

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)

Care and Protection of Children Amendment Bill 2019

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview of the Bill

This Bill gives effect to 12 Royal Commission recommendations with the intention to achieve better outcomes for children and families in the Northern Territory.

Human Rights Implications –

This Bill engages the following human rights instruments:

- The Convention on the Rights of the Child (CRC);
- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); and
- The International Covenant on Civil and Political Rights (ICCPR).

This Bill engages the following rights:

1. Right of the family to be accorded the widest possible protection and assistance – Article 10 of the ICESCR, Articles 19 and 27 of the CRC and Article 23 of the ICCPR.

This Bill promotes the right of the family, as the natural and fundamental group unit of society, to be accorded the widest possible protection by society and the State by expanding the range of what the CEO may do generally to include the provision of services aimed at promoting or safeguarding the wellbeing of children. This right is also promoted by the strengthening of the requirements upon the CEO to support a child or young person in transitioning to independence.

2. Right of a child not to be separated from their parents except when determined that such separation is necessary for the best interests of the child – Article 9 of the CRC

This Bill promotes the right of a child not to be unnecessarily separated from their parents, except where it is in their best interests, by embedding the standard of ‘unacceptable risk’ and the principle that decisions involving intervention in the life of a child be the least intrusive, consistent with the best interests of the child.

3. Right of interested parties to participate in proceedings concerning the separation of a child from their parents – Article 9 of the CRC and right of indigenous peoples to participate in decision-making in matters which would affect their rights – Article 18 of the UNDRIP.

This Bill promotes the right of interested parties to participate in proceedings and make their views known by requiring that services provided under the Act promote actively involve children, their parents and family in decision-making and by requiring that the CEO facilitate the participation of relevant parties in the preparation, modification and review of care plans. This right is also promoted through enhancements to the process of applying for protection orders, including giving sufficient notice to parents. In particular, this Bill promotes the right of indigenous peoples to participate in decision-making in matters by specifically providing for the inclusion of a person from the kinship group of the child or an Aboriginal representative organisation nominated by the child or their family in the preparation, modification and review of care plans. The right of indigenous peoples to understand and be understood in proceedings is

also promoted through the strengthened notice requirements upon the CEO, including the provision of relevant information in a language and manner they understand.

4. Right of a child to express their views freely in all matters affecting them – Article 12 of the CRC

This Bill promotes the right of a child who is capable of forming their own views the right to express those views freely in all matters affecting them by requiring that Aboriginal children be able to participate in decision-making processes involving the child, through encouraging and facilitating the participation of children in the preparation and review of their care plan and by requiring that the duration and effect of orders be explained to children in a language and manner they understand.

5. Right of a child separated from their parents to maintain relations and contact – Article 9 of the CRC

This Bill promotes the right of a child to maintain relations and contact with their parents when separated from them by including the need to strengthen, preserve and promote positive relationships between a child and their family as a principle to be used in determining what is in the best interest of a child. This Bill also emphasises the importance of reunifying a child with their parents, where possible, by requiring that care plans include what is required of the parents for reunification. This right is also promoted by allowing the Court to make supervision directions binding upon the CEO of Territory Families.

6. Right of a child taken into care to have continuity in upbringing and background – Article 20 of the CRC

This Bill promotes the right of a child who has been taken into care to have due regard be given to the desirability of continuity in their upbringing and their ethnic, religious, cultural and linguistic background by including cultural considerations and the possibilities of reunification with family as relevant factors in determining the ‘best interests’ of a child. This right is also promoted by ensuring that care plans must consider the cultural needs of Aboriginal children in care.

7. Right of indigenous children to enjoy their culture – Article 30 of the CRC

This Bill promotes the right of indigenous children to enjoy their culture by including an Aboriginal child’s right to enjoy the culture and tradition of their family under the ‘best interests’ principles and requiring that the cultural needs, including the maintenance and development of a child’s Aboriginal identity and encouragement of their connection to culture, tradition, language and country of the child, be included in their care plan.

8. Right of indigenous peoples to transmit their culture to future generations – Article 13 of the UNDRIP and right of indigenous peoples to maintain and strengthen their distinctive spiritual relationship with their lands, territories waters and coastal seas – Article 25 of the UNDRIP.

This Bill promotes the right of indigenous peoples to develop and transmit their culture to future generations by highlighting the importance of an Aboriginal child’s right to enjoy their culture, tradition, language and country and ensuring that actions or measures are taken to ensure that this connection is maintained and developed when in care.

Conclusion

The Bill is compatible with human rights as it promotes the human rights of children and young who interact with the child protection system of the Northern Territory.