INQUIRY INTO THE CARE AND PROTECTION OF CHILDREN LEGISLATION AMENDMENT (EVERY CHILD MATTERS) BILL 2026

NT Office of the Children's Commissioner

Madam CHAIR: On behalf of the committee, I welcome everyone to this public hearing into the Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026.

I welcome to the table to give evidence to the committee Children's Commissioner Shahleena Musk. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public, you may ask the committee to go into a closed session and take your evidence in private.

Could you please state your name and the capacity in which you are appearing.

Ms MUSK: Shahleena Musk, Children's Commissioner Northern Territory.

Madam CHAIR: Commissioner, would you like to make an opening statement?

Ms MUSK: Thank you for giving me the opportunity. The Children's Commissioner is an independent statutory officer focused on the safety and wellbeing of vulnerable children in the Territory and continuous improvements to policies, practices and services relating to vulnerable children.

My mandate centres on this promotion of child rights through awareness raising, consultations and community engagement; advocacy and advice on policy and law reform; in addition to dealing with complaint regarding services to vulnerable children and monitoring child protection and youth detention systems.

While I recognise the need to review legislation to ensure that it remains fit for purpose and promotes best practice, it is crucial that any proposed 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, and on sound advice. To be given only one week to consider a Bill that complete reorientates the architecture of the child protection system undermines my ability to provide comprehensive and meaningful advice and undermines the rule of law.

Considering my legislative role to oversight the administration of the *Care and Protection of Children Act 2007*, I had expected to be involved at a much earlier formative stage, particularly in determining the nature and extent of evident failings or limitations that might necessitate law, policy or practice change. Instead, this Bill has been developed in relative secrecy, without any explanation on what necessitates these reforms. The first time I saw the Bill and was able to appreciate its breadth and scope was after it was tabled in parliament just over two weeks ago.

In essence, this Bill erodes the rights of Aboriginal children, families and communities, and increases the opportunity for government intervention in family life. The changes are likely to increase the removals of Aboriginal children from their families, kin, communities and culture, and expedite pathways for permanent disconnection. It will increase harm and adverse outcomes for vulnerable children and families in contact with an already overextended and strained system.

The Aboriginal child placement principle is not failing Aboriginal children. Poor outcomes for Aboriginal children reflect failures of implementation, investment and accountability. To respond to systemic failure by removing legal protections from the very children that the system is failing is obviously wrong.

The Bill does not present just minor legislative changes but rather broad, sweeping and far-ranging reforms. They will have serious implications for vulnerable children in the Territory, particularly Aboriginal children. It will also impact the broader child protection system. As I said, that is already overburdened and under-resourced.

I acknowledge aspects of the Bill reflect the importance of giving children and young people a voice in decision-making, which is a paramount human right. Despite this, children and young people with lived experience of the system have not been consulted. Throughout my submission I have included quotes from care-experienced children that I have had the privilege and pleasure of engaging with at the Create roundtable just over a month ago. Their voices and views must be taken seriously and given weight. They are indeed the experts who continue to live the experience of a dysfunctional system.

For the reasons outlined in my submission and among the hundreds or more so opposing the Bill, I am firmly of the view it should not pass. Whilst there are components regarding working with children checks and independent children's lawyers that have potential—through a robust consultation and further development they could be brought into law. The Bill in its entirety presents serious risks for the rights, interests and wellbeing of vulnerable children.

The Bill does not have sufficient regard to rights and liberties of individuals, particularly Aboriginal children. It does not have sufficient regard to the institution of parliament. The Bill does not accurately reflect the full intent of the Convention on the Rights of the Child. It also does not reflect Australia's endorsement of the United Nations Declaration on the Rights of Indigenous Peoples.

My primary concerns with the Bill are clearly spelled out in the submission, but in summary it removes established rights and key safeguards pertaining to Aboriginal children, families and communities. It introduces an arbitrary reunification timeframe which will accelerate the permanent removal and disconnection of Aboriginal children from their families. It will expand pathways for government oversight and intervention in family life. It increases the use of coercive and compliance-based interventions. It introduces the proactive efforts framework premised on preventing removal and prioritising early reunification, which lacks government accountability and will be ineffective without investment in services to support families. It is contrary to commitments arising from national agreements and partnerships, including the national agreement, Safe and Supported, and Closing the Gap.

In addition to taking questions, I want to table a paper that was drafted by myself and my office on the Aboriginal child placement principle. This is a resource that explains the history, importance and unique context of the principle in the Northern Territory, including a dissertation regarding the five composite elements. This will assist the work of the committee, because I will not be able to do it justice to try to talk through this document today; it is 46 pages.

The Aboriginal child placement principle is a nationally accepted framework guiding decision-making specific to Aboriginal children in contact with the child protection system. Its purpose is to ensure an Aboriginal child's connection to family, community, culture, language and country is preserved and where possible strengthened. It is underpinned by five interrelated elements—prevention, participation, partnership, placement and connection. Together these elements reflect a well-established understanding that cultural identity and community connection cannot be separated from safety but are central to a child's wellbeing and long-term outcomes. I have five copies for the committee members today. Thank you.

Madam CHAIR: Thank you, Ms Musk.

Mrs ZIO: Thank you for your submission and thanks for attending today; we appreciate it.

I start by saying that I absolutely agree that the Aboriginal child placement principle is not harming children, and that is why we have not proposed to remove it from the new legislation.

Commissioner, throughout your submission you argue that the legislation is not the problem and that poor outcomes reflect failures of implementation, investment and accountability. However, you also highlight that Aboriginal children comprise 89% of children in care and that the placement of Aboriginal relatives or kin have fallen to just 16.7% and that the Northern Territory continues to record some of the worst outcomes nationally. At what point should parliament conclude that the current legislative settings themselves may be contributing to these outcomes and require reform?

Ms MUSK: I think it was clear in my submission and quite a lot of the submissions from Aboriginal community-controlled organisations, child experts and even SNAICC, that the evidence shows failures in implementation, investment and accountability. As we said, I think it was 17% of Aboriginal children in care were placed with Aboriginal family or kin. SNAICC's review of the Northern Territory's implementation found that the Aboriginal child placement principle was not being actively applied in practice. The over-representation is a result of poor compliance, inadequate implementation, insufficient resourcing of the

Aboriginal child placement principle, such as limited investment and partnerships with Aboriginal community to deliver prevention, early intervention and support services to Aboriginal families.

Removing or weakening this principle shifts focus away from strengthening self-determination, community leadership and shared decision-making and towards centralised control, despite evidence that culturally grounded approaches improve safety, stability and long-term wellbeing.

I have read the submission of Larrakia Nation. I have been out there to see them. I know the work that they do— Darrandirra — when it comes to families and children, parenting courses and mums and bubs clubs. They are the things that work, and we are moving away from that. We need to invest in things that work rather than change laws that will not make things better.

Mrs ZIO: Can I ask a question about statistics and data of the 16.7% of kids who are currently placed within the Aboriginal child placement principle. Could it be that the Department of Children and Families cannot actively locate people who will take care of these kids? Is that a reason as to why that statistic is low?

Ms MUSK: Again, I ask the committee to read the submissions. Like I said, I have read the submission of Larrakia Nation …

Mrs ZIO: We read them all. I am asking you a question around whether or not that could be a contributing factor.

Ms MUSK: Again, there is a combination of factors at play here. It has been a failure of the government to really step through for practitioners, as Catherine Liddle spoke about, practice guidance. I have worked in Victoria where you can find online the child protection manual. Anyone can google it and have a look at how it steps through all relevant considerations in informing best interests.

Mrs ZIO: Sorry, my question was: could the fact be that it is hard for people who work in the care and protection of children to locate and get agreement for people to participate in the placement principle—to actually find carers who fit that category?

Ms MUSK: No, sorry. Respectfully, Laurie, what I have seen, and having been out to speak with Larrakia Nation, Yalu and others, is family are available. It is whether or not the department practitioners are actually engaging with families. There has been a failure to engage with extended family—kin—rather than the nuclear family. That is the problem here; there is a westernised view about the caring of children. That is where we are failing. Yalu and others—like I said, read the submission from Larrakia Nation. They go out, they work with family and they find family because Aboriginal family, as a collective, want to look after their kin.

Mrs ZIO: Can I ask a direct question? If a decision-maker is faced with two options, one that provides immediate safety, stability and permanency for the child and another that better aligns with the cultural placement preferences but carries greater uncertainty or delay, should the decision-maker always choose the option that best protects the child from harm regardless of cultural considerations?

Ms MUSK: That is the law. The law is to apply the best interests of the child to ensure the child is safe. That is established law in the Northern Territory.

Mrs ZIO: I am asking you the question: should the decision-maker choose the option that best protects the child from harm, regardless of cultural considerations?

Ms MUSK: It is a balancing of a range of factors. There is structured decision-making through the Act. It is informed by section 8 through to section 12. There are multiple factors that need to be weighed and balanced. Of course, the immediate safety and wellbeing of the child is paramount.

Mrs ZIO: I am not sure if you were here when I asked a question of SNAICC and talked around section 12 of the current Act. There is actually no comment about the safety of a child in that section. When a practitioner starts working with the family, if it is an Aboriginal child they will go directly to section 12 and the part there is about making sure that an Aboriginal child, as far as practicable, should be placed with a person in the following order of priority: child's family; community; local community; or any other Aboriginal person. There is no mention of safety in that section of the Act.

My question again is: should cultural placement outweigh the safety of a child? I believe that is what the new legislation is trying to do, make sure that safety is paramount and included in those sections when it is related to the child placement principle. Is that something you agree or do not agree with?

Ms MUSK: I feel what is being said is a misrepresentation of law. Section 10 of the *Care and Protection of Children Act 2007* makes the best interests of the child the paramount consideration in every decision, including that any intervention must be the least intrusive intervention of a child's life that is consistent with the best interests of the child. The need to protect the child from harm and exploitation is already an existing factor and the best interests is the paramount consideration in law. There is no aspect of the current Act or the Aboriginal child placement principle that accepts unsafe circumstances for any child or prevents the department from removing children. The statistics spell that out.

The framing around these amendments that the existing Act puts culture ahead of safety is absurd; it is wrong. It is not supported by the text of the Act and it is not supported by the evidence.

Established appellate authority in the Northern Territory, the Court of Appeal decision of *NB & Ors v SB & Ors* [2020] NTCA 2 is jurisprudence. This is the authority here in the Northern Territory which confirms the best interests of the child is the paramount concern as in section 10. Anyone exercising a power or performing a function under the Act, must as far as practicable uphold the principles, but they do not override the paramountcy of best interests. All the factors set out in the principles, including those in sections 7 to 12A are to help inform a decision regarding best interests. As, in this decision, if there is a conflict between the Aboriginal child placement principle and the ultimate safety and wellbeing of that child, safety and wellbeing take precedence. That is the established law.

Madam CHAIR: I am mindful of time and we have a few more questions.

Mr YOUNG: Thank you for appearing today and for your submission.

The recent report which was released on harm in care, could you summarise your findings for the committee and explain how the Bill in its current form will not increase safety for children in care and your concern if the if the Bill was to be passed, the implications for children?

Ms MUSK: That report, Monitoring Harm in Care, looked at notifications, investigations and substantiations of harm to children who were in out-of-home care for a two-year period, from 2023 to 2025. The report identified persistent and serious systemic failings in the Northern Territory child protection system's response to harm experience by children in out-of-home care.

Across the reporting period, a significant number of children experienced alleged and substantiated harm whilst in the care of the CEO, including repeated exposure to harm. In addition, there were significant delays in investigation responses and failures to adequately record, monitor and act on safety and wellbeing concerns.

Data that was verified from the department and actually came from the department was that nearly one in three children in out-of-home care, 29% or 292 individual children, were the subject of at least one alleged harm notification in 2024–25, more than double the previous reporting year. Concerningly, 23% of children in care, 243 individual children, in that year had multiple notifications.

Across the two reporting years, only one of the 75 substantiated harm in care investigations that my office reviewed, and I myself reviewed, was completed within the 42-day requirement. Just one of 10 priority 1 investigations, the most urgent cases involving physical and sexual harm, were commenced within 24 hours. The report describes it as near universal noncompliance with the department's own response timeframes, meaning children at times remained in unsafe placements for extended periods. From our review, in more than one in four substantiated cases for that year, 28%—and also 35% in the last year—the person responsible was identified as the person who was their carer.

It shows, and we did include reference to the Productivity Commission looking at other jurisdictions, that the Northern Territory had significantly higher rates of substantiated harm in care in that 2024–25 period. It speaks for itself that there are serious issues in terms of the department's ability to monitor and track what is happening to children in care, deal with allegations in a timely way and ensure the safety of children.

This Bill will actually contribute to more and more kids coming into care in situations that they may not be safe, and the department is overworked, under-resourced and there are staffing issues, so I have real concerns.

We profess to keep kids safe in the Northern Territory. There have also been other reforms in the Northern Territory that I think demonstrate a failure to safeguard children in the Northern Territory; a failure to implement recommendations from royal commissions, including the Royal Commission into Institutional and Sexual Abuse of Children; failures to operationalise and enforce child safe standards in the Northern Territory; a failure to implement a reportable conduct scheme. The removal, the de-establishment, of the Child Deaths Review and Prevention Committee, which I was a member on, which was totally dedicated to preventing child deaths, has been disbanded.

To me, law change alone will not address the underlying issues that ensure children come into contact with the system; we need to be investing in families and communities and services and programs that actually work.

Madam CHAIR: Thank you, Ms Musk. I think the Member for Daly has a question.

Mr YOUNG: Yes. I have one small question. In the Bill's current form, if it was to pass, are you concerned that extra pressures will be put on out-of-home care and that we will see a huge increase in harm of children who go into out-of-home care?

Ms MUSK: Of course. Catherine Liddle of SNAICC gave that evidence before, and the data shows in other jurisdictions that has happened. South Australia is a case in point. You change the laws to focus on one factor and that increases, because the department will be so risk-averse. All these changes, particularly the structural changes here—the protracted timeframes, the threshold for intervention is quite broad and lowered—we are going to see more children coming into care and, sadly, we are going to see more Aboriginal children come into care.

Mrs ZIO: You talked about the harm of a child in the report and that one in three children report harm when they are in out-of-home care. Are you able to—I am pretty sure we are all pretty confident about the high extreme sexual abuse or exploitation that is at a high level or the end level of harm. Can you talk to us about some of the lower levels of harm that are reported? When it is reported as an incident or a harm, is it categorised into different levels of harm? Can you tell us what the lower levels of harm are?

Ms MUSK: I do not have the policy in front of me, but the thing with this report is that we focused on harm in care. I did an audit of 75 substantiated harm in care. Earlier in the report we talk about wellbeing concerns. Section 83B of the *Care and Protection of Children Act* is about wellbeing concerns, and they are substantially high as well. They are things like the child not attending school dressed, or without food. Things of that nature are lower-level concerns regarding wellbeing. This report is about harm—serious harm that affects the wellbeing and safety of the child, such as sexual abuse and exploitation.

Mrs ZIO: Specifically just serious harm.

Ms MUSK: The serious harm stuff.

Mrs ZIO: The one in three statistic, is that all levels of harm?

Ms MUSK: This is the serious harm—physical, emotional and sexual abuse.

Mrs ZIO: Thank you.

Madam CHAIR: Member for Johnston, thanks for waiting patiently.

J DAVIS: Thank you, commissioner, for coming today.

You talked about the lack of consultation with your office and also talked about the lack of consultation with young people who this Bill is about and that was a right. As the person who is appearing before us who is the closest to having a voice of young people that we can hear from, I am wondering if you could share what, in your understanding, young people would be saying to us, people who this Bill is going to impact, and what they would want us to understand about it.

Ms MUSK: This is a difficulty for me. Any reform should be informed by children with lived experience.

I am privileged to meet with and spend time with children in out-of-home care. I gladly do that with the support of the Create Foundation. The department and myself are invited to meet with children in out-of-home care

as part of the roundtable every year. That was only conducted in April. The first half of that workshop. It was a workshop involving ourselves as the Office of the Children's Commissioner, 15 Aboriginal children in out-of-home care and members of the department. It was focused on Aboriginal children's rights to stay connected, to know who they are and to develop their Aboriginal identity.

It was probably the most traumatic experience of my life in the sense that—I am going to get emotional because they all spoke about not knowing who they are, not being able to speak their language, being ashamed because they were unable to perform the ceremony because they were disconnected from family. I am sorry for getting emotional, but what is missing in this conversation is the voices of children who have lived experience of the system. I am so sorry.

Madam CHAIR: Do you just want to take a second?

Ms MUSK: Thank you.

We receive complaints from children in out-of-home care. I invite the committee members to read our annual report. It is, again, not knowing their rights, not being provided information about their wellbeing, not even having a copy of their care plan. They were not aware that cultural elements should be embedded in the care plan. Children often complained about not being able to go out to country, not being engaged with their family and siblings being separated.

There are a lot of issues with the child protection system that we are not addressing. This is a real distraction, as far as I am concerned, from the underlying issues—the systemic issues. I tried to explain that in the other submissions. There have been attempts to help inform a more robust analysis, review, of the child protection system to ensure we are addressing the systemic issues. That has all been sidelined now.

Here we are looking at law reform, which is not going to tackle the underlying issues. We are not engaging and listening to children—they have a right to be heard on decisions that affect them, and they are excluded from this whole conversation. Sorry for getting emotional, but this really matters.

J DAVIS: Thank you, commissioner, for the work you do.

I want to come back to the ongoing question about safety. I think that is at the heart of what we are grappling with here. There is this understanding that the current law does not prioritise children's safety. I heard the Chief Minister say the other day, 'I cannot understand how anyone can argue with making the safety of children the number one priority. To those people who think that is what the old Act does, they are just absolutely wrong.'

I think you have explained pretty clearly—and in response to the Member for Fannie Bay you also addressed this—but for the record, I would like to hear very clearly: does the current Act prioritise the safety of children? There is a lot of talk about semantics, but let us use the language that people are using.

Ms MUSK: That is what I am saying. For me it is the established law in the Northern Territory. That is the most recent Court of Appeal decision that reiterates that.

It is useful because I had a read through some of the submissions. In terms of the Aboriginal child placement principle, Natalie Lewis, the commissioner for Aboriginal children in Queensland, articulates well that the principle operates within, not as an exception to, the best interests of the child. It is integrated, not hierarchical. Best interests remains paramount when any conflict arises. The principle refines and informs the best interests inquiry by identifying cultural, relational and identity-based factors relevant to long-term wellbeing and stability for an Aboriginal child. The current legislation and structure of the principles enables an individualised assessment and holistic consideration of a child's rights, needs and interests over their life course, not just their physical immediate safety. This is about the holistic needs and wellbeing of the child, not just at the point of removal, but ongoing.

We are saying that in contrast to established law, best practice and child rights, the Bill actually transforms the best interests principle from its holistic consideration of the child's rights, wellbeing and development, and the responsibility of government to promote the full enjoyment of all child rights, into a narrower construction that prioritises certain matters and actively diminishes others.

I think in a reference from Jumbunna, the UN committee has said that the concept of the child's best interests is complex. Its content must be determined on a case-by-case basis. It has stated that it is useful to draw up a non-exhaustive and non-hierarchical list of the elements that could be included by the decision-maker to

determine the best interests of the child. These, of course, must be taken into consideration, in balance, in light of each situation. That is what established law does.

What is also missing in this conversation is that there is practice guidance and policy to inform decision-makers to step them through those matters.

Madam CHAIR: Commissioner, I am mindful of the time. The Member for Drysdale had a question, and it is probably going to be the last one.

Mr HOWE: For the record, commissioner, could you please state when you received your commission, which minister appointed you and what is the term for the office of commission—the length of time?

Ms MUSK: Sure. I was appointed to the role on 22 January 2024. I have a five-year term. I am appointed in accordance with the Act. The minister—I come under the Attorney-General's portfolio.

Mr HOWE: Who was the Attorney-General at the time of appointment?

Ms MUSK: Mr Chansey Paech.

Mr HOWE: Thank you, commissioner.

Madam CHAIR: Thank you, commissioner. That concludes our hearing for this morning.

Ms MUSK: I table the guidance.

Madam CHAIR: We can take that, thank you. Thank you for appearing today.

The committee suspended.
