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PRIVATE AND CONFIDENTIAL

Committee Secretariat
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By email only: LSC@nt.gov.au

Dear Secretary,

RE: Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026

Legal Aid NT welcomes the opportunity to provide comment on the Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026 (“**the Bill**”) proposed to amend the *Care and Protection of Children Act 2007* (“**the Act**”).

Legal Aid NT provides frontline legal services for parents and caregivers from all backgrounds who appear in the Local Court Family Matters’ Jurisdiction (“**the Court**”) in relation to applications for protection orders under the Act by the Department of Children and Families (“**the Department**”). This includes our duty lawyer service at the Court to assist parents when they come to Court for the first time, and ongoing legal assistance through a grant of aid to represent them through the proceedings. Legal Aid NT is ultimately the “*backstop*” service, providing assistance to clients who may not be eligible for legal assistance from other community legal assistance services.

Legal Aid NT auspices the Domestic Violence Legal Service (“**DVLS**”), which provides frontline legal services to victim survivors of domestic, family and sexual violence, including duty advice, advice clinics and ongoing representation for victim survivors in Domestic Violence Order matters. There are significant intersections between victim survivors of domestic, family and sexual violence and those navigating the care and protection jurisdiction; a significant proportion of Legal Aid NT care and protection clients are victim survivors of domestic, family and sexual violence, and a significant proportion of DVLS clients have had interactions with the care and protection system, often as a result of their experience of violence.

Legal Aid NT endorses the submission made by the Northern Territory Legal Assistance Forum. Legal Aid NT also wishes to make additional submissions regarding the proposed amendments regarding the best interests of children, Family Responsibility Agreements and Orders, domestic and family violence, carers as parties to proceedings and legal representation for children.

Best Interests of the Children

1. While Legal Aid NT has no concerns around safety being added to the Act, we note that “safety” can be a broad concept. A similar change was made to the *Family Law Act 1975* (“**Family Law Act**”) where safety was noted to include “*safety from being subjected to, or exposed to, family violence, abuse, neglect, or other harm*” in relation to determining the children’s best interests. In this sense, it may be that the need to protect the child from harm and exploitation in the current form of the Act already achieves the aim of safety.
2. Legal Aid NT has concerns that the mandating of a hierarchy under the proposed section 8 may unduly fetter the Court’s discretion. In our view, it is more appropriate for the Court to be able to place weight on each factor as relevant to a particular matter.
3. Legal Aid NT is concerned that placing greater weight on permanency as proposed by section 8(1)(d) of the Bill may lead to more contested applications before the Court. These proposed changes, when coupled with those at section 128 of the Bill, which limit the Court’s discretion to a maximum of two short-term protection orders before a long-term order, may result in parents being less likely to consent to short-term applications made by the Department to work on reunification. That is because there is a risk that consenting to a short-term order will mean that a child is in a placement that in of itself creates the permanency contemplated by section 8(1)(d) of the Bill. This could ultimately be used against parents where the Court is required to give greater weight to permanency, than it is to other factors, such as the child’s physical, emotional, intellectual, spiritual, developmental and educational needs or the capacity of the parents to care for the child. In this context, Legal Aid NT anticipates increased contested hearings, creating a greater workload for the Courts and capacity and resource pressures for legal assistance services.
4. It is Legal Aid NT’s position that the proposed hierarchy places undue weight on a child remaining in a care placement, which is likely to undermine any attempts made to reunify the child with parents or family. This is exemplified by the relegation of reunification and need to strengthen positive relationships with parents and family to effectively secondary considerations under the proposed section 8(3) of the Bill.

Family Responsibility Agreements and Orders

5. Legal Aid NT has concerns about the interaction between the proposed Family Responsibility Agreements and associated orders, and the *Family Law Act 1975* (“**Family Law Act**”) and jurisdiction of the Federal Circuit and Family Court of Australia (for ease “**Family Court**”).
6. Under section 69ZK of the Family Law Act:
 - 1) *A court having jurisdiction under this Act must not make an order under this Act (other than an order under Division 7) in relation to a child who is under the care (however described) of a person under a child welfare law unless:*
 - a. *the order is expressed to come into effect when the child ceases to be under that care; or*
 - b. *the order is made in proceedings relating to the child in respect of the institution or continuation of which the written consent of a child welfare officer of the relevant State or Territory has been obtained.*
 - 2) *Nothing in this Act, and no decree under this Act, affects:*
 - a. *the jurisdiction of a court, or the power of an authority, under a child welfare law to make an order, or to take any other action, by which a child is placed under the care (however described) of a person under a child welfare law; or*
 - b. *any such order made or action taken; or*
 - c. *the operation of a child welfare law in relation to a child.*

- 3) *If it appears to a court having jurisdiction under this Act that another court or an authority proposes to make an order, or to take any other action, of the kind referred to in paragraph (2)(a) in relation to a child, the first - mentioned court may adjourn any proceedings before it that relate to the child.*
7. In effect, if an order under State or Territory child welfare legislation is made in relation to the care of a child, the Family Court cannot make an order in relation to the child until the care order either expires or is withdrawn.
8. The proposed section 102E of the Bill, while noting an order for parental responsibility cannot be made, does provide for a direction to be made with respect to requiring a parent to “*exercise proper care and supervision of the child*” as in accordance with the directions that can be made under section 65F. Such a direction would raise the risk that the child is “*under the care*” of that parent for the purposes of section 69ZK.
9. This raises concerns that if a Family Responsibility Order is made, then the Family Court’s jurisdiction would be limited unless the Department consents to proceedings. This is particularly problematic in matters where care matters are better dealt with through the Family Court. This will also mean that there may be further procedural mentions at the Family Court, requiring appearances from the Department or clients who may be legally aided increasing the costs of representation.

Domestic and Family Violence and “events of concern”

10. In the proposed Part 2.1A of the Bill at section 65B (1), risks of domestic violence are proposed to be managed consistently with the family violence framework.
11. The proposed Part also contains an Object at section 65A, which states:
- The object of this Part is to promote the wellbeing of children by:*
- (a) Increasing parental involvement and accountability; and*
 - (b) Addressing the needs of parents and improving parenting capacity and capability; and*
 - (c) Preventing the need for proceedings under Part 2.3 or criminal proceedings.*
12. Section 65B (2) directs the risk of domestic violence to be managed in accordance with the Risk Assessment Management Framework (RAMF), approved pursuant to section 124Q of the *Domestic and Family Violence Act 2007* (NT). The RAMF was published in September 2020. It is currently being reviewed by the Department’s Research and Evaluation Unit, with the review expected to be completed in October 2026. It is premature to create a legislated requirement to follow a framework that is in the process of being reviewed.
13. The RAMF includes a process for managing domestic and family violence (“**DFV**”) risk in Practice Guide 3.¹ It is a guide for workers in how to respond to DFV risks and sets out the specific steps that workers should take. It is not designed to be followed by individuals and families and does not include guidance for parents to assess and manage their own risk.
14. The Practice Guide also states that:

¹ Northern Territory Government, “Northern Territory Domestic and Family Violence Risk Assessment and Management Framework” (“**RAMF**”), at p. 68-77.

*The fundamental aim of risk management is to increase the safety of victim survivors. If risk is not managed, or not managed adequately, the safety of victim survivors may be compromised. This could result in serious injury or death.*²

15. This fundamental aim as stipulated in the RAMF may not necessarily align with the Object of Part 2.1A and may result in parental accountability and parenting capacity being prioritised above improving the safety of victim survivors, contrary to the RAMF.
16. If the intention of section 65B(1) is that domestic violence risk is to be managed by the Department, this is not explicit from the wording of the Bill. The RAMF sets out in Practice Guide 3 that DFV risk management is most effective when a service or agency leads the approach.³ There will be obstacles if the Department intends to lead risk management, as our experience demonstrates that working with victim survivors to manage DFV risks requires a relationship of trust, which may be difficult to establish with DCF workers who may remove children from parents, particularly when the parents have prior experience with child protection.
17. If DCF does not intend to lead DFV risk management as is set out in the RAMF, the responsibility under section 65B rests with either the parents, or specialised DFV workers. Specialised DFV worker-led responses are supported by the RAMF, which states that although all workers have a responsibility to respond to domestic violence crises, comprehensive risk management should be done by specialist workers.⁴
18. The involvement of specialist workers relies on specialist DFV organisations, which are experiencing high volumes of referrals and are subject to long waiting periods, particularly in relation to crisis and ongoing safe accommodation. We expect this to continue and worsen in 2026-2027 as a result of funding pressures and demand.
19. DVLS clients have encountered significant obstacles in 2025-2026 in accessing safe crisis and long-term accommodation. DVLS have assisted clients escaping DFSV with children who have been unable to access crisis or long-term accommodation, in some instances for almost three months.
20. The alternative interpretation is that the inclusion of a specific requirement to manage domestic violence in a Part which is intended to increase involvement and accountability of parents, rests with the parents. This may result in victim survivor parents being held responsible for managing the risk of DFV affecting themselves and their children. The inclusion of section 65B suggests that victim survivor parents could be held accountable for remaining or returning to a violent relationship, not accessing safe accommodation and other support services and not preventing the exposure of their children to DFSV, all of which may be outside of the victim survivor's control or unavailable to them at the time.
21. To not distinguish between the parent using violence and the parent experiencing violence is contrary to the approach of the RAMF and the *Domestic and Family Violence Act 2007* (NT), which includes as an object *"to ensure persons who commit domestic violence are held accountable for their conduct"*⁵ (underline added), specifically identifying users of violence as those who should take accountability for their actions.

² RAMF, at p. 70.

³ RAMF, at p. 70.

⁴ RAMF at p. 70.

⁵ *Domestic and Family Violence Act 2007* (NT) s 3(e).

22. Legal Aid NT does not support the implication that DFSV victim survivors should take accountability for the violence they are experiencing. Perpetrators of coercive control often blame victim survivors for the violence they themselves perpetrate, telling victim survivors they caused the perpetrators to use violence against their partner and children.
23. DVLS has observed that clients experiencing coercive control often blame themselves for the violence they experience and that their children are exposed to and experience. Victim survivor parents must be provided with trauma-informed, culturally safe and adequately resourced support services to empower them to make the best decisions for them and their children.
24. The RAMF recognises that when a victim survivor is intending to leave or has recently left the person using violence, the risk of serious harm or death from DFV increases.⁶ Parent victim survivors may feel pressure to leave a DFV relationship to prevent the commencement of court proceedings, and if done in a way that is not safe, or not appropriately supported, may increase the risk of harm to the victim survivor parent and the child or children.
25. The requirement that risks of DFV must be managed in accordance with the RAMF does not negate that experiencing or exposure to DFV may constitute an “*event of concern*”, which includes “*any event that adversely affects a child’s wellbeing*”, as defined in section 65D. This definition is extremely broad. The decision not to exclude risk of DFV from this definition will likely result in parents using violence and victim survivor parents being subject to the same Family Responsibility Agreement. This may have the effect of entrenching a perpetrator’s narrative that a victim survivor is responsible for the violence they experience, and create an unsafe, inappropriate and unreasonable expectation that a victim survivor works with their perpetrator to manage the DFV risks that they and their children are experiencing.
26. Legal Aid NT is concerned that the framework surrounding the mandating of Family Responsibility Agreement meetings following an “*event of concern*” could be used by people perpetrating systems abuse in family law matters. In our experience, the Department currently screens out matters that are better dealt with before the Family Court.
27. However, if the Department is required to screen more matters in on the basis that they “*must*” invite a parent if the conditions of section 65D(1) are met, that may result in a parent who is acting appropriately and protectively having further interactions with the Department as a result of consistent systems abuse reporting by a partner who is a user of violence. The potential for systems abuse exists when the Department is mandated to invite a parent to a Family Responsibility Agreement meeting.

Resourcing and Operational Concerns

28. The proposed amendments introduce additional operational and procedural events which do not exist under the current Act which have resource implications not only for the Department, but the Court and legal assistance services.
29. Legal Aid NT notes that not agreeing to, or not complying with, Family Responsibility Agreements forms a ground for the application for a Family Responsibility Order under the proposed section 102C(a) or (b) of the Bill. As a result, there is a concern that entering into a Family Responsibility Agreement may not be done by a parent freely and voluntarily with the potential that the Department may apply to the Court if there is no agreement.

⁶ RAMF at p. 70.

30. As a result, parents will require legal advice prior to agreeing to a Family Responsibility Agreement. This will place pressure on Legal Aid NT and other legal assistance services for legal advice and minor assistance services. Legal Aid NT is funded by the NT government to provide duty lawyer services and legal representation at Court. The current funding is limited having regard to budgetary pressures arising from the demand for Legal Aid NT's criminal law services.

Addition of Carers as Necessary Parties to Proceedings

31. The current legislation provides a discretion to the Court to join carers to proceedings. The current section 94 of the Act outlines that "*any other person considered by the Court to have a direct and significant interest in the wellbeing of the child*" is a party to the proceeding.⁷ There is also currently a mechanism in relation to protection order applications where a party can apply to join the proceedings on the basis that they have "*a direct and significant interest in the wellbeing of the child*".⁸
32. It is submitted that this provision already allows persons who may have such an interest to be involved in proceedings and indeed joinder applications have enabled them to become parties. Legal Aid NT is aware of instances where carers and family members have been joined as parties to proceedings using this section, as a result, no amendment is required.
33. Legal Aid NT is opposed to the mandated addition of carers of more than 8 months of a child being necessary parties to proceedings under proposed sections 94, 125 and 137D of the Bill. Legal Aid NT observes the term 'carer' has not been defined and as a result the definition could include family members of the child or paid foster carers.
34. Legal Aid NT notes that there is no equivalent provision naming carers as mandated parties in the corresponding legislation of other jurisdictions.

Resource and Operational Concerns

35. Legal Aid NT is concerned about the financial impact of this proposed change to the Act on the justice sector. It is anticipated that carers would seek legal assistance services both in relation to advice and legal representation as parties to the Court proceedings.
36. Firstly, in relation to the provision of legal advice, under the *Legal Aid Act 1990* (NT), Legal Aid NT may provide legal assistance to those persons who are "*unable to afford the cost of obtaining from private legal practitioners the legal services in respect of which legal assistance is sought*".⁹ The Legal Aid Guidelines¹⁰ further note that priority is given to certain classes of person in order, with the third class being:
- Persons who would be more severely disadvantaged than others (whether such disadvantage is expressed in terms of one or more economic, physical, cultural, linguistic, educational, geographic or other factors) if legal aid was not provided.*¹¹
37. As a result, Legal Aid NT would be required to prioritise limited funding to provide advice and legal representation to parents in order to ensure compliance with our statutory function. There has been no indication as to what services and resources will be available to provide legal advice to carers, and how such services will be funded. Without any funding allocated to the provision of legal advice

⁷ *Care and Protection of Children Act 2007* (NT), s 94

⁸ *Care and Protection of Children Act 2007* (NT), s 94

⁹ *Legal Aid Act 1990* (NT), s 26(1)(a)(i).

¹⁰ Publicly available online

¹¹ Legal Aid Guidelines, March 2026, Part 1(1)(c).

to carers, Legal Aid NT would be in a position where we would be unable to guarantee that advice could be provided.

38. Secondly, adding carers as another party to proceedings has the potential to introduce a more adversarial and inter-partes approach to litigation at the Court. This is likely to increase the workload of the Court and the various legal assistance services as more matters will be required to proceed to a contested hearing.
39. In addition, applications made to the Court often contain highly sensitive information about the parents which can include information about the parents being in care themselves. Such issues are likely to create further contested interlocutory applications for the suppression of certain information/evidence, which will further delay proceedings, creating further costs to the Court and legal assistance services.

Representation of Children

40. The Explanatory Statement indicates that the purpose of the amendments to the Bill is to keep children safe and central to decision making achieved by, among other things, *“strengthening children’s access to independent legal representation in long-term child protection matters”*.
41. While Legal Aid NT appreciates the stated intent of the Bill is to increase access to legal representation and keep children central to decision making, Legal Aid NT has concerns, the proposed amendments do not achieve that aim.
42. The existing provisions for the legal representation of children are contained in Division 6A of the Act.
43. Section 143A of the Act currently provides the Court with a broad discretion to appoint a legal practitioner to represent a child (commonly known as the **child representative**), if it is considered to be in the child’s best interests. This provision applies to any proceeding under the Act.
44. The basis for representation is either on instructions with an age presumption of 10 years of age or best interests under section 143B.
45. The child representative is required to determine whether the child has sufficient maturity and understanding to be able to provide instructions in the proceedings, advise the Court of the basis of the child’s capacity to instruct, put the child’s views and wishes before the court and to actively and professionally represent the child as if engaged by the child.
46. The proposed amendments are to section 143A only. This would remove the Court’s discretion to order the appointment if it is in the child’s best interests and substitute it by (a) introducing mandatory orders for appointment, with exceptions, where a long-term parental responsibility child protection or permanent care order is sought; and (b) in the case of any other proceeding, replacing it with the requirement for the Court to be satisfied the child has not made an informed and independent decision not to be represented, thereby requiring order for appointment.

Determining a child’s capacity for informed and independent decision making

47. The proposed amendment places an obligation on the Court to determine a child’s capacity to make an informed and independent decision about whether they wish to be legally represented in the proceedings. The section 143B age presumption of 10 may be of some assistance. However, while the intent of the drafting is to assist the child representative in determining the basis of representation, this can only occur after the Court has made the order for appointment.

48. In practice, the Court may or, in our experience, in most instances – will not have before it, evidence of a child’s level of understanding and maturity to engage in a legal process. Although named as a party to the proceeding, children do not generally attend Court and participate in Court events, unlike youth justice proceedings in the Children’s Court.
49. The Court would be necessarily reliant on evidence contained in the Department’s material, in the absence of any other independent expert reports. The preparation and filing of psychological, social assessment reports (including Children’s Court Clinic Assessment Reports)¹², occurs extremely rarely in the Northern Territory.
50. The lack of independent expert evidence is a significant drawback to the effective representation of children in this jurisdiction. The unacceptably high number of children and families coming before the Court, have demonstrated high levels of vulnerability and complexity, not least the impact of complex trauma on children’s neurodevelopment, cognition, sense of agency and safety. Those vulnerabilities create a difficult starting position for a young person trying to understand and engage in an adult process. When this is coupled with language and cultural considerations, assessments by legally trained professionals as opposed to assessments by health or social science experts, could be problematic.

Training of Child Representatives

51. Currently, no accreditation or mandatory training is required for a child representative to undertake the role, although section 143E of the Act provides that regulations may make provision for appointment eligibility criteria and the responsibilities and standards required of the role. These Regulations have not been enacted and are necessary.
52. Legal practitioners undertaking this work are drawn from both the local private profession and from national commercial firms, have varied skills and experience working with clients with highly complex communication needs, experience in the Northern Territory and general legal expertise in this area.
53. Unlike interstate jurisdictions, where Legal Aid Commissions are funded to appoint child representatives including providing and regulating targeted child representative training, in the Northern Territory the Solicitor for the Northern Territory (“**SFNT**”) manages the appointment of all child representatives. The legal practitioners appointed are private firms who must be registered and on the published NT Legal Services List to undertake NT government work in a range of legal areas. Such practitioners sometimes undertake work representing the Department, in one matter and child representative, in another. In Legal Aid NT’s experience, this has sometimes caused confusion for clients and families at Court events.
54. In Legal Aid NT’s experience, separate child representatives will often be required to visit children at their placements through their carers. If carers are added as necessary parties, parents may be concerned about the impartiality of child representatives in circumstances where the representative is meeting the child through the carer.
55. Legal Aid NT understands the training requirement imposed for legal practitioners to undertake child representation work is the completion of a national accreditation training programme for Independent Children’s Lawyers¹³ in Family Law proceedings. This training is to be distinguished

¹² See Legal Aid Queensland, “Do you have questions about a social assessment report”, <https://www.legalaid.qld.gov.au/files/assets/public/v/9/publications/relationships-and-children/questions-about-social-assessment-factsheet/do-you-have-questions-about-a-social-assessment-report-fs-web.pdf>; Children’s Court Clinic (NSW), “Who we are and what we do”, https://childrenscourt.nsw.gov.au/documents/factsheets/ccc_adult.pdf; Children’s Court of Victoria, “Family Assessment – Psychology”, <https://www.childrenscourt.vic.gov.au/sites/default/files/2025-01/Children%27s%20Court%20Clinic%20-%20Family%20Assessment%20Brochure.pdf>

¹³ National Legal Aid, “Become an ICL”, <https://icl.gov.au/become-an-icl>

from the specialist child representation training delivered by interstate Legal Aid Commissions. The family law and care and protection jurisdictions are not analogous. It is by design that different training and accreditation programmes and selection criteria/panel entry requirements have been established by legal aid commissions in other jurisdictions.

56. The absence of specialist training in the NT may explain why legal practitioners are requested to undertake alternate training designed for a different area of law and practice.
57. Legal Aid NT invites government to promulgate the regulation contemplated in section 143E of the Act to regulate the quality and impact of child representation and provide appropriate funding to facilitate training.

Exceptions to mandatory orders for appointment

58. The proposed new section 143C (1) of the Bill provides for an exception to mandatory orders for appointment in circumstances:
- (a) Where a child is already legally represented, or
 - (b) The Court is satisfied of the child's informed and independent decision not to want one
 - (c) The Court is satisfied the matter needs to be heard urgently and it is in the child's best interest the matter proceed in the absence of legal representation of the child.
59. The concerns regarding the assessment of a child's capacity discussed above are echoed here. Even more so, given the gravity and life changing nature of the application under consideration impacting the child.
60. The other concern relates to the scope of matters to be heard urgently. Legal Aid NT cannot contemplate a circumstance in which a Court should be compelled to make a child protection order until a child turns 18 or indeed a Permanent Care Order, without giving the child a voice (even though a party to the proceeding) or the child's best interests being independently put before the Court.
61. This assumes greater consequence in circumstances where matters are finalised with no other party appearing before the Court except the Department. Legal Aid NT is aware of matters being finalised in this way under the present legislation.
62. Consequently, as the Family Matters Jurisdiction Court is a closed one, the child's broader family or interested persons, would be excluded from advocating for, or being informed about, critical decisions for the child, unless they are parties to the proceedings. It would be left to the Executive to inform the child and child's family of the permanency of the orders made by Court.
63. Legal Aid NT submits the only amendments to section 143A of the Act be to sub-section (1):
- s.143 (1) In proceedings under this Act, the Court must order the appointment of a legal practitioner to represent a child to whom the proceedings relate.*
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Conclusion

Legal Aid NT supports the continuous review and improvement of care and protection policy and legislation.

Legal Aid NT is however concerned that the changes proposed in this Bill will carry unintended consequences, particularly as there are currently insufficient resources across legal assistance services, Courts, domestic, family and sexual violence services, other non-legal support services and the Department, to adequately respond to the current demands of the sector, notwithstanding the additional demands that would be brought in by the proposed Bill. Many of the current challenges in the sector are resource based rather than legislation based.

Legal Aid NT is concerned that this Bill will create additional challenges for the sectors and families involved without addressing the sector's longstanding areas of concern regarding care and protection policy, resourcing and legislation.

Legal Aid NT suggests that to be properly and effectively implemented, legislative change requires meaningful and considered engagement and consultation with the sector, and significant additional funding and support for legal and non-legal support services, Courts and the Department.

Yours faithfully,

A black rectangular redaction box covering the signature of Catherine Voumard.

Catherine Voumard

Director

Northern Territory Legal Aid Commission