



**Central Australian
Aboriginal Congress**
ABORIGINAL CORPORATION | ICN 7823

16 April 2019

Secretary to the
Economic Policy Scrutiny Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
DARWIN NT 0801

By email: EPSC@nt.gov.au

**Submission to the Committee's inquiry into the
*Care and Protection of Children Amendment Bill 2019***

Dear Secretary,

Thank you for the opportunity to make a submission to the Economic Policy Scrutiny Committee's inquiry into the *Care and Protection of Children Amendment Bill 2019*.

As a leading Aboriginal community controlled health service, Congress has developed a comprehensive model of primary health care delivering quality, evidence-informed services and programs on a foundation of cultural responsiveness.

Over many years, we have advocated for measures aimed at reducing the number of Aboriginal children entering the child protection, criminal justice and detention systems in the Northern Territory. We set out our position in our *Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory* (1 November 2016) which we attach to this letter for the Committee's information.

We understand that the current Bill seeks to respond to the Royal Commission's recommendations regarding the care and protection of children by amending the *Care and Protection of Children Act 2007* to:

- mandate early assessment, intervention and support;
- update the principles underlying the operation of the Act;
- strengthen care planning;
- improve court orders;
- enhance legal processes; and
- formalise the transition to independence.

We commend the Northern Territory Government for bringing forward these changes which we believe will result in a more socially just and effective child protection system, especially for Aboriginal children and their families. However,

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**Aboriginal health
in Aboriginal hands.**

we believe that there are three crucial areas where the Bill does not go far enough to provide care and protection to Aboriginal children.

1. Family Group Conferencing

Family Group Conferencing is a collaborative way of making decisions that focuses on how best to protect the child in relation to child welfare issues, in a way that involves the child's broader family. It often includes the child, his or her representatives, the parents and extended family (kin) as well as child welfare workers. Family group conferences were first legislated for in New Zealand in 1989 and have been adopted by numerous other jurisdictions since. They were trialled in Alice Springs between 2010 and 2011 but were discontinued by the former Northern Territory Government despite being evaluated positively.

The Royal Commission recommended the re-establishment of family group conferences (Recommendations 34.7 and 34.8). Such a reform is critical to ensuring that Aboriginal family and community knowledge and experience is embodied in child welfare decisions, including to advise on the placement of Aboriginal children under the Aboriginal and Torres Strait Islander Aboriginal Child Placement Principle and to identify Aboriginal kinship carers (see next points).

2. Application of Aboriginal and Torres Strait Islander Aboriginal Child Placement Principle

The strengthening of the commitment to the Aboriginal and Torres Strait Islander Aboriginal Child Placement Principle throughout the Bill is welcome, in particular the clarification that the role of Aboriginal family and culture in a child's life must be considered as part of 'the best interests of the child'.

However, we note that Clause 12(3) of the *Care and Protection of Children Act 2007* outlining the priority of the placement of an Aboriginal child (with a member of their family; with Aboriginal person in the child's community in accordance with local community practice; with any other Aboriginal person; and only then with a non-Aboriginal person) remains un-changed. It therefore only requires this order of priority to be observed 'as far as practicable'.

It is our view that this order of priority should be observed *at all times* unless and until each of the priorities in order is exhausted as a possibility, and that Family Group Conferences are used to determine whether each priority in placement can be met. In other words, a Family Group Conference is used to determine firstly whether there is a member of the child's family with whom the child can be placed; if the Conference agrees this not possible, they then consider the next priority (whether an Aboriginal person in the child's community in accordance with local community practice) is possible, and so on through the list of possible placements, ending as a last resort with non-Aboriginal carers.

3. *Aboriginal kinship carers*

To avoid confusion in the child welfare system, the Bill should include a definition of 'Aboriginal kinship carers' as those members of an individual child's broader kin group who have been identified through Family Group Conferencing as best placed to act as kinship carers. This term should not therefore be used as a position title for employees of Territory Families who – while playing an important role in liaising with Aboriginal children, families and communities – may not have kin relationships with a particular child and his or her family.

Accordingly, we present the following responses to the terms of reference of the Economic Policy Scrutiny Committee.

a) whether the Assembly should pass the Bill

The Bill will result in a more socially just and effective child protection system, especially for Aboriginal children and their families and should be passed, with the important amendments noted below.

b) whether the Assembly should amend the Bill

The Assembly should amend the Bill as follows:

- *Family Group Conferencing*: as per Recommendation 34.7 and 34.8 of the Royal Commission, with other amendments as needed, Section 127 of the Care and Protection of Children Act (NT) be amended to mandate the use of Family Group Conferencing when making child welfare decisions for Aboriginal children.
- *Application of Aboriginal and Torres Strait Islander Aboriginal Child Placement Principle*: amendments to reflect that the order of priority for placements under the Aboriginal and Torres Strait Islander Aboriginal Child Placement Principle should be followed *at all times*, unless and until a Family Group Conference determines that each priority for placement in order is not possible.
- *Aboriginal kinship carers*: a definition be inserted into the Bill of 'Aboriginal kinship carers' as those members of an individual child's broader kin group who have been identified through Family Group Conferencing as best placed to act as kinship carers.

c) whether the Bill has sufficient regard to the rights and liberties of individuals

While the Bill as it stands improves the legislative basis for the enjoyment of Aboriginal children's and families' rights, the inclusion of the amendments identified above are necessary to ensure that they are fully able to enjoy these rights under:

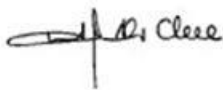
- *Article 9 of the Convention on the Rights of the Child* (Right of interested parties to participate in proceedings concerning the separation of a child from their parents);
- *Article 13 of the United Nations Declaration on the Rights of Indigenous Peoples* (Right of Indigenous peoples to transmit their culture to future generations);
- *Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples* (the right of Indigenous peoples to participate in decision-making in matters which would affect their rights); and
- *Article 25 of the United Nations Declaration on the Rights of Indigenous Peoples* (Right of Indigenous peoples to maintain and strengthen their distinctive spiritual relationship with their lands, territories waters and coastal seas)

d) whether the Bill has sufficient regard to the institution of Parliament

Congress has no comment to make on this term of reference.

I thank the Committee for the opportunity to comment on the Bill, and am happy to provide further detail on request.

Yours sincerely



Donna Ah Chee
Chief Executive Officer