

North Australian Aboriginal Justice Agency

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 representatives from the North Australian Aboriginal Justice Agency, Andrew Roberts, Grace Mayor and Jessica Hartman. 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 each state your name and the capacity in which you are appearing.

Mr ROBERTS: Andrew Roberts, managing lawyer of the civil section at NAAJA. I am a practising child protection lawyer.

Ms MAYOR: Grace Mayor, I am a child protection lawyer at NAAJA.

Ms HARTMAN: Jessica Hartman, I am the family support coordinator at NAAJA.

Madam CHAIR: Mr Roberts, would you like to make any opening statements?

Mr ROBERTS: Ms Mayor will make an opening statement on behalf of NAAJA.

Ms MAYOR: We thank the committee for the opportunity to give evidence in relation to this important Bill. NAAJA provides legal advice, representation and support services to parents and families in child protection matters across the Northern Territory, including through duty services in the family matters division in the Local Court in Darwin, Katherine, Alice Springs and Tennant Creek. Our evidence today is based on our extensive experience working in the child protection space and our broader walking alongside Aboriginal communities and families.

Every single child in the Northern Territory deserves to grow up safe, loved and free from harm. That is not and has never been in dispute. The Northern Territory child protection system is undeniably broken, but the problem is not that the current Act does not prioritise child safety. The current legislation is already designed to protect children from harm and exploitation. It gives the department the power to step in when a child has been or is likely to be exposed to harm or exploitation. If children are still being harmed despite those powers already existing, then we should be asking why and taking a closer look at the operation of the system rather than the legislation.

There will be cases when removing children is appropriate and necessary to keep them safe. NAAJA does not dispute this fact either. In fact, in the vast majority of the children court proceedings where NAAJA acts matters are resolved by agreement with parents agreeing that their children should be in care, but child protection decisions are inherently complex. A decision to remove children must be carefully balanced. It must respond to immediate safety concerns while also considering the long-term harm and trauma that removal can cause.

For Aboriginal children connection to family, kin, language, community and country are fundamental to their long-term wellbeing. These are protective factors. The Aboriginal and Torres Strait Islander Child Placement Principle exists because governments have a long history of causing deep harm because they failed to recognise this. This is one of the safeguards that helps decision-makers understand what safety means for Aboriginal children in the short and long term.

The evidence does not support the argument that Aboriginal family, culture and kinship are barriers to child safety. It shows the opposite. Aboriginal children make up 90.54% of children in care in the Northern Territory. They are already being removed from family, kin, language, community, culture and country at extraordinary rates. That is not evidence that the department needs broader removal powers. It is evidence that the system is already removing Aboriginal children from their families at a rate that should concern every person in this room.

This Bill as drafted winds back and undermines key protections which had been designed to make sure that decisions about Aboriginal children are informed by their particular needs, rights and circumstances as Aboriginal children. The current Act does not place these factors above safety, and any suggestion that it does is a fundamental misunderstanding of the legislation. What it does ensure is that these important factors are taken into account in assessing what actions and decisions would be best for the child in the short and long term.

Our clients already talk about another Stolen Generation. That is not something they talk about as history; they talk about it in the here and now. We are deeply concerned that this Bill will result in more kids in care and fewer kids with family, without actually improving the long-term outcomes for these children. Again, the problem is not the current legislation; the problem is that the government's systems for Aboriginal children and families are failing in practice.

The minister has been working on this legislation for a year, but it does not address the well-known problems. That is a year of government energy and resources spent on the wrong issues. Removing children into a broken system does not promote their long-term wellbeing. We see many Aboriginal families desperately trying to keep their kids safe and at home, but are being let down by systemic barriers beyond their control.

A family might be doing everything they can to care for children but are experiencing homelessness, living in overcrowded housing and waiting up to 10 years for a three-bedroom house in Darwin. This might mean that keeping the fridge full whenever a case worker comes to visit is out of their control.

We can see many families who are trying to do everything asked of them to get their kids back, but they cannot. This is often because they cannot access the services or supports they need to address the protection concerns. For example, there are currently only eight beds at the Royal Darwin Hospital detox centre. This is the only free service of its kind. Detox is a requirement for them to enter a lot of the rehabilitation centres in Darwin. Families can be placed on waitlists for weeks before they can access detox while the child protection timeline continues to run against them.

We had cases where safe house crisis services for women facing DV turn women away because their kids are not in their care. With no other service available, she cannot escape her violent partner.

We had families evicted from supported accommodation facilities because their children have been removed, only to have the department say that they cannot be reunified because they do not have stable housing. We had parents trying to see their children, but they cannot reach a case worker because no case worker is allocated to the file or the case worker has changed so many times they do not know who to ask for anymore.

We see many families wanting to care for children, but are unable to get through the complex and bureaucratic kinship carer approval process. A potential kinship carer will be asked to complete up to 10 forms. Every adult in the house will have to complete five forms. Everyone must have 100 points of ID. That is only some of the requirements. For a family in an overcrowded Northern Territory Government house, where English may be the fourth or fifth language, that process can be almost impossible without support.

We categorically reject any suggestion that there are not families able and willing to care for these children. They are often out there and are not supported to navigate the process. That is only the paperwork; it is before we even get to the bigger barriers families face in being approved, which do not go to their suitability to care.

These realities matter because, under the proposed changes, there may be even less time available for parents to demonstrate sustained change before long-term arrangements are pursued. This will disproportionately affect parents dealing with trauma; addiction recovery; housing instability; and domestic, family and sexual violence. These issues are not resolved neatly or quickly. Healing, recovery and safety planning are often long term and non-linear. When those problems are not resolved, the family is treated as if they have failed.

The Bill does not fix that reality; it makes it worse. Making it easier to remove children and harder to get them back with family risks generations of harm to Aboriginal kids.

We welcome the committee's questions.

J DAVIS: Thank you for appearing today and for your submission and the opening statement.

You just talked about, and your submission goes into some detail, the circumstances that already prevent many Aboriginal families from becoming kinship carers or achieving reunification—things like not being on a lease, being on an eight to 10-year waiting list for housing and living in a house in disrepair that the Northern Territory Government is actually responsible for. If these amendments are passed, particularly with the two-year hard reunification timeframe, can you talk to what the potential impacts of that might be?

Mr ROBERTS: Of the two-year timeframe?

J DAVIS: Yes, in relation to the context that we are working in.

Mr ROBERTS: Those systemic barriers go to the heart of the problem with a rigid timeframe. In posing strict limitations when the processes that need to happen to reunify might be beyond that person's control means that you can end up in situations where courts and departments are making decisions that might not be in the child's best interests but they are forced to make particular decisions because of an arbitrary timeframe.

What we are most concerned about with that structure of specific timeframes is that it means that the discretion of the court to make what is objectively the best interests determination is constrained. The court might have to say, 'I think it is in the best interests to make another short-term order, but I cannot. I might think it is the best interests to make another short-term order because the department has not taken the steps they need to take to support the family, and reunification is a real possibility, but it has not happened in this particular timeframe because of all of those barriers.'

They might look at a proactive efforts framework and say that the department has manifestly failed to meet that threshold and provide that standard of support to a family and still nonetheless be forced to make a particular order which might not be in that child's best interests.

J DAVIS: Could you talk briefly to what that means. If someone is not able reunify with their family after two years, what does that mean in terms of the long-term impact on that child?

Mr ROBERTS: There are a few ways to look at it. Part of it is the starting point might be that decision might not be in that child's best interests, but we have to do it anyway. It might not be in the child's best interests for a whole range of reasons, but something everyone needs to bear in mind is that out-of-home care is not a good solution for kids.

Whenever we are talking about these considerations, we are not talking about safety versus harm. We are balancing risk. Any decision for a child to be in care is balancing the risk of them being where they are now with the risks that come from the process of removal, which can be deeply traumatic, and the risks that come with them being in out-of-home care where so much data points to the worse outcomes for kids who are in care.

Often the reason we will be advocating court for short-term orders is because there is a prospect of reunification. The department already has not done the work they need to do, and it is still on the cards that reunification should happen even if it happens over a longer timeframe. That is the court making a determination right now that it is in the best interests to give that the time it needs to run its course.

J DAVIS: On a different area, section 65E in particular expands police discretion to increase surveillance of Aboriginal children and families through referrals that will trigger family responsibility agreements for children who are too young or cannot be engaged under the *Youth Justice Act*. Can you talk about your interpretation of this section and its practical implications particularly how it might function for children under 10 years?

Mr ROBERTS: My understanding is that it could operate with respect to children under 10 and with respect to children who have been found not to have criminal responsibility, so children who are *doli incapax*. It is a curious provision in the context with the child coming before the youth court, there are already powers for that court under section 51 of the *Youth Justice Act* to refer a matter to the CEO to consider whether the child is in effect in need of protection and what other steps need to be taken for their wellbeing. It is curious to then have a separate process outside of that where that is the court making a referral based on the material that comes before the court in a youth justice matter, for a separate pathway for referral purely at the discretion of the police.

There is also an extent to which it is just not necessary. There is no reason why the police cannot speak to the department and work collaboratively. One of the problems we see in a whole range of spaces is departments and the government and services not working effectively together. Why do we need a statutory

power and what does a statutory power achieve if these organisations cannot find ways in the best interests of children to work together?

Mrs ZIO: Thank you for your submission and thank you for attending today; we appreciate your time. You stated not long ago that out-of-home care is not a good outcome for kids, and we all 100% agree. The best outcome for kids is a good, stable family environment where every child can thrive, but that is not the case in many families in the Northern Territory.

In relation to the Aboriginal child placement principle, you argue in your submission that it should be strengthened. Can you identify any objective measure, whether it is safety, educational attainment, health outcomes, reunification success or reduction in repeat harm, that demonstrates that the current child placement principle has improved outcomes for Aboriginal children in the Northern Territory?

Mr ROBERTS: There are real flaws in the way it has been implemented, and that goes to our core submission. This is not about the legislation; this is about the way it is implemented. This is about the fact that there is no clear accountability on the department to meet those criteria. This is about the fact that there is no real mechanism through the court to review and enforce compliance with those principles. The fact that the department is not meeting those standards now should be the real question we are all asking. Why are they not being met? That is what concerns us so much about the suggestion that in that context we would be watering it down. If we wanted to have better outcomes in child protection, we would be looking at ways to make the department more accountable for meeting the standards that are already in the legislation, not watering them down.

Mrs ZIO: One of the questions that I asked a previous witness was around anecdotally we have heard from people who work in the department that one of the key reasons the kinship levels are at 16.7% is that they cannot locate family who are willing to take on the child; therefore, it is not enabling that data to be able to increase the numbers. Do you have any thoughts on that?

Mr ROBERTS: We categorically reject the idea that there are not family willing and able to care for Aboriginal kids. There are so many barriers to becoming a carer.

Just to apply—we touched on it in our opening submission—a potential kinship carer has to have 100 points of ID and complete a seven-page authorised care and nomination form; a carer consent to release SAFE NT information form; a SAFE NT national police check application form; a SAFE NT working with children clearance application form; a carer affirmation of confidentiality form; two carer references from a non-family member who has known them for two years; a vendor statement form; a vendor creation form; if there are any concerns about health, a consent to release medical information form; and a medical report request to be completed by a doctor. That is just to be assessed, and that is just the applicant.

Every adult in the house—as we know, overcrowding in the NT is a huge problem—also has to complete a carer consent release SAFE NT information form; a SAFE NT national police check application form; a SAFE NT working with children clearance application form with 100 points of ID; a child protection history check form; and a carer affirmation and confidentiality form.

Then children in the house have to complete forms. There are so many barriers to even being assessed. It is shocking how often we sit at the court with a client and it is the first time they had a real conversation about who could look after the kid. In a 15-minute conversation we identify three plausible family members and then wait six to 12 months for that to go through the process of considering them and determining whether or not they can be a carer.

Mrs ZIO: Do you think we should be removing some of those safeguards that make that a safe place for that child to be placed?

Mr ROBERTS: Bureaucratic forms are not a safeguard. Forms in English for somebody who speak English as a fifth language are not a safeguard. There are other ways and simpler ways you could put in place checks and balances to ensure somebody is safe that is not putting upon a potential carer 40 pages of paperwork. It is completely unrealistic to suggest that filling out forms on their own without proper support is the only way you can properly screen a potential carer.

Mrs ZIO: From my experience and talking with people in the care sector and families who have undergone this process, I do not know that is an accurate statement to make that they just get given the forms and are sent away. I think a lot of options are provided to families for support with getting that stuff done. It is not always the case where it is just like, 'Take these forms and fill them out. They are in English; they are in your

fifth language.’ It is not always the case. I think that is a generic statement that can be made. There are options available for support to fill out those forms; am I right?

Ms MAYOR: With every client’s family member who I have assisted, they have just been given the forms and they have come to the office and I have helped them, which then leads us to doing a lot of social support. I have never successfully assisted someone through the kinship process.

Mr ROBERTS: To take another example. If it is someone in a remote community where there is no on-the-ground presence of DCF, which is really common, you cannot do this in a day. You might have to go away and apply for ID for people to be able to have them complete that form. They might not have ID, and that does not go whether or not they are a suitable carer; it goes to whether or not they have ID. You might fly out and give them the forms and say, ‘We have done as much as we can do today’. Unless there are those proper follow-ups and engagement with families, you are not going to be able to navigate that process.

Mr YOUNG: In your submission you stated Aboriginal families are being pushed into the child protection system through the government’s failure to address poverty, unsafe and overcrowded housing, unmet disability and mental health needs, incarceration, racism, service gaps and the absence of properly funded Aboriginal-led supports. Would you agree it is fair to say that the consequence of this proposed Bill can no longer be described as unintended and the government is aware of the impact that poor child protection legislation has on Territory children and families now and for generations? If so, can you outline how legislation can prioritise safety through prevention?

Mr ROBERTS: I cannot speak to the government’s intentions in the Bill. I am not going to as that is not appropriate. It is deeply concerning the extent to which aspects of these amendments are not in any way directed at safety, but are specifically removing references to Aboriginal children and specific protections for Aboriginal children. That happens throughout the principles in the Act.

We fully support that early intervention and early support is the right approach. The earlier you can get in and support families, the better. There is so much that could be done by the government to improve that aspect of this system, but it is not achieved by this Bill. It is not achieved by implementing even an active efforts framework, which we support in principle—but a framework that is not backed up with the appropriate resources and support services that have to exist for that to actually work. I think what we will see with this Bill is a continuation of what we are seeing now, which is some lovely principles about how it should be implemented, but in the absence of an effective accountability mechanism that sits behind that, it just does not happen in practice.

One of the real hallmarks of the care and protection system in the NT is the difference between how it looks if you read the legislation and the department’s policies and what they say happens with what the experience is for families on the ground actually experiencing it.

Mr YOUNG: If the Bill is passed, what impact do you see it having on the legal sector and, more broadly, the operation of the courts in the Northern Territory?

Mr ROBERTS: I suspect the Legal Assistance Forum will speak to this some more. We are anticipating a significant amount of additional legal work connected to it and a sector that is under extreme pressure as is for a whole variety of reasons.

What we saw in Victoria when they implemented strict time limits was a whole bunch of unintended consequences, including increased contestation in the court, increased matters going to trial and matters sitting and working their way through the court for a much longer period of time. All of that has impacts on services.

What is really concerning is there is this whole new regime under this legislation with the family responsibility agreements and family responsibility orders that will achieve much better outcomes if families are supported with legal advice and assistance through those processes to make sure they work as they are intended. The services have to be resourced to do that.

Other jurisdictions have trialed great models of early intervention and the department referring matters off and getting lawyers involved to support families as early as possible in the system. At the moment, the child protection legal services can barely keep up with matters while they are in the court. Again, that goes to accountability. The sector is just not resourced to hold the government to account to meet the standards this parliament is setting in the legislation right now.

Mr HOWE: Mr Roberts, you said you are concerned that Aboriginal children being referred to in the legislation is not there. Can you explain to me why you think Aboriginal or non-Aboriginal children should be differentiated in the legislation?

Mr ROBERTS: The reason these provisions exist is that special measures recognise the long-term failings of governments across Australia, including in the Northern Territory, to properly respond to the needs of Aboriginal people. These specific provisions and special measures have been designed to address long-term systemic government failings. It is a fairly standard approach to special measures.

There was some discussion that the purpose of this Bill was to align the legislation with international human rights instruments, but that is incorrect. There is clear guidance from the United Nations that special measures are part of properly implementing that Bill. Where you see the level of over-representation we see of Aboriginal children in the care system, you need to have special measures to address that.

Mr HOWE: Why is that?

Mr ROBERTS: To address the over-representation and the particular needs, circumstances and factors that are relevant that are specific to an Aboriginal child. None of this displaces the best-interests principle. It is incorrect to suggest it does. All of the principles in relation to the Aboriginal child placement principle are subordinate to the paramount consideration under the Act, but it guides decision-makers—both the department and the court—to turn their minds to factors that they need to properly consider in order to make decisions that are in the best interests of Aboriginal children.

Mr HOWE: I understand—correct me if I am wrong—NAAJA's representatives today are all from the civil side of your law firm?

Mr ROBERTS: Ms Mayor and I are child protection lawyers in our civil team and Ms Hartman is the manager of the Family Support Service, which sits outside the civil team.

Mr HOWE: From your submission, I understand you provide criminal representation as well. Does your law firm provide criminal representation for family, domestic and sexual violence. If so, how does that interplay with the civil team?

Mr ROBERTS: In what way?

Mr HOWE: Do you provide legal representation for family, sexual and domestic violence?

Mr ROBERTS: We do not. The criminal team may represent their clients. There is an information barrier and we do not know what the criminal section is doing; they are completely separate from civil. They may represent some clients in some matters ...

Mr HOWE: You do not know?

Mr ROBERTS: I am aware that they represent people in those matters.

Mr HOWE: Do you know how many?

Mr ROBERTS: No, I do not have that information.

Mr HOWE: Are you willing to take that on notice?

Mr ROBERTS: How many ...

Mr HOWE: How many cases in the last 12 months has NAAJA defended for domestic, family and sexual violence convictions?

Madam CHAIR: The question is: will you take it on notice, first?

Mr ROBERTS: I do not have access to that data as the manager of the civil section.

Madam CHAIR: You cannot take that on notice?

Mr HOWE: You will not take it on notice?

Mr ROBERTS: I cannot be sure that I can access that data; it relates to our criminal section which is separate from the civil section. I can raise that internally at NAAJA and see if we are able to provide it.

Mr HOWE: Okay. I will direct that through you, Madam Chair, for follow up at the end of my questions.

So that I can understand how the civil side works, which is good because we need to have the representation, especially if the department has done something wrong and has not gathered the right evidence. It is not an attack of the work you are doing now. I am trying to understand NAAJA's submission. Are you mainly representing families trying to reunify?

Mr ROBERTS: The civil section provides representation to parents and family members. The realities of our scope of service in our funding-constrained environment is we predominantly only provide representation from the point of removal or when the matter comes before the court until the court proceedings finish. That is a big gap in the system.

There is very limited capacity for a range of support services and legal services to provide broader support to families in the child protection system and, I would add, a real resistance to the department to lawyers being involved, even if it would assist the parents to, for example, understand what is being asked of them. Ms Mayor can speak to an example very recently of when there was an unwillingness to have her involved in safety planning meetings. The benefit of having a lawyer present in that space is being able to make sure that the parent understands what the safety plan is and is more likely to comply with it.

Madam CHAIR: Mr Roberts, we have run out of time.

Mr HOWE: Can I get one final question, Madam Chair?

Madam CHAIR: You had better be quick. I need as quick an answer as reasonable, thank you.

Mr HOWE: If you could, just on record, increase kinship care, any final thoughts any member has on how we can best go about that? I like the bureaucracy point. Is there anything else you would like to get on record?

Mr ROBERTS: I think there are huge bureaucratic barriers. I think there is a whole range of other factors that if you were serious about increasing kinship care you would be looking to address.

Ms HARTMAN: Basically you need to be looking at the systemic issues that are happening. We need more housing. We need to address the poverty. We cannot have strong families if the system is broken. That is basically the whole of our submission. That is as quick as I can make it, otherwise I can go in very deeply.

Madam CHAIR: Thank you, Ms Mayor, Mr Roberts and Ms Hartman for appearing today.