduce the over-representation of Aboriginal children in child protection and out-of-home care systems;
- recognise and protect the unique rights of Aboriginal children, families and communities in contact with child protection;
- ensure an understanding culture underpins and is integral to safety and wellbeing for Aboriginal children; and
- keep Aboriginal children connected to their family, community, culture and country.[v]

Background to the Aboriginal Child Placement Principle

The Aboriginal Child Placement Principle arose from grassroots activism by Aboriginal peoples and organisations to address the over-representation of Aboriginal children adopted by or placed in out-of-home care with non-Indigenous carers, and to prevent past practices from continuing or being repeated.

The Bringing them Home report revealed the devastating effects of the forcible removal of Aboriginal and Torres Strait Islander children- the Stolen Generations. The report laid bare children's experiences of physical, psychological and sexual abuse, in terms of spiritual, emotional and physical trauma, as a direct result of the broken connection to traditional land, culture and language and the separation of families, and the effect of these on the ability to provide nurturing consistent care to children.

Inspired by the success of the *Indian Child Welfare Act 1978* in the United States, the Aboriginal Child Placement Principle similarly sought to establish distinct national child welfare legislation and policy focused on reducing rates of child removal, and enhancing and preserving children's connections to family and community as well as their sense of cultural identity.

Embedded in Territory law and policy

The Aboriginal Child Placement Principle is embedded in section 12 of the *Care and Protection of Children Act 2007* (NT) and internal child protection policy.

In any decision regarding an Aboriginal child in contact with the child protection system child protection staff must demonstrate their commitment to the five elements of the Secretariat of National Aboriginal and Islander Child Care (SNAICC) Aboriginal Child Placement Principle.[vi]

The five elements, are core to planning and decision making when sourcing and supporting placements for Aboriginal children. The five elements of the Aboriginal Child Placement Principle are:

- **Prevention** – the right of Aboriginal children to be brought up within their own family and community and on their own country.[vii]
- **Partnership** – the right of Aboriginal persons to participate in significant decisions about Aboriginal children.[viii]
- **Connection** – the right of Aboriginal children to be supported to develop and maintain connections to family, community, culture, traditions, language and country.[ix]
- **Participation** – the right of the children, their parents, and family members to participate in an administrative or judicial process for making a significant decision about a child.[x]
- **Placement** - that if a child is to be placed in care, the child has a right to be placed with a member of the child's family group.[xi]

The Northern Territory Context

Aboriginal children make up 43% of the youth population yet 89% of children in care, this is the highest percentage nationally.[xii]

In 2022-23, Aboriginal children were placed into OOHC and other supported placements at 12.2 times the rate of non-Indigenous children.[xiii]

In 2022-23, just 23.8% of Aboriginal children were placed with Aboriginal relative or kin, meaning 76.2% were not placed in accordance with the Aboriginal child placement principle (element 5). As reported by SNAICC, the Northern Territory's rate of placing Aboriginal children in care with their Aboriginal kin or other Aboriginal carers has worsened over successive reporting periods. This data indicates "a continued and widespread failure to ensure that OOHC placements adhere to the Child Placement Principle placement hierarchy."[xiv]

As at 30 June 2023, 76.8% of Aboriginal children in OOHC required to have a cultural support plan did not.[xv] The Northern Territory continues to have the poorest performance in the country for connection.

The total number of kinship care placements have decreased while the proportion of Aboriginal children in OOHC increased during 2022-23. Contrary to TFHC's plan to phase out purchased home based care placements by 2021, the use of this form of care has increased year on year. The 2023-24 Northern Territory Government budget allocation for purchased

home based care is $34.9 million compared to $4.1 million for kinship care services and $8.3 million for foster care services.[xvi]

Closing the Gap and Safe and Supported

The Northern Territory is a party to Safe and Supported: the National Framework for Protection Australia's Children 2021-2031, which is Australia's framework to reduce child abuse and neglect and its intergenerational impacts. It is the key strategy supporting efforts to reduce the rate of Aboriginal children's over-representation in OOHC by 45% by 2031, target 12 of the National Agreement on Closing the Gap. It is to be delivered through two 5-year action plans, including the Safe and Supported: Aboriginal and Torres Strait Islander First Action Plan 2023-2026.

The Aboriginal and Torres Strait Islander Action Plan is a commitment to partnership and shared decision-making in response to Closing the Gap Priority Reform 1. This Action Plan sets out eight actions for all parties to focus their collective effort on, specific to this consultation it includes Action 5: to strengthen and implement the Aboriginal Child Placement Principle to the standard of "active efforts". This action commits to implementing all 5 elements of the ATSICPP, and improving the accountability of all governments and sectors in reducing the over-representation of Aboriginal and Torres Strait Islander children and young people in child protection systems.

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[i] NB & Ors v SB & Ors [2020] NTCA 2, in addition to s.90 of the *Care and Protection of Children Act 2007*.
[ii] Ibid.
[iii] In the Northern Territory it is known as the Aboriginal Child Placement Principle, however nationwide it is the Aboriginal and Torres Strait Islander Child Placement Principle.
[iv] SNAICC – National Voice for our Children (2017) Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle: a resource for legislation, policy, and program development- external site opens in new window, SNAICC, accessed 2 January 2025.
[v] Ibid.
[vi] Territory Families, Policy: Placements V 1.1, https://families.nt.gov.au/__data/assets/pdf_file/0011/425756/Placements-Policy.pdf, accessed 2 January 2024.
[vii] Care and Protection of Children Act 2007 (NT), s.12(2B).
[viii] Care and Protection of Children Act 2007 (NT), s.12(1) and (2).
[ix] Care and Protection of Children Act 2007 (NT), s.12(2C).
[x] Care and Protection of Children Act 2007 (NT), s.12(2).
[xi] Care and Protection of Children Act 2007 (NT), s.12(3). As far as practicable, be placed in accordance with the hierarchy established in s.12(3).
[xii] Office of the Children's Commissioner, Annual Report 2023-24, https://occ.nt.gov.au/__data/assets/pdf_file/0006/1464234/OCC-Annual-Report-2023-24-web-high-res.pdf.
[xiii] Ibid; SNAICC, Reviewing Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle Northern Territory 2021–23.
[xiv] Ibid.
[xv] Ibid.
[xvi] Office of the Children's Commissioner, Annual Report 2023-24, https://occ.nt.gov.au/__data/assets/pdf_file/0006/1464234/OCC-Annual-Report-2023-24-web-high-res.pdf.

Ms Karen Broadfoot
Acting Chief Executive Officer
Department of Children and Families
Via email only: [redacted]

Dear Ms Broadfoot,

I welcome the opportunity to provide a submission to the review (the review) of the Care and Protection of Children Act 2007 (NT) (the CaPCA).

As you would be aware, the Children's Commissioner is an independent statutory officer focused on the safety and wellbeing of 'vulnerable children' in the Northern Territory (NT) and continuous improvements to policies, practices and services relating to vulnerable children. My mandate centres on the promotion of child rights through awareness raising, consultations and community engagement, advocacy and advice on policy and law reform, in addition to dealing with complaints regarding services to vulnerable children, and monitoring child protection and youth detention systems. This submission builds on an and reflects aspects of the OCC submission made in respect of earlier proposed amendments to the CaPCA dated 17 January 2025 (attached).

While I recognise the need to review legislation to ensure it remains fit-for-purpose and promotes best practice, it is crucial that any proposed legislative and/or policy reforms which have the potential to affect the operation and administration of the child protection system are not made in haste and without adequate consultation or a sound evidence base. I believe the review should not focus solely on legislation but consider its workability and effectiveness within the current socio-economic, cultural and geographic context of the NT and the availability and accessibility of early intervention services, supports and programs to reduce child protection involvement. It is not possible to conduct a thorough review of the child protection system without understanding the role of intersecting policies and programs or the absence thereof, and the broader issues impacting workforce, service system and interplay between relevant government agencies and community services that play a role in this system.

Acknowledging this is the first submission focused on the terms of reference and scope of the review, it provides a high-level overview on how to make the child protection system more effective, efficient and accessible to those in contact with or at risk of entry into the system. It is focused on improvements which embed and give effect to children's rights, offer alternatives to the formal system that address risk and need earlier and that strengthen and where possible, preserve the family unit.

In undertaking this review, we must acknowledge the colonial origins of the current system and the intergenerational impacts of past discriminatory laws and policies on Aboriginal children, families and communities. It is crucial to ensure changes to the child protection system - like legislative reform - address the discriminatory underpinnings of the past.

This review and any amendments provide an opportunity to address systemic and emerging issues impacting vulnerable children and families across the NT. Now is the time to reconcile legislation in the NT in line with best practice child protection frameworks, nationally and internationally.

Meaningful consultation, co-design and collaboration with stakeholders must occur from the inception of the review process through genuine co-design and collaboration.

I value the opportunity to make this submission and offer the expertise of my office to this review moving forward. I also acknowledge the diverse views and experiences of organisations working in this sector who have significant expertise to offer this review. I recommend further consultation with these groups including Aboriginal Community Controlled Organisations and the social services sector.

I look forward to the next stage of this review process and again offer my assistance in the planning, consultation and coordination needed to achieve a robust and independent process.

For any questions related to this submission, please contact Elle Jackson A/Manager Strategy and Rights at

Yours sincerely,

Shahleena Musk
Children's Commissioner
2 May 2025

Summary of key recommendations

- An independent expert panel with subject matter expertise should be appointed to lead the review, with due consideration of related reviews and Inquiries conducted in New South Wales (NSW)[1], South Australia (SA)[2] and Victoria.[3] After this initial consultation on the terms of reference and scope, the review should be deferred to ensure it is well planned, coordinated and resourced.
- Consider the evidence, findings and recommendations made in recent reviews, Inquiries and Royal Commissions into state and territory child protection systems, particularly noting the applicability to the Northern Territory legal and policy context and any accompanying reform to the child protection system.
- Consider amendments to include similar provisions to Part 1.1B of the *Children, Youth and Families Act 2005 (Victoria)* that enshrine the right to self-determination for Aboriginal children, young people and families.
- Consider amendments to include a positive duty on the NT Government to progressively hand over power, resources and responsibilities to Aboriginal communities and organisations (as has occurred in Victoria under s18 of the *Children Youth and Families Act 2005).*[4] Legislative action must be met with a comprehensive plan developed in partnership with Aboriginal Community Controlled Organisations to outline the path to delegated authority.
- Consider amendments to formalise and strengthen the role and importance of Aboriginal Carer services, family finding and kinship assessment, advice and support services and ensure they can be actively involved in decision making for Aboriginal children, young people and families.
- Consider staged amendments to develop and operationalise Aboriginal Family Led Decision Making (AFLDM) as part of the child protection system and resource an AFLDM model in the Aboriginal Community Controlled sector.
- Enact s49 and s127 of the CaPCA to ensure that a mediation conference can be convened at various stages of the child protection system and develop and adequately resource an NT wide mediation service in addition to the development, resourcing and empowerment of AFLDM mechanisms across the NT in partnership with Aboriginal Community Controlled Organisations.
- Develop an active efforts framework with specific provisions that require implementation of the Aboriginal Child Placement Principle to the standard of Active Efforts, considering the legislative schemes in Queensland and New South Wales which have recently legislated their application.[5]
- Operationalising the ACPP through the development of comprehensive and clear policy and practice guidance for child protection staff.
- Consider workforce training, development and policy updates that are required to equip the child protection workforce to be 'Active Efforts ready' in line with NSW approach to Active Efforts reforms.
- Identify meaningful strategies to address the child protection workforce shortage and practitioner vacancy rate to ensure Active Efforts provisions are not set up to fail in practice.

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[1]Professor Megan Davies, Family is Culture: Final Report Independent Review into Aboriginal Out of Home Care in NSW, (2019), New South Wales.
[2] Commissioner for Aboriginal Children and Young People, *Holding onto Our Future*, *(2024),* South Australia.
[3] Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems,* (2023), Victoria
[4] S18, Children, Youth and Families Act, (2005), Victoria.
[5] Children and Young Persons (Care and Protection) Act, 1998, (NSW) s.9(a),; Child Protection Act 1999 (Qld) s 5F(6).

- A sixth element of Performance should be considered for the ACPP. The implementation of Performance to the standard of Active Efforts is demonstrated by accurate reporting and compliance of all elements, including comprehensive measures embedded within practice and case management systems[6]
- Legislate a mandatory annual reporting requirement that the CEO report on the implementation of Active Efforts for the ACPP and on matters of funding directly invested in Active Efforts measures across the child protection service system[7]
- Amend the CaPCA to include that the Court should satisfy itself that the five elements of the ACPP have been applied to the standard of Active Efforts before making an order under the Act. If it is not so satisfied, the Children's Court should have the power to make specific orders requiring the CEO to comply with the obligation to implement the ACPP to the standard of Active Efforts.
- Consider staged amendments to s143A of the CaPCA to stipulate that in relation to proceedings under the Act, the Children's Court must appoint an independent legal representative to represent a child to whom the proceedings relate.
- Develop accompanying regulations in accordance with s143E, practice directions or guidelines, specialised training and minimum standards to support the appointment and articulate the core requirements, qualifications and expertise of independent legal representatives for children in partnership with the Courts, the NT Law Society and legal services.
- Consider the need to create, resource and empower an independent Guardian or Advocate for children in care modelled on the South Australian Guardian for Children and Young People enshrined in s26 of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA)*.[8]
- Consider amendments to grant the Children's Commissioner free and unfettered access to child protection information, data and records related to vulnerable children and provides access to any place where a vulnerable child in care resides.
- Consider a staged approach to implement child safe standards and a reportable conduct scheme as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse. This should be met with adequate planning, coordination and infrastructure including resourcing to empower an independent oversight body which may include a new Commission for Children and Young People to develop, lead and operationalise a reportable conduct scheme.
- Prioritise the development of a differential response to children and families, and subsequently consider amendments to s26 of the CaPCA that will bring the NT in line with and reflect mandatory reporting provisions modelled on Part 4.4 of the *Children, Youth and Families Act 2005* (Victoria)[9]. This must go hand in hand with the development of the stage approached to enforceable child safe standards and a reportable conduct scheme.
- Consider amendments to s70(3)[10] to strengthen children and young people's rights to adequate information, assistance and support in leaving care planning and the provision of resources and supports specific to leaving care within separate leaving care plans and more clearly articulate the responsibility of the CEO in leading leaving care planning for children in care.

[6] Commissioner for Aboriginal and Torres Strait Islander Children, *Holding into Our Future*, (2024), South Australia, pg 24.
[7] Commissioner for Aboriginal and Torres Strait Islander Children, *Holding into Our Future*, (2024), South Australia, pg 24.
[8] S26, *Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA).*
[9] Part 4.4, *Children, Youth and Families Act,* (2005), Victoria.
[10] S70, *Care and Protection of Children Act*, (2007), NT.

- Develop a comprehensive and complementary framework to guide care and transition planning to accompany legislative reforms.
- Consider amendments to mandate a comprehensive and culturally appropriate health assessment and regular reviews for all children entering care. This should include a positive duty for the CEO and service providers to facilitate and enable referrals and specialists or allied health care assessments, supports, treatment and services.
- Consider the need to resource, develop and operationalise a health initiative modelled on the *Pathways to Good Health Initiative* in Victoria[11] that should be developed with and led by Aboriginal Community Controlled Organisations.
- Consider mechanisms to enable timely screening and assessment for children in care with suspected disability, along with an evaluation of the existing Medical and Allied Health Specialist Services (MAHSS) panel.

Introduction – Northern Territory context

The NT's child protection system has long been a site of systemic injustice and adversity for Aboriginal children and their families. Aboriginal children make up 89% of all children in out of home care in the Northern Territory.[12] In 2024-25, just 16.7% of Aboriginal children in care were placed with Aboriginal relatives or kin.[13] As reported by SNAICC, the Northern Territory's rate of placing Aboriginal children in care with their Aboriginal kin or other Aboriginal carers has worsened year on year.[14]

Since July 2023, the OCC has received 187 complaints related to the child protection system. Data trends show, care planning remains the most significant concern for children and young people. Complaints reveal, children and young people are dissatisfied with the adequacy and appropriateness of their care arrangements including case management, care planning, cultural plans and leaving care plans. Trends also show children and young people have ongoing concerns for safety and stability, and family connectedness while in care. For example, the OCC received a total of 44 complaints about family connectedness indicating a desire to be better connected to their birth families and other loved ones.

This demonstrates the need for a fundamental shift away from approaches that blame, isolate and stigmatise families towards approaches that promote the social and emotional wellbeing of children, build and strengthen connections to families, communities and cultures and identify shared accountability.

Priority must be given to reforms that focus on promoting the unique rights of children and ensuring the needs of children, young people and families are met through culturally-safe and trauma-responsive approaches.

The review must recognise Aboriginal people's right to self-determination. Working in genuine partnership with and handing over control to Aboriginal people and communities is vital to determining safe, effective and responsive child protection practices, and is reflected in Closing the Gap priority

[11] Victorian Government, *Pathways to Good Health Initiative,* accessed via webpage May 2025.
[12] Office of the Children's Commissioner, *Annual Report 2023-24*, pg 12.
[13] Report on Government Services (ROGS) Data, *Aboriginal and Torres Strait Islander Children aged 0-17 years in care by relationship with caregiver, at 30* June (a), rogs-2025-partf-section16-child-protection-data-tables.xlsx Table 16A.23
[14] SNAICC, *Reviewing the Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle in the NT 2021-2023*, pg 6.

reforms.[15] This is ultimately about reimagining our child protection system from one that has historically discriminated against Aboriginal people, forcibly removed their children and caused irreparable harm, to one that is community controlled, culturally responsive and grounded in the expertise of Aboriginal child rearing practices and perspectives.

At the heart of this review are the voices, ideas and experiences of children and young people who have been in contact with and/or are presently subject to the child protection system. They have significant expertise to contribute to this review as subject matter experts who can provide insights into the practical and systemic factors impacting the operation and effectiveness of the system. Listening to and taking their views seriously is paramount to a meaningful consultation process.

Most jurisdictions across Australia are striving to move beyond reactive crisis driven responses toward early, relevant, place-based and culturally responsive supports that prevent escalation or entrenchment in the statutory system. This review is a pivotal moment for the NT to seize the opportunity to do the same.

The links between family socio-economic disadvantage, intergenerational trauma and their impact on the wellbeing of children are well established. Reforms geared towards prevention, early help for families, and those focused on genuine partnership will enable a more contemporary and responsive child protection system and create better outcomes for the Territory's most vulnerable children.

Terms of Reference

It is imperative the review is independent, adequately resourced and undertaken through robust governance, infrastructure and oversight that enables transparency and accountability. This can be achieved via the following:

- An independent expert panel with subject matter expertise should be appointed to lead the review, with reference due consideration of related reviews and Inquiries conducted in New South Wales (NSW)[16], South Australia (SA)[17] and Victoria.[18]
- Terms of reference must consider how the review can play a role in operationalising and fulfilling the NT's obligations under key partnership agreements and strategies including Safe and Supported: the National Framework for Protecting Australia's Children[19] particularly action 8 that stipulates implementing the Aboriginal Child Placement Principle to the standard of Active Efforts,[20] and actions plans under the NT Generational Strategy[21] and Closing the Gap.[22]

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[15] Australian Government*, National Agreement on Closing the Gap: Priority Reforms*, accessed via webpage May 2025.
[16] Professor Megan Davies, Family is Culture: Final Report Independent Review into Aboriginal Out of Home Care in NSW, (2019), New South Wales.
[17] Commissioner for Aboriginal Children and Young People, *Holding onto Our Future, (2024),* South Australia.
[18] Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems,* (2023), Victoria.
[19] Australian Government, *Safe and Supported: National Framework for Protecting Australia's Children 2021: 2031*, (2021).
[20] Australian Government*, Safe and Supported: Aboriginal and Torres Strait Islander First Action Plan*, pg 36.
[21] Northern Territory Government, *Kids Safe, Family Together, Community Strong: 10 Year Generational Strategy for Children and Families in the Northern Territory*, (2023).
[22] Australian Government, *National Agreement on Closing the Gap*, (2020).

- The review must take a child rights approach and identify opportunities for the CaPCA to be strengthened to include children's rights enshrined in the United Nations Convention on the Rights of the Child,[23] United Nations Declaration of the Rights of Indigenous Peoples,[24] the United Nations Convention on the Rights of Persons with Disabilities[25] and the Optional Protocol to the Convention Against Torture (OPCAT).[26]
- A Steering Committee should be appointed to co-design, guide and inform the direction of the review. The Committee should include senior Government representatives, young people with lived care experience, the Children's Commissioner, leaders from Aboriginal Community Controlled Organisations, DCF Cultural Advisors, and legal and child rights experts.
- A comprehensive report should be developed as a result of the review that reflects the views of stakeholder submissions, consultations, the methodology for the review, evidence and comprehensive analysis of relevant data and information that has been covered in the review. This report should be made public.
- Any recommendations made as a result of the review should be overseen by the Steering Committee or an implementation group. Recommendations must have a clear implementation plan and should be developed and delivered in partnership with Aboriginal Community Controlled Organisations and other key stakeholders.
- A monitoring and evaluation framework should be developed for both the review and implementation of any recommendations arising. An evaluation of the recommendation's implementation and findings, including legislative reform, made in the review should be conducted by an independent expert. A mandatory review of any amendments to the CaPCA should be legislated, well-resourced and be undertaken by the NT Law Reform Committee.
- Any reports that arise from the monitoring and evaluation of potential future reforms should be made public.

Through a genuine process of co-design, particularly human-centred design with key stakeholders – including, young people with lived care experience, Aboriginal Community Controlled Organisations and community leaders, and legal and child rights experts – the Department can have confidence the CaPCA supports the overall improvement of the NT child protection system.

The review should aim to contemporise and modernise the objectives and principles of the CaPCA to ensure that it prioritises the safety of children and enshrines the unique rights of children, with a particular focus on the following overrepresented groups:

- Aboriginal children
- Children living with a disability
- Children with intergenerational care history

[23] United Nations, *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
[24] United Nations, *Declaration on the Rights of Indigenous Peoples*, accessed via webpage October 2024, (entered into force 13 September 2007).
[25] United Nations, *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, A/RES/61/106, (entered into force 3 May 2008).
[26] *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (adopted 2002), UN Doc. A/RES/57/199, (entered into force 22 June 2006).

Addressing outstanding recommendations

It is essential for the terms of reference to consider outstanding recommendations from previous reviews, Inquiries and Royal Commissions and how CaPCA amendments to and any accompanying reform to the child protection system can address them. The review must also draw on expertise and learnings from other jurisdictions who have embarked on significant reforms to their child protection systems, including through the implementation of Active Efforts.

The review should analyse and consider outstanding recommendations and learnings from:

- The Royal Commission into Institutional Responses to Child Sexual Abuse (including the need to legislative a reportable conduct scheme in the NT and establish the implementation and accreditation of Child Safe Standards)[27]
- The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission)[28]
- The Royal Commission into the Protection and Detention of Children in the Northern Territory (the NT Royal Commission)[29]
- Inquest into the Death of Baby G[30]
- Inquests into the deaths of Miss Yunupiŋu, Ngeygo Ragurrk, Kumarn Rubuntja and Kumanjayi Haywood[31]
- Inquest into the death of Kailab Moir[32]
- Kids Safe, Family Together and Community Strong: 10 Year Generational Strategy for Children and Families in the NT[33]
- Family is Culture Review Report: Independent Review of Aboriginal Children and Young People in OOHC (NSW)[34]
- Yoorrook Justice Commission, Yoorrook for Justice Final Report (Chapter D – Child Protection)[35]
- Commissioner for Aboriginal Children and Young People South Australia - Holding onto Our Future: Final Report of the Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle in the removal and placement of Aboriginal children and young people in South Australia.[36]

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[27] Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Recommendations*, pg 19, pg 36.
[28] The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report Volumes 1-12*, (2023).
[29] Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report: Findings and Recommendations*, (2017).
[30] Inquest into the Death of Baby G, [2024], NTLC 6.
[31] Inquests into the deaths of Miss Yunupiŋu, Ngeygo Ragurrk, Kumarn Rubuntja and Kumanjayi Haywood [2024] NTLC 14.
[32] Inquest into the death of Kailab Moir [2025] NTLC 6
[33] Northern Territory Government, *Kids Safe, Family Together, Community Strong: 10 Year Generational Strategy for Children and Families in the Northern Territory*, (2023).
[34] Professor Megan Davis, *Family is Culture: Final Report, (2019)*, New South Wales.
[35] Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems,* (2023), pg 106-212, Victoria.
[36] Commissioner for Aboriginal Children and Young People South Australia, Holding onto Our Future: Final Report of the Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle in the removal and placement of Aboriginal children and young people in South Australia, (2024), South Australia.

Operationalise Government commitment to national agreements

The terms of reference must recognise the NT Governments commitment to the National Agreement on Closing the Gap[37] and Safe and Supported: the National Framework for Protecting Australia's Children 2021-2031[38] and Action Plans, particularly action 8 of the First Action Plan that stipulates implementing ATSICPP to the standard of Active Efforts[39] The terms of reference should consider how the CaPCA amendments can operationalise the NT's commitment to these national agreements.

Scope of the review

Operationalising the cultural rights of Aboriginal children

The denial of self-determination and ongoing systemic racism directly contributes to the over-representation of Aboriginal children and young people in the child protection system.

The OCC references Part 1.1B of *Children, Youth and Families Act 2005 (Victoria*) that enshrine unique recognition principles protecting and promoting the right of Aboriginal children, families and communities to self-determination. The principles also recognise the serious barriers that historical and ongoing racism create to the best interests of Aboriginal children. The review should consider amendments to include similar provisions to Part 1.1B of the *Children, Youth and Families Act 2005 (Victoria)* that also outline the responsibility of Government, community service providers and the Courts in applying recognition principles that protect the rights of Aboriginal children, young people and families.[40]

A commitment to delegated authority

There should also be a clear duty in the Act that supports the right to self-determination through requiring the Government to progressively hand over power, resources and responsibilities to Aboriginal communities and organisations (as has occurred in Victoria under s18 of the *Children Youth and Families Act 2005).*[41]

For example, the self-determination duty in the Act could say that: "the Government has a duty to seek to develop strategic partnerships Aboriginal Community Controlled Organisations (**ACCOs**), through and by:

- sharing information and data about Aboriginal children's experiences in the child protection system;
- ensuring opportunities and inviting proposals to improve outcomes for Aboriginal children;
- working with the Court, Children's Commissioner and ACCOs to set expectations and targets for Aboriginal children;
- delegating functions to ACCOs and;
- developing accountability measures, including reporting on measures taken to improve outcomes for Aboriginal children and young people."

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[37] Australian Government, *Closing the Gap National Agreement: Formalities,* accessed via webpage April 2025.
[38] Australian Government, *Safe and Supported: the National Framework for Protecting Australia's Children 2021-2031, pg 3,* accessed via webpage April 2025.
[39] Australian Government, *Safe and Supported: First Action Plan 2023-2026 Fact Sheet*, pg 2.
[40] Part 1.1B, Children, Youth and Families Act (2005), Victoria.
[41] s18, Children, Youth and Families Act, (2005), Victoria.

Legislative action must be met with a comprehensive plan developed in partnership with ACCOs to outline the path to delegated authority. The plan must:

- be shaped by NT Aboriginal community priorities and aspirations,
- outline relevant legislative amendments to enable exercise of statutory authority by Aboriginal people and communities, including a timeline for amendments,
- stage implementation with enabling and supporting mechanisms for implementing delegated authority,
- identify current and future ACCO sector capacity to exercise statutory child protection functions, along with a plan for staged implementation,
- include mechanisms outside of legislation for Aboriginal people and communities to exercise decision-making and authority in child protection matters.
- identify opportunities to address the barriers to kinship placements and challenges faced by kinship support services,
- identify pathways to shift funding from non-ACCO to ACCO service providers and a detailed plan in consultation with ACCOs to transition delegated authority,
- leverage the strengths of the existing system and build on examples of best practice,
- identify gaps in service coverage and availability, and barriers to service access, and how these will be addressed,
- build on the capacity of existing ACCOs providing kinship care services and support new ACCOs to provide kinship support services, including kinship finding, assessments including advice/recommendations to the department and ongoing support for carers,
- define key pillars of system transformation at a service, policy and system level,
- include strategies to meaningfully empower Aboriginal families and communities to be involved in decision-making about out-of-home care.

Centering the rights and voices of Aboriginal people in decision making

Aboriginal Family Led Decision Making (AFLDM) is available in a number of jurisdictions as a key decision-making process for Aboriginal children who have been substantiated as having suffered, or likely to suffer, abuse or neglect. The AFLDM program is seen as a crucial tool to address the over-representation of Aboriginal children and young people in the child protection system and integral to implementing the Aboriginal Child Placement Principle. The AFLDM program is a culturally safe and respectful process which facilitates Aboriginal decision making and aims to:

- Build on the strengths in family and kinship networks so that the needs of children can be met.
- Empower families to make good decisions and plans in relation to the safety and wellbeing of their children.
- Explore family placement options, if needed.
- Actively involve the child's family, Elders and other significant people in the child's life in decision-making.[42]

Aboriginal family led decision making (AFLDM) was not legislated in the 2023 CaPCA amendments. It is essential for legislation, policies, processes, procedures and practices to reflect the importance of enabling Aboriginal families and children to meaningfully participate in decision-making. AFLDM must

[42] VACCA, Aboriginal Family Led Decision Making Aboriginal Family Led Decision Making - VACCA

be embedded in the legislation, including provision for family conferences to be independently facilitated by Aboriginal people. This should be part of a staged approach and co-design process with Aboriginal Community Controlled Organisations and must be met with adequate investment.[43]
The OCC recommends the CaPCA enables AFLDM and that s.127 of the CaPCA establishes that a mediation conference can be convened for a child through the provision of adequate resourcing. The review should consider the well-established need for a resourced mediation and AFLDM mechanism that is co-designed and facilitated by Aboriginal Community Controlled Organisations to service the NT and able to take referrals from the CEO and the Court.

Empowerment and strengthening of Aboriginal Carer services, including family finding, kinship care assessments and support services in legislation is key to meaningfully protect and promote the cultural rights of Aboriginal children. In addition, the NT must fulfill its commitments under Safe and Supported and Closing the Gap to increase the exercise of authority and role of Aboriginal communities and organisations, to be actively involved in decision making for Aboriginal children, young people and families and in the provision of family support and progressively child protection services. There is significant work to be done to build the capacity and sustainability of an Aboriginal workforce to transition aspects of the child protection system over to Aboriginal community control.

Active Efforts and the Aboriginal Child Placement Principle

The OCC supports legislative and policy approaches that promote and protect the safety, rights and wellbeing of all children in contact with the child protection system. We draw attention to the recommendation made by the Coroner in the Inquest into the death of Baby G regarding Active Efforts modelled on NSW provisions. [44]

The Aboriginal Child Placement Principle (ACPP) is underpinned by 30 years of evidence supporting the importance of distinct child protection responses determined by Aboriginal children's connection to their family, community, culture and country. The development of the ACPP was a direct response to the devastating effects of past discriminatory laws and policies that saw the mass removal of Aboriginal children and their disconnection from land, culture and language through the separation of families.

The ACPP aims to:

- Embed an understanding that culture is integral to the safety and wellbeing of Aboriginal children and young people
- Recognise and protect the rights of Aboriginal children, family and communities in child safety matters
- Support self-determination of Aboriginal and Torres Strait Islander people in child safety matters
- Reduce the over-representation of Aboriginal and Torres Strait Islander children in child protection and out of home care systems.[45]

The ACPP reflected across multiple subsections of s12, is focused on reducing the over-representation of Aboriginal children in out of home care, reflects the importance of Aboriginal children's rights to develop and maintain their connection to family, community and culture, and affirms Aboriginal children

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[43] SNAICC, Reviewing the Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle Northern Territory 2021-23, pg 21.
[44] *Inquest into the death of Baby G*, (2024), NTLC 16, pg 46.
[45] SNAICC, *Reviewing implementation of the Aboriginal and Torres Strait Islander Child Placement Principle in the Northern Territory 2021-23* (2025), pg 4.

and their families' rights to participate in significant decisions and administrative or judicial child protection processes.[46]

The concept of active efforts was originally developed internationally by Indigenous people to address the overrepresentation of Indigenous children in contact with care and protection systems.[47] For Aboriginal children, active efforts cannot be seen separate from the ACPP. Active efforts underpin and support the ACPP by providing a framework to effectively measure compliance with all five elements principle.[48]

SNAICC defines active efforts as *"purposeful, thorough and timely efforts that are supported by legislation and policy and enable the safety and wellbeing of Aboriginal and Torres Strait Islander children. This shared national understanding of Active Efforts is necessarily broad and can encompass a variety of strategies to ensure Aboriginal and Torres Strait Islander children's connection to family, culture, community and country."*[49]

Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) defines active efforts as "as affirmative, thorough, and timely efforts that are intended primarily to maintain or reunite an Aboriginal and Torres Strait Islander child with his or her family." In Queensland, active efforts are regarded as the "gold standard" on the adequacy of service provision to a child and their family when going through the child protection system. An individualised and responsive tailoring of efforts to the circumstances of each case is required and includes access to comprehensive assessments, facilitating participation of representatives of the child's family in decision making, family finding services, having culturally appropriate family preservation strategies, maintaining siblings together and having regular visits with custodians. Active efforts also have a focus in the operation and deliberations of the Court; with judicial officers determining the quality of actions necessary to constitute Active Efforts and whether these efforts have been made or not.[50]

The review must consider opportunities to strengthen implementation of the ACPP[51] through complementary policies and guidance to workers, matched with culturally safe and effective services, supports and programs. While all five elements of the ACPP were included as part of amendments to the CaPCA in 2023, the amendments were not matched by comprehensive policy and guidance including development of services and programs to inform how best to implement and give effect to all five elements. Legislation alone is insufficient implement ACPP – reforms must be met with accompanying policy and practice guidance. In addition, there should be a clear duty and responsibility on those involved in the child protection system to implement and demonstrate adherence to the five elements of the ACCP to the standard of active efforts, through the inclusion of Active Efforts provisions.

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[46] United Nations Human Rights Commission, *Convention on the Rights of the Child*, E/CN.4/RES/1990/74 (1990) Art 10, Art 12, Art 30; United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295 (2004).
[47] SNAICC, *The Aboriginal and Torres Strait Islander Child Placement Principle: A Guide to Support Implementation,* pg 4.
[48] Queensland Aboriginal and Torres Strait Islander Child Protection Peak, *Active Efforts in Practice*, pg 4, 5
[49] SNAICC, *The Aboriginal and Torres Strait Islander Child Placement Principle: A Guide to Support Implementation*, pg 4.
[50] Queensland Aboriginal and Torres Strait Islander Child Protection Peak, Active-Efforts-Practice-Guide-v14-FINAL.pdf
[51] S12*, Care and Protection of Children Act*, 2007, NT.

In light of this, the review should consider:

- Developing an Active Efforts framework with specific provisions that require implementation of the Aboriginal Child Placement Principle to the standard of Active Efforts, considering the legislative schemes in Queensland and New South Wales which have recently legislated their application.[52]
- Operationalising the ACPP through the development of comprehensive and clear policy and practice guidance for child protection staff modelled on work done by QATSICPP on implementing Active Efforts in practice [53]and in SNAICC's guide on implementing the ATSICPP, specifically concerning Active Efforts[54]
- The review must also consider workforce training, development and policy updates that are required to equip the child protection workforce to be 'Active Efforts ready' in line with NSW approach to Active Efforts reforms.
- Meaningful strategies to address the child protection workforce shortage and practitioner vacancy rate to ensure Active Efforts provisions are not set up to fail in practice.
- A sixth element of Performance should be considered for the ACPP. The implementation of Performance to the standard of Active Efforts is demonstrated by accurate reporting and compliance of all elements, including comprehensive measures embedded within practice and case management systems[55]
- Legislate a mandatory annual reporting requirement that the CEO report on the implementation of Active Efforts for the ACPP and on matters of funding directly invested in Active Efforts measures across the child protection service system[56]
- Amend the CaPCA to include that the Court should satisfy itself that the five elements of the ACPP have been applied to the standard of Active Efforts before making an order under the Act. If it is not so satisfied, the Children's Court should have the power to make specific orders requiring the CEO to comply with the obligation to implement the ACPP to the standard of Active Efforts.

Operationalising the ACPP through Active Efforts can be achieved by working with Aboriginal Community Controlled Organisations (ACCOs) to build their capacity, provide culturally safe services and supports and progressively transfer the responsibility for aspects of the child protection system to ACCOs through genuine partnerships and capacity building met with adequate resourcing, infrastructure and authorisations as evidenced through the approach taken in Victoria.[57]

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[52] Children and Young Persons (Care and Protection) Act, 1998, (NSW) s.9(a),; Child Protection Act 1999 (Qld) s 5F(6).

[53] Queensland Aboriginal and Torres Strait Islander Child Protection Peak, Active Efforts in Practice.

[54] SNAICC, *Aboriginal and Torres Strait Islander Child Placement Principle Guide to Support Implementation,* (2018).

[55] Commissioner for Aboriginal and Torres Strait Islander Children, *Holding into Our Future*, (2024), South Australia, pg 24.

[56] Commissioner for Aboriginal and Torres Strait Islander Children, *Holding into Our Future*, (2024), South Australia, pg 24.

[57] Victorian Government, Victoria's Aboriginal Children in Aboriginal Care approach, accessed via webpage May 2025.

Protecting and promoting the rights of all children and strengthening their right to participate

Children and young people have a right to be involved in decisions that impact them. This is currently articulated in existing principles of the CaPCA that enshrine a child's right to participate in decisions that affect them.[58]

Recently, stakeholders have approached our office regarding concerns for vulnerable children in child protection proceedings who have not had a separate representative appointed to engage, advocate and appear on their behalf or to act in a "best interest's" capacity.

The CaPCA can strengthen the right for children to participate and have their views taken seriously by:

- Considering a staged amendment to s143A of the CaPCA to stipulate that for children subject to care and protection proceedings the Court **must** appoint an independent legal representative
- Developing regulations and accompanying practice directions, mandating specialised training, and specifying qualifications and criteria to be met to support the appointment and effectiveness of independent legal representatives for children.

Division 6A of the CaPCA governs legal representation for children, with s143E providing for the making of regulations which may establish eligibility criteria for appointment; and set out the responsibilities and standards to be met as a legal representative for the child. However as of this date, no regulations have been enacted. In contrast to other jurisdictions there is limited eligibility criteria or articulation of child specific qualifications or expertise for appointment and absence of specialised training of separate legal representatives in the NT.

The review should also consider the need to legislate an independent Guardian or Advocate for children in care modelled on the South Australian Guardian for Children and Young People enshrined in s26 of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA).*[59]

Independent oversight

Independent external oversight is an important mechanism to foster community confidence in the exercise of power by public officials. The capacity of the OCC to provide comprehensive, valuable and effective oversight of agencies and to promote the safety and wellbeing of vulnerable children in the NT requires free and unfettered access to places and information pertaining to where vulnerable children are held or accommodated.

In line with recommendation 40.5 of the NT Royal Commission,[60] reforms to the CaPCA to legislate free and unfettered access would facilitate the OCC to:

- Inspect a place where children are involuntarily held or routinely accommodated in an institutional setting, without prior notice;
- Inspect a any place where a child or young person who is involved with the child protection system resides if a complaint raising a serious risk of harm to the children is received;

[58] S11*, Care and Protection of Children Act*, 2007, NT
[59] S26, *Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA).*
[60] Royal Commission into the Protection and Detention of Children in the Northern Territory, *Findings and Recommendations, (2017),* pg 62.

- when undertaking an investigation to be able to access information on:
  - children and young people in the child protection and/or youth justice systems; and
  - facilities where children and young people are held;
  - be able to access documents while undertaking an investigation or inquiry, which otherwise may be subject to a legal professional privilege claim.

The OCC supports CaPCA amendments reflective of similar legislative provisions to empower the OCC in the performance of its functions, free and unfettered access to persons, facilities, information and records. These amendments would be a positive step forward to ensure the OCC can deliver effective independent monitoring, oversight, evaluation and provide advice for institutions caring for vulnerable children with the view to achieving continuous service, practice and policy improvements.

Child Safe Standards and Reportable Conduct Scheme

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) examined the historical abuse of children in educational institutions, religious groups, sporting organisations, state institutions and youth organisations. In 2017, the final report made 409 recommendations on how to improve laws, policies and practices to prevent and better respond to child abuse in institutions. Following the final report, the Australian Government confirmed its commitment to implement all recommendations directed at the Commonwealth. The NT Government confirmed its commitment to implement recommendations specific to states and territories, via its initial response and its last progress report.

While the NT's stringent mandatory reporting laws and Working with Children's Checks (Ochre Card) are some mechanisms for the prevention of and response to allegations of child abuse, these are insufficient alone. The NT must undertake further and extensive work to implement outstanding recommendations from the Royal Commission. In particular, commitment to, adherence and enforcement of the Child Safe Standards and National Principles for Child Safe Organisations, in addition to the development and delivery of a reportable conduct scheme in our jurisdiction.

Essentially the child safe standards must be understood, committed to and implemented in the NT; to ensure organisations that engage children create a child safe culture, adopt strategies and take action to promote child wellbeing and prevent harm to children. In addition, we need a reportable conduct scheme to ensure organisations can appropriately respond to allegations of child abuse (and other child-related misconduct) made against their workers and volunteers.

A reportable conduct scheme enables independent oversight of these responses and facilitates information sharing between regulators and relevant bodies including police and the oversight agency. Together the Child Safe Standards and a Reportable Conduct Scheme work to ensure children are safe, while strengthening an organisations capacity to prevent and appropriately respond to allegations of child abuse.

The review should consider staged amendments to enliven child safe standards, and a reportable conduct scheme as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse. This should be met with adequate planning, coordination and infrastructure including resourcing to empower an independent oversight body which may include a new Commission for

Children and Young People to develop, lead and enforce compliance with the child safe standards/National Principles and operationalise a reportable conduct scheme.

Amending mandatory reporting requirements

People in the NT notify child protection authorities of alleged harm at six times the rate of the national average.[61] While a wide range of factors may contribute to explaining why there is such a significant difference in the NT and the national rate. The NT is the only jurisdiction where all adults are required by law to mandatorily report if they believe a child has been harmed or exploited.

In the last reporting period, 22,728 notifications were made to child protection, relating to 11,217 children. 54% of those notification **did not** screen in for further investigation. Of the 22,728 notifications, 19% (4,291) of those led to an investigation and 5% (1,223) substantiated or established harm had occurred. While the rate of notifications to the Department of Children and Families is far more than other jurisdictions, the proportion of notifications that are substantiated is the **second lowest** in Australia (5.1% substantiated in 2022-23).[62]

There is a risk that a significant portion of children and families who are reported to child protection may fall through the cracks and receive limited or no access to earlier services or supports. It is only until their needs escalate or when they reach crisis point that child protection intervenes in the tertiary end of the system which can result in removal. The Department must work with ACCOs and the community sector to develop a comprehensive differential response for children and families.

In congruence with this, the OCC recommends consideration of amendments to mandatory reporting requirements in s26 of the CaPCA modelled on Part 4.4 of the *Children, Youth and Families Act 2005* (Victoria).[63] These reforms will need to coincide with work around enforceable child safe standards/national principles and a reportable conduct scheme in the NT.

Leaving care planning

The CaPCA requires the CEO to ensure all young people leaving care have an established *Care Plan*. For a child aged 15 years or over, the *Care Plan* must identify their needs and outline actions to be taken to prepare them to leave care, transition to other living arrangements and to live independently.[64] The plan should:

- Prepare them for leaving care;
- Provide assistance and support;
- Enhance their ability to be self-sufficient and become independent adults.

Collaborative planning for transition to independence must commence with a young person from the time they are 15 years of age. Caseworkers record details of the plan in the young person's *Transition to Independence Care Plan* which must articulate the level of practical and financial support that the

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[61] Office of the Children's Commissioner Northern Territory, *Annual Report 23-24*, page 30.
[62] Office of the Children's Commissioner Northern Territory, *Annual Report 23-24*, pages 28-43
[63] Part 4.4, *Children, Youth and Families Act*, (2005), Victoria
[64] S70, *Care and Protection of Children Act*, (2007), NT

Department must provide to meet their needs.[65] Planning must be focused on the young person's circumstances and the support required to develop essential life skills.
Planning for a young person's transition to independence must be developed in collaboration with the young person, their family, their carer and any person identified by the young person as significant in their life.[66] The young person's views and wishes must be taken in account where reasonable and appropriate. Clear and proactive communication about planning decisions is critical throughout this process to reduce stress and risk of poor outcomes for the young person as they navigate a period of significant change in their lives.

The majority of young people aged 15-17 years do not have a leaving care plan. DCF data provided to the OCC for annual monitoring of the CAPCA indicates this requirement is not being met. During 2023-24, there were 290 young people aged 15-17 years in out-of-home care requiring a *Care Plan.* Of those, 56% of young people were reported to not have one.[67]

The OCC recommends amendments be made to s70(3) of the CaPCA[68] to strengthen young people's rights to adequate information, assistance and support in leaving care planning and the provision of financial and other resources for leaving care within separate leaving care plans. In addition, the CaPCA must clearly articulate the responsibility of the CEO in leading leaving care planning for children in care. The Department should also consider the development of a complementary framework to guide care and transition planning.

Addressing the health, mental health and disability needs of vulnerable children

The provision of adequate health, mental health and disability screening, assessment and treatment is vital to ensure the wellbeing of children and young people in care.

All children entering or in care should receive a comprehensive health check. For Aboriginal children, this should align to a comprehensive health check under Medicare item 715[69] and be delivered by an Aboriginal Medical Service. Provisions should be entered into the CaPCA that mandate comprehensive health checks within a timely period for all children in care. This should include a positive duty for the CEO and service providers to facilitate and enable referrals and specialists or allied health care assessments, supports, treatment and services.

We reference the *Pathways to Good Health Initiative* in Victoria that delivers screening, assessment, referrals and health planning for children aged 0-17 years entering or re-entering statutory care[70] and recommend the review consider the need to resource a similar initiative in the NT that could be developed with and led by Aboriginal Community Controlled Health Services.

The OCC has focused recently on understanding disability screening and assessment pathways for vulnerable children, including those known as 'crossover children' who are in contact with both the

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[65] Transition to Independence Policy, approved 27/04/23, version 1.01. Department of Territory Families, Housing and Communities
[66] Transition to Independence Policy, approved 27/04/23, version 1.01. Department of Territory Families, Housing and Communities.
[67] Office of the Children's Commissioner Northern Territory, *Annual Report 23-24*,page 44.
[68] S70, *Care and Protection of Children Act*, (2007), NT.
[69] Australian Government, Medicare Benefits Schedule – Item 715, accessed via webpage May 2025.
[70] Victorian Government, *Pathways to Good Health Initiative,* accessed via webpage May 2025.

youth justice and child protection systems. We are aware of serious and ongoing gaps in the provision of adequate screening and assessment for vulnerable children interacting with these systems. The serious issues concerning adequate screening and assessment for children in care, including those who intersect with the youth justice system and enter detention, were well identified and documented by the NT Royal Commission.[71]

Failure to identify and respond to health, mental health and disability needs and trauma associated with abuse and neglect can lead to children in care disengaging from school, society and ending up in detention.

This pathway is reflected in recent coronial inquest findings and recommendations in relation to the death of a child who was in contact with both the youth justice and child protection system. During the Inquest into the death of Kailab Moir the Coroner identified the provision of support to meet the young person's needs was inadequate and inconsistent, including the absence of attempts to meaningfully engage them in paediatric follow up. The Coroner identified "*failure to ensure paediatric follow up played a part in the constant placement breakdowns that Kailab experienced and likely contributed to the deterioration in behaviour to crisis point when he entered the criminal justice system in 2018*".[72]

Access to early and timely assessments for fetal alcohol spectrum disorder to enable the provision of adequate support was another key theme identified during this inquest.[73]

The Coroner recommended "*that the NT Department of Children and Families (formerly Territory Families) review whether recommendation 15.1 (FASD screening) of the Royal Commission into the Protection and Detention of Children in the NT has been implemented and that information sharing protocols give Territory Families access to this information*".[74]

While the OCC acknowledges Machinery of Government changes mean that the responsibility for youth justice has been moved Department of Corrections, DCF must take action to ensure all children in care with suspected disabilities receive timely and early access to screening and assessment. Mechanisms to enable this should be considered as part of the review process, along with an evaluation of the existing Medical and Allied Health Specialist Services (MAHSS) panel.

The issue of adequate screening and assessment was also identified in the Disability Royal Commission that recommended "*State and territory governments should ensure all First Nations children up to five years of age coming into out-of-home care are screened using the culturally adapted developmental screening Ages and Stages Questionnaire-Talking about Raising Aboriginal Kids (ASQ-TRAK) tool. Children who are vulnerable in two or more of the five domains of communication, gross motor, fine motor, problem solving, and personal-social should be supported by an application for an Early Childhood Early Intervention plan*".[75]

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[71] Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report: Findings and Recommendations,* pg 50.
[72] Inquest into the death of Kailab Moir [2025], NTLC 6, pg 44.
[73] Inquest into the death of Kailab Moir [2025], NTLC 6, pg 45.
[74] Inquest into the death of Kailab Moir [2025], NTLC 6, pg 61.
[75] Royal Commission Disability, Volume 9 Final Report: First Nations People with Disability, pg 129.