

Legislative Scrutiny Committee Secretariat  
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Via email: [lsc@nt.gov.au](mailto:lsc@nt.gov.au)

Dear Committee,

The Northern Territory Anti-Discrimination Commission (the Commission) welcomes the opportunity to provide submissions to the Legislative Scrutiny Committee regarding the *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026* (the Bill).

The Commission's submission focuses specifically on the Committee's Terms of Reference regarding:

- 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; and
- whether the Bill has sufficient regard to the institution of Parliament.

The Commission's submission is informed by its statutory role administering the *Anti-Discrimination Act 1992 (NT)*, including the Positive Duty reforms commencing in January 2024, which require organisations and public authorities to take reasonable and proportionate measures to prevent and eliminate discrimination to the greatest extent possible.

The Commission acknowledges the Bill's stated intention to strengthen early intervention, improve child safety and promote stability and permanency outcomes for children. The Commission also acknowledges the inclusion of strengthened principles relating to proactive efforts, participation of children with disabilities and responsibilities of public authorities.

However, the Commission submits that aspects of the Bill raise important anti-discrimination, human rights and systemic accountability considerations that warrant further scrutiny and amendment.

## **1. Positive Duty and Child Protection Systems**

The Commission submits that child protection systems are among the most significant environments in which Positive Duty obligations should operate.

Child protection decision making directly impacts children's safety, identity, culture, disability supports, family relationships, access to services and long-term life



outcomes. As such, public authorities administering the legislation should be required to proactively identify, prevent and respond to systemic discrimination risks arising from policies, procedures and decision-making frameworks.

The Commission submits that child protection systems engage significant risks of indirect and systemic discrimination, particularly affecting:

- Aboriginal children and families;
- children with disabilities;
- parents with cognitive or psychosocial disability;
- culturally and linguistically diverse families;
- families experiencing poverty, trauma or housing insecurity; and
- families in remote communities with limited access to services.

The Commission recommends that the Bill expressly recognise the operation of anti-discrimination obligations and Positive Duty principles within the administration of the Act.

## **2. Potential Contraventions under the Anti-Discrimination Act 1992 (NT)**

The Commission further submits that aspects of the proposed Bill may engage potential contraventions of the *Anti-Discrimination Act 1992 (NT)*, particularly in relation to:

- section 19, which prohibits discrimination on the basis of protected attributes including race and disability;
- section 24, which imposes a duty to reasonably accommodate a special need arising from an attribute; and
- section 49A, which prohibits discrimination in the administration of laws and government programs.

The Commission notes that child protection systems operate squarely within the scope of section 49A, given the exercise of statutory powers, discretionary decision-making and administration of Territory laws and government programs by public authorities.

In practice, there is a significant risk that children and families may experience discriminatory impacts where systems, policies or practices fail to reasonably accommodate disability, communication, cultural or trauma related needs. This is particularly relevant for:

- Aboriginal children and families;
- children with cognitive, psychosocial or developmental disabilities;
- parents with disability;
- families requiring interpreters or culturally safe engagement; and
- children experiencing complex trauma.

The Commission submits that failure to provide reasonable accommodation in child protection processes may amount to unlawful discrimination under section 24 of the *Anti-Discrimination Act 1992 (NT)*. This may arise where children or families are unable

to participate equitably in investigations, care planning, court processes or decision making because systems are not adapted to their specific needs.

Similarly, where child protection policies, practices or decision making disproportionately disadvantage Aboriginal children and families, there may be risks of direct, indirect or systemic race discrimination contrary to section 19, particularly within the administration of laws and government programs under section 49A.

The Commission therefore submits that the Bill should be strengthened to ensure decision makers are expressly required to:

- identify and mitigate discriminatory impacts;
- reasonably accommodate special needs;
- implement culturally safe and trauma informed approaches;
- ensure equitable participation in decision making; and
- proactively prevent systemic discrimination consistent with Positive Duty obligations under Part 2A of the *Anti-Discrimination Act 1992 (NT)*.

### **3. Duty to Accommodate Special Needs**

The Commission welcomes the inclusion of provisions relating to children with disabilities.

However, the Commission submits that the Bill should go further by expressly recognising the obligation to reasonably accommodate disability, communication, cultural and trauma related needs throughout all stages of engagement, participation and decision making.

Under the *Anti-Discrimination Act 1992 (NT)*, discrimination may arise where systems fail to reasonably accommodate a person's special needs, including disability related needs, communication barriers, cognitive impairment or trauma related vulnerabilities.

In practice, child protection systems often operate through rigid administrative and legal processes that unintentionally disadvantage vulnerable children and families.

The Commission submits that reasonable accommodation obligations should extend to:

- communication supports;
- interpreters;
- culturally safe engagement practices;
- cognitive and psychosocial disability supports;
- trauma informed participation processes; and
- accessible participation in court and administrative proceedings.

Without these safeguards, vulnerable children and families risk being assessed against systems they are structurally unable to navigate equitably.

#### **4. Aboriginal Child Placement Principle and Systemic Racism**

The Commission notes the proposed restructuring of provisions relating to Aboriginal children and associated placement principles.

The Commission is concerned that aspects of the proposed reforms may unintentionally weaken protections relating to participation, cultural connection and self-determination for Aboriginal children and families.

The Office of the Children's Commissioner has identified that Aboriginal children continue to be removed at disproportionate rates and that implementation of the Aboriginal Child Placement Principle remains poor within the Northern Territory.

The Commission notes particular concern regarding:

- removal of references to participation rights;
- risks of reduced Aboriginal family participation in significant decisions;
- prioritisation of permanency frameworks without sufficient cultural safeguards; and
- insufficient recognition of systemic racism within child protection systems.

The Commission further notes that systemic racism impacting Aboriginal children has been identified as a contributing factor to overrepresentation within Territory systems.

The Commission submits that cultural identity, language, kinship, community and country are not secondary considerations. They are protective factors directly linked to identity, wellbeing and long-term outcomes for Aboriginal children.

#### **5. Family Responsibility Agreements and Orders**

The Commission acknowledges the policy intent behind family responsibility agreements and orders as mechanisms aimed at early intervention and shared accountability.

However, the Commission submits that coercive or compliance-based frameworks may disproportionately impact families already experiencing structural disadvantage, including poverty, disability, domestic violence, trauma and housing insecurity.

Without sufficient safeguards, these mechanisms risk operating in ways that unintentionally penalise vulnerable families for circumstances linked to broader systemic inequities and service access barriers.

The Commission submits that these frameworks should prioritise:

- therapeutic engagement;
- culturally safe practices;
- procedural fairness;

- accessibility supports;
- advocacy pathways; and
- trauma informed approaches.

## **6. Rights and Liberties of Individuals**

The Commission submits that aspects of the Bill may insufficiently safeguard the rights and liberties of vulnerable children and families, particularly where broad discretionary powers intersect with structural disadvantage.

The Commission acknowledges the Bill's emphasis on child safety and permanency. However, those objectives must operate alongside safeguards that ensure:

- meaningful participation;
- equitable access;
- cultural safety;
- procedural fairness; and
- freedom from discrimination.

The Commission submits that meaningful participation requires more than formal opportunities to participate. It requires systems designed to accommodate differing capacities, communication styles, disability needs and cultural contexts.

## **7. Regard to the Institution of Parliament**

The Commission submits that robust parliamentary scrutiny is particularly important where legislation authorises significant state intervention into family life and decision making affecting vulnerable children.

The Northern Territory does not currently have a Human Rights Act or formal legislative human rights compatibility framework. In this environment, parliamentary scrutiny committees perform a critical accountability role in assessing whether legislation appropriately balances child safety, public interests and individual rights.

The Commission encourages careful scrutiny of provisions that may:

- reduce participatory protections;
- weaken cultural safeguards;
- increase coercive state intervention;
- create indirect discriminatory impacts; or
- disproportionately affect Aboriginal children and families.

## **8. Commission Recommendations**

The Commission recommends that the Legislative Scrutiny Committee consider the following amendments and safeguards in relation to the Bill.

**Recommendation 1**

Amend the Bill to expressly recognise the operation of the *Anti-Discrimination Act 1992 (NT)*, including Positive Duty obligations applying to public authorities and agencies exercising powers or functions under the Act.

**Recommendation 2**

Insert an express obligation requiring decision-makers to take reasonable and proportionate steps to accommodate disability, communication, cultural and trauma related needs of children and families throughout all processes under the Act.

**Recommendation 3**

Strengthen safeguards to ensure meaningful participation of children with disabilities through supported decision making, communication assistance, culturally safe engagement and accessible participation processes.

**Recommendation 4**

Amend the Bill to strengthen protections relating to the Aboriginal Child Placement Principle, including retaining stronger participatory protections for Aboriginal children and families and embedding active efforts principles informed by the Aboriginal Child Placement Principle.

**Recommendation 5**

Ensure the Bill expressly recognises that cultural identity, language, kinship, community connection and country are protective factors linked to the wellbeing and long-term outcomes of Aboriginal children.

**Recommendation 6**

Strengthen safeguards relating to family responsibility agreements and orders to ensure they do not disproportionately impact families experiencing disability, trauma, poverty, domestic violence or barriers associated with remote service access.

**Recommendation 7**

Introduce monitoring and accountability mechanisms to identify and respond to systemic discrimination risks within child protection systems, including risks arising under sections 19, 24 and 49A of the *Anti-Discrimination Act 1992 (NT)*.

**Recommendation 8**

Require agencies administering the Act to undertake ongoing anti-discrimination, cultural safety, trauma informed practice and disability inclusion capability development consistent with Positive Duty obligations.

**Recommendation 9**

Strengthen independent oversight and transparency mechanisms relating to significant child protection decisions, particularly where decisions involve child removal, placement away from kin or long-term permanency arrangements.

**Recommendation 10**

Ensure parliamentary scrutiny processes continue to robustly assess the human rights and anti-discrimination implications of child protection reforms, particularly in the absence of a Northern Territory or Federal Human Rights Act.

**Recommendation 11**

The Bill does not have sufficient regard to the rights and liberties of individuals especially in relation to the rights of the child as expressed in the United Nations Convention on the Rights of the Child (UNCRC) article 3 - 'best interests principle'.

**Recommendation 12**

The Assembly should not pass the Bill.

**9. Conclusion**

The Commission supports reforms aimed at improving the safety, wellbeing and long-term outcomes of Territory children. However, child protection systems must also be designed and implemented in ways that are culturally safe, disability inclusive, accessible and free from systemic discrimination.

Positive Duty provides an important framework for shifting child protection systems from reactive intervention towards proactive prevention, accountability and inclusion.

The Commission submits that strengthening anti-discrimination safeguards, accommodation obligations, cultural safety protections and systemic accountability mechanisms within the Bill would better align the reforms with principles of equity, dignity and preventative institutional responsibility.

Ultimately, child protection systems should not only protect children from immediate harm. They should also ensure that the systems designed to safeguard children do not themselves reproduce exclusion, inequity or structural disadvantage.

Yours sincerely,



**Jeswynn Yogaratnam**

**NT Anti-Discrimination Commissioner**