

Submission regarding the *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026*

1. Introduction

This submission concerns the *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026* ('*Bill*'), introduced by the Northern Territory Government on 13 May 2026. This submission applies an international children's rights lens and seeks to demonstrate that the proposed legislation contravenes the Northern Territory's duties and responsibilities prescribed by the *United Nations Convention on the Rights of the Child* ('*CRC*').

1.1. The *CRC*

The *CRC* is the pre-eminent international treaty regarding the rights of children.¹ It has 196 States Parties.² Australia ratified the *CRC* on 27 December 1990.³ Under art 26 of the *Vienna Convention on the Law of Treaties* (VCLT),⁴ a treaty in force is binding upon parties to it and must be performed by them in good faith.

In *Minister for Immigration and Ethnic Affairs v Teoh*,⁵ the High Court held that Australia's ratification of a treaty generates a 'legitimate expectation' that administrative decisions would be made in accordance with the terms of the treaty. Moreover, on 22 December 1992, the Attorney-General declared the *CRC* an 'international instrument' for the purposes of the *Australian Human Rights Commission Act 1986* (Cth).⁶ Consequently, rights under the *CRC* fall within the definition of 'human rights' in Australia. Under the *CRC*, Australia has a responsibility to 'undertake all appropriate legislative, administrative, and other measures for the implementation of the [*CRC*'s] rights'.⁷

This submission will analyse the proposed legislative amendments with reference to the relevant rights under four thematic groupings: general principles; family; identity and culture; and care.

2. General Principles

The United Nations Committee on the Rights of the Child ('*Committee*') identifies four articles as 'general principles' of the *CRC*.⁸ General principles are cross-cutting provisions which should guide the

¹ John Tobin, 'Introduction: The Foundation for Children's Rights' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press, 2019).

² United Nations Treaty Collection, *Convention on the Rights of the Child – New York, 20 November 1989*, (website) <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4>.

³ United Nations Human Rights: Office of the High Commissioner, *Pledge by Australia* (Website) <<https://www.ohchr.org/en/treaty-bodies/crc/celebrating-30-years-convention-rights-child/pledge-australia>>.

⁴ (1969) 1155 UNTS 331 (concluded 23 May 1969, entered into force 27 January 1980).

⁵ (1995) 183 CLR 273.

⁶ *Australian Human Rights Commission Act 1986* (Cth); Australia - Joint Committee on Foreign Affairs, Defence and Trade, *A Review of Australia's Efforts to Promote and Protect Human Rights* (AGPS, Canberra, November 1994) 153.

⁷ *United Nations Convention on the Rights of the Child*, GA Res 44/25, opened for signature 20 November 1989, UN Doc. A/RES/44/25 (entered into force 2 September 1990) art 4.

⁸ Committee on the Rights of the Child, *General comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, UN Doc CRC/GC/2003/5 (2003) [12].

implementation of any decisions that affect children in any way, including legislative amendments.⁹ Of particular relevance to the *Bill* are the general principles provided in articles 2 – non-discrimination; 3(1) – best interests; and 12 – right of the child to express their views and participate in decisions concerning them.

2.1. Article 2 – Non-Discrimination

Article 2(1) of the *CRC* obliges the Northern Territory to ‘respect and ensure the rights set forth in the [*CRC*] to each child within their jurisdiction without discrimination of any kind’.¹⁰ The *Bill* violates this article as it is discriminatory towards Aboriginal children: the removal¹¹ of the Aboriginal Child Placement Principle in s 12(3) of the *Care and Protection of Children Act 2007* (‘*Act*’), which instructs that Aboriginal children only be placed with a person who is not an Aboriginal person as a matter of last resort,¹² is, as discussed further below, likely to significantly restrict the ability of affected Aboriginal children to access many of their *CRC* rights. Further, the considerations provided in proposed s 12B will disproportionately impact children whose families or carers are experiencing financial and/or housing insecurity.

2.2. Article 3(1) – Best Interests

The best interests of the child must be a primary consideration in all actions concerning children.¹³ Whilst the *Bill* maintains the *Act*’s instruction that ‘[w]hen a decision involving a child is made, the best interests of the child are the paramount concern’,¹⁴ the introduction of a priority order¹⁵ for the factors to be considered during a best interests determination is troubling. The Committee makes clear that ‘[t]here is no hierarchy of rights in the [*CRC*]’ and recommends creating a ‘non-exhaustive and **non-hierarchical** list of elements that could be included in a best-interests assessments’.¹⁶ As such, the effective diminishing of important considerations, such as ‘the nature of the child’s relationship with the child’s family’,¹⁷ is a worrying breach of Australia’s international obligations.

Moreover, it is not evident from the Explanatory Statement whether any overall best interests assessment occurred during the drafting of the proposed amendments – the Northern Territory Government has a responsibility to consider ‘the impact of [the *Bill* on] ... children and the enjoyment of their rights and should [consider the] ongoing monitoring and evaluation of the impact of measures on children’s rights’.¹⁸

2.3. Article 12 – Expression of Views and Participation

Children in the Northern Territory have ‘the right to express [their] views freely in all matters affecting [them]’.¹⁹ Additionally, they should ‘be provided the opportunity to be heard in any judicial and

⁹ Noam Peleg, ‘International Children’s Rights: General Principles’ in Ursula Kilkelly and Ton Liefwaard (eds), *International Human Rights of Children* 135, 139.

¹⁰ *CRC* (n 7) art 2(1).

¹¹ *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026* (NT) s 12C(3) (‘*Bill*’).

¹² *Care and Protection of Children Act 2007* (NT) s 12(3) (‘*Act*’).

¹³ *CRC* (n 7) art 3(1).

¹⁴ *Act* s 10(1); *Bill* s 8(1).

¹⁵ *Bill* s 8(2).

¹⁶ Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, UN Doc CRC/C/GC/14 (2013) [4], [50 (emphasis added)] (‘*GC 14*’).

¹⁷ *Bill* s 8(2)(i).

¹⁸ Committee on the Rights of the Child, *GC 14* (n 13) [99].

¹⁹ *CRC* (n 7) art 12(1).

administrative proceedings affecting [them]’.²⁰ Once more, the Explanatory Statement does not suggest that any Northern Territory children were consulted on the *Bill’s* content prior to its introduction. It is hoped that any submissions received from children will be given additional weight by the Legislative Scrutiny Committee.

Section 11 of the *Bill* appropriately reflects the requirements of article 12, and the alteration of the instructive wording from ‘should’ to ‘must’ is commendable.²¹ However, the content of the *Bill’s* s 12C(2) is concerning. Whilst it is notable that an Aboriginal child’s participation in a significant decision involving them is now expressly provided, that the *Bill* has reduced the provision of participation from ‘a right’ and ‘enabled’ to an ‘opportunity’ is dubious.²² Although it is recognised that the *Bill’s* s 11 should facilitate Aboriginal children’s participation in decisions covered by s 12, it is nonetheless concerning that (1) the Northern Territory Government has retracted their family’s right to participate and (2) the family’s participation is no longer directly enabled by statute.

3. Family Rights

Provisions concerning the child’s family are contained in *CRC* articles 5 – responsibilities and duties of parents, extended family members and the community; 7 – right to know and be cared for by one’s parents; 8 – right to the preservation of family relations; 9 – right to not be separated from one’s parents against one’s will; 16 – protection from arbitrary or unlawful interference with one’s family; and 18 – recognition that both parents have common responsibilities for the upbringing and development of their children.²³

Ultimately, the *Bill* has a significant impact on children’s ability to know and be cared for by their parents and/or family, especially for Aboriginal children. The removal of Aboriginal children’s ‘right to be brought up within their own family’²⁴ is inconsistent with the *CRC’s* view ‘that the child, for the full and harmonious development of his or her personality, should grow up in a family environment’.²⁵ Further, regarding the aforementioned best interest factors, that ‘the need to strengthen, preserve and promote positive relationships between the child and the child’s parents, family members and other persons who are significant in the child’s life’ is merely a matter that may be relevant²⁶ further demonstrates that the *Bill’s* provisions regarding children’s relationships with their families are insufficient.

Lastly, the introduction of Family Responsibility Agreements and Family Responsibility Orders²⁷ will likely have implications for the enjoyment of articles 5 and 18, as they allow for an earlier and broader fettering of parental autonomy than what is currently permitted by the *Act*.

4. Culture and Identity Rights

²⁰ *Ibid* art 12(2).

²¹ *Act* s 11; *Bill* s 11.

²² *Act* s 12(2)(a); *Bill* s 12C(2)(a).

²³ *CRC* (n 7) arts 7, 8, 9, 16, 18.

²⁴ *Act* s 12(2B)

²⁵ *CRC* (n 7) preamble.

²⁶ *Bill* s 8(3).

²⁷ *Ibid* ss 65A – F, 102A – 102T.

The *Bill* removes the existing Aboriginal Child Placement Principle²⁸ and replaces it with a Universal Child Placement Principle.²⁹ In effect, this amendment removes the priority of placing Aboriginal children with Aboriginal people in community or otherwise. Further, it removes the requirement that a non-Aboriginal carer be sensitive to the child's needs and be able to support the child's connection to family, community, culture, traditions, language and Country.³⁰

This amounts to a violation of a child's cultural and identity rights pursuant to articles 30 and 20 of the Convention.

Article 30 states 'a child ... who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her culture, to profess and practise his or her own religion, or to use his or her own language'. Article 20 states '(a) child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State ... (and) ... (w)hen considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background'.

The removal of the Aboriginal Child Placement Principle amounts to a violation of a child's right to enjoy their culture with other members of their community. Moreover, it impedes on their right to cultural continuity.

Moreover, in removing the Aboriginal Child Placement Principle from legislation, the Northern Territory Government would directly contravene the Committee's most recent recommendations to Australia, wherein they urge governments to 'strongly invest in measures developed and implemented by Aboriginal and Torres Strait Islander children and communities to prevent their placement in out-of-home care, provide them with adequate support while in alternative care and facilitate their reintegration into their families and communities'.³¹

5. Care Rights

Article 19 concerns the measures States Parties must take to protect children from violence and abuse. Significantly, it requires 'the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement', thereby emphasising family support and preventative intervention rather than removal of the child.

Article 20 pertains to children who cannot, in their own best interests, remain in their family environment. Such children are entitled to special protection and assistance provided by the State. However, article 20 must be read together with article 9, which provides that 'a child shall not be separated from his or her

²⁸ *Act* s 12.

²⁹ *Bill* s 12(b).

³⁰ *Act* s 12(2D)(d)(ii).

³¹ Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) [34(d)].

parents unless it is necessary for the best interests of the child'. Read together, these provisions indicate placement away from the family environment should be temporary and not last longer than necessary.³²

The *Guidelines for the Alternative Care of Children*, adopted by the United Nations General Assembly in 2009,³³ are highly authoritative interpretive standards and an important tool for interpreting the *CRC*. The Guidelines provide that 'all decisions concerning alternative care should take full account of the desirability, in principle, of maintaining the child as close as possible to his/her habitual place of residence, in order to facilitate contact and potential reintegration with his/her family'.³⁴

The proposed legislation mandates long-term orders where family reunification has not been achieved within two years.³⁵ Although the Guidelines promote permanency,³⁶ the *Bill* does not adequately balance this objective against the child's broader rights under the *CRC*. The *Bill's* approach is inconsistent with article 9's requirement that separation occurs only where necessary in the child's best interests and with the *CRC's* broader emphasis on family. Further, the mandatory nature of the provision undermines the best interests principle by fettering judicial discretion and preventing courts from undertaking an individualised assessment of the child's circumstances in each case.

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Emma Henke* & Hannah Gibson**

*Emma Henke is a candidate in the Advanced Master of Laws (International Children's Rights) at Leiden University. She holds a Bachelor of Laws (Honours) and Bachelor of Development Studies from the Australian National University. She has been employed as a solicitor in the criminal team of the North Australian Aboriginal Justice Agency (NAAJA) since 2021. Prior to that role, she was the Associate to a Justice of the Northern Territory Supreme Court. She writes this submission in her personal capacity.

** Hannah Gibson is a candidate in the Advanced Master of Laws (International Children's Rights) at Leiden University. She holds a Bachelor of Laws (Honours) and Bachelor of Arts from the Australian National University. She has been employed as a Legal Associate to a Justice of the Federal Circuit and Family Court of Australia (Division 1). She writes this submission in her personal capacity.

³² GA Res 64/142, *Guidelines for the Alternative Care of Children*, UN GAOR, 64th sess, 65th plen mtg, Agenda Item 64, UN Doc A/RES/64/142 (24 February 2010, adopted 18 December 2009) [14].

³³ *Ibid.*

³⁴ *Ibid* [11].

³⁵ *Bill* s 128(1A).

³⁶ *Ibid* [12].