Comments on the Care and Protection of Children Legislation Amendment (Every Child Matters) Bill (2026)

Attention: legislative scrutiny committee
Date: 18 May 2026
Re: Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026 (Serial No. 67)

Thankyou for granting this significant Bill appropriate public scrutiny.

This Bill replaces the principles framework in Part 1.3 of the Care and Protection of Children Act 2007 (NT). The Explanatory Statement presents the change as a clarification of the Act's original intent. In substance, the Bill removes several explicit rights and participation guarantees for Indigenous children and their families, and replaces them with weaker language that is stated not to create enforceable rights.

These changes matter because they sit alongside broader reforms in the Bill, including Family Responsibility Agreements, Family Responsibility Orders, and court-linked referrals into Commonwealth income management. In practice, these measures will mainly affect Indigenous families because Indigenous children make up the overwhelming majority of children in out-of-home care in the Northern Territory.

Government states the reforms aim to improve stability and permanency; reduce repeated placement disruption; prioritise safety; and create earlier intervention pathways. These are welcome objectives that Indigenous families share, and could be better pursued without reducing participation protections.

A major legal risk for the Bill is section 10 of the Racial Discrimination Act 1975 (Cth). The Statement attempts to avoid that issue by reframing the current participation provisions as merely "*guiding principles*" that never created enforceable rights. But the current Act repeatedly uses the language of rights and obligations. The existing section 12 refers to "*rights*" multiple times, including a right "*to participate, and to be enabled to participate*" in decision-making processes. The 2019 amendments strengthened that language rather than weakening it.

Once the current Act is read on its own terms, it is difficult to carry the implication that these rights never existed. The Bill therefore carries a real risk of challenge under RDA s.10.

rights relegated as discretionary participation

The current section 12 contains repeated references to rights held by Indigenous children and their families. For example:

> *the child's family members have a **right** to participate, and **to be enabled to participate**, in an administrative or judicial process for making the decision*

> *the child and the child's family have a **right** to identify relevant people to participate*
> *a person identified … has the **right** to participate*
>
> *An Aboriginal child has the **right** to be brought up within the child's own family and community and on the child's own country*
>
> *An Aboriginal child has a **right** to be supported to develop and maintain a connection with the child's family, community, culture, traditions, language and country*

The phrase "*to be enabled to participate*" is especially important. It does not simply allow for participation. It places a positive obligation on decision-makers to make participation possible.

The Bill removes this language entirely. Proposed section 12C no longer refers to rights. Instead, it says children and families "*should be given the opportunity to participate*" and that identified persons "*should be allowed to participate*."

This is not a minor drafting update. It is a clear reduction in the strength of the protections.

The Explanatory Statement does openly confirm the intention of the change:

> *the child and their family members will no longer have a right to participate and be enabled to participate*

and states that the amendment is intended to ensure the Act's principles "*do not create or confer on any person any right or entitlement enforceable at law.*"

That intention directly contradicts the language of the current Act, which repeatedly refers to rights and participation obligations.

policy intent

Proposed section 7(4) states that the principles in Part 1.3 do not create enforceable rights or entitlements. But Parliament cannot retroactively change the meaning of the current Act by declaring that the rights in the existing section 12 were never really rights.

The present Act must be interpreted according to its own wording and legislative history. The text repeatedly uses the language of rights. The 2019 amendments strengthened those rights rather than weakening them. The Statement invites readers to ignore that history and treat the old provisions as though they were always merely aspirational.

The problem is not only legal but practical. Agencies and oversight bodies have operated on the understanding that the current section 12 imposes real obligations. The Office of the Children's Commissioner has described the existing provisions as legislative requirements that mandate Indigenous family and community participation in decisions.

The Bill therefore does more than "*clarify*" the law: it changes it.

Racial Discrimination Act

Section 10 of the Racial Discrimination Act 1975 (Cth) prevents state or territory laws from reducing rights enjoyed by people of a particular race.

The current section 12 gives Aboriginal children and families distinct statutory participation protections not otherwise provided in equivalent form elsewhere in the Act. Those protections would be reduced or removed by enactment of this Bill.

The Bill tries to present the changes as universal by replacing Indigenous-specific protections with broader principles that apply to all children. But the practical effect still falls overwhelmingly on Indigenous children because Indigenous children make up nearly 90% of children in out-of-home care in the Northern Territory.

The High Court has already confirmed that laws can breach section 10 even when they are written in formally neutral language. The real issue is practical effect.

Parliament is free to repeal special measures, but the surrounding conditions matter. The current over-representation of Indigenous children in the child protection system has not improved to the point where the need for these protections has disappeared.

For that reason, the risk under section 10 is substantial and should be addressed directly.

drafting evolution

In January 2025, the NT Government released a discussion paper proposing a “Special and Exceptional Circumstances” clause that would have allowed the Local Court to override the existing child placement principles for Indigenous children specifically.

That proposal drew strong criticism from Indigenous organisations, legal services and human rights bodies, including SNAICC, NAAJA, the Australian Human Rights Commission and the National Children’s Commissioner. Critics argued that the proposal would weaken protections for Indigenous children and operate in a discriminatory way.

This year’s Every Child Matters Bill reads as the broader successor to last year’s discussion paper. Presenting the new Bill to the public, Minister Cahill told reporters this month that she had been working on changes to the Care and Protection of Children Act for a year.

The Bill takes a very different approach to last year's proposal. Instead of creating an explicit Indigenous-specific exception, it restructures the principles framework more broadly:

- the placement principle is rewritten as a universal principle applying to all children;
- Indigenous-specific participation rights are reduced to participation opportunities; and
- proposed section 7(4) states that the principles do not create enforceable rights.

The language is now formally universal, but the practical effect remains concentrated on Indigenous children because of the demographic reality of the NT child protection system.

This drafting history matters because it shows the Government was aware of the discrimination risk. The earlier proposal was criticised for being too explicit.
The current Bill instead pursues similar outcomes through broader language.

Courts assessing the practical effect of legislation are not limited to the final wording alone. The development of the Bill may become relevant if the legislation is later challenged under the Racial Discrimination Act.

Commonwealth income management

Proposed section 102E(1)(c)(i) allows the Local Court to direct the CEO to issue a notice under the Social Security (Administration) Act 1999 (Cth), triggering enhanced income management for a parent.

The Bill does not itself impose income management. The Northern Territory cannot directly control Commonwealth social security payments. Instead, the Bill creates a referral pathway:

- the Local Court makes an order;
- the CEO gives notice to the Commonwealth Secretary;
- Services Australia applies enhanced income management.

This structure has several important consequences that deserve deeper consideration.

It creates a court-linked pathway into a Commonwealth income management regime that is otherwise administrative in character.

In doing so, review rights become fragmented, which in turn fragments procedural protection. A family challenging the outcome may need to deal with:

- NT court appeal processes regarding the Family Responsibility Order; and
- Commonwealth review processes regarding the income management decision.

This is a severe procedural defect, denying families a single cohesive forum from which to seek remedy. It is a cost on dissent that bears no relationship to the merits of the underlying decision. This obviously makes review significantly more difficult in practice, especially for vulnerable families already dealing with multiple systems.

This flaw raises significant questions about procedural fairness, and the institutional role of Territory courts within the broader Commonwealth framework. These questions of integrity and fairness across jurisdictions warrant careful constitutional scrutiny.

It's also worth noting here that the NT scheme depends entirely on the continued existence of the Commonwealth referral mechanism in section 123SCA of the Social Security (Administration) Act 1999 (Cth). If the Commonwealth changes or repeals that section, this part of the NT framework may cease to operate effectively. That dependency should be reconsidered because Commonwealth policy on income management remains in flux.

broader practical effect

The Bill introduces Family Responsibility Agreements and Family Responsibility Orders. These mechanisms can be triggered by broad “events of concern,” including criminal or anti-social behaviour; school non-attendance; or any event that adversely affects a child’s wellbeing.

Orders may include referrals into income management, banned drinker orders, housing-related behavioural arrangements and restricted premises declarations.

In practice, these measures will fall most heavily on Indigenous families because Indigenous children are vastly overrepresented in the NT child protection system. In this way a formally universal framework can still have a racially concentrated effect. The Bill therefore cannot be assessed only at the level of formal drafting language. Its practical operation matters.

support-oriented intervention vs coercive on-ramping

The Bill significantly broadens the circumstances in which families may become subject to state intervention.

The definition of “event of concern” includes anti-social behaviour, school non-attendance, and any event adversely affecting a child’s wellbeing. It also permits police referral pathways involving children below the age of criminal responsibility.

Although these mechanisms are framed with the co-opted term ‘early intervention’, the Bill creates specific pathways into increasingly coercive measures, including Family Responsibility Orders and referrals into Commonwealth income management. Children whose conduct is not criminal, and families who may never previously have met the threshold for statutory child protection intervention, may nevertheless become drawn into escalating systems of supervision and control.

supporting family reunification

The Bill emphasises permanency and timely decision-making, including a framework aimed at reunification within two years of removal - a policy direction other jursidictions have recently abanoned. Greater stability for children is an important objective. However, the Bill does not address the practical reality: many families face structural barriers (housing instability, disability, poverty, remoteness, and service shortages) that cannot necessarily be resolved within compressed statutory timeframes.

There is a risk that the combination of expanded intervention pathways and shortened reunification horizons will accelerate families toward long-term separation before adequate support efforts have genuinely occurred. Noting child protection output funding cuts in the recent budget, it is unclear whether government can provide the support and conditions necessary for reunification within the statutory timeframe.

other omissions in the Explanatory Statement

The Statement is silent on policy questions that matter. Beyond the lack of RDA s.10 compatibility advice, the Statement ignores:

Closing the Gap. The National Agreement on Closing the Gap includes Target 12 (45% reduction in over-representation of Aboriginal and Torres Strait Islander children in OOHC by 2031) and Priority Reform 1 (partnership and shared decision-making). PR1 commits the NT to formal partnership and shared decision-making on policies affecting Aboriginal and Torres Strait Islander people. The NT has formal partnership architecture in the Tripartite Forum (NT Government, Commonwealth, APO/NAAJA/NTCOSS). The Bill was not developed through the Tripartite Forum and ACCO members publicly oppose it.

The Don Dale Royal Commission (Final Report November 2017) made 227 recommendations emphasising Indigenous-led decision-making and reduced coercive intervention. note: the Statement's only reference to "the 2017 Royal Commission" is to the (different) Royal Commission into Institutional Responses to Child Sexual Abuse.

Coronial findings from the Inquest into the Death of Baby G recommended an "*active efforts*" principle modelled on NSW provisions. The Bill's new s.12D ("*proactive efforts*") is partly responsive to this. The Coroner did **not** recommend the s.12C participation-rights downgrade. The Bill packages a coronial recommendation with an unrelated and contrary policy change and presents the bundle as coronial implementation.

Consultation evidence - The Statement does not share which Aboriginal Community Controlled Organisations and Aboriginal peak bodies were consulted on the s.12C changes, what feedback was received, or which feedback was adopted. NAAJA CEO Ben Grimes' published position is that effective child protection reform "*cannot responsibly occur through politically reactive amendments driven by media narrative*".

Evidence base - The Statement claims the reforms will deliver "*long-term stability and permanency*" but cites no evidence that subordinating placement principles to a universal hierarchy improves outcomes for Indigenous children. The peer-reviewed literature is broadly consistent in the opposite direction.

questions for the Minister

Has the Government obtained advice regarding compatibility of the Bill with section 10 of the Racial Discrimination Act 1975 (Cth)? Will that advice be released publicly?

How has the Government measured the impact of the Bill against the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory (2017)?

What Closing the Gap impact assessment was conducted, particularly against Target 12 and Priority Reform 1? Will it be published?

How does a rigid two-year limit on reunification reconcile with the NT's explicit commitments under Target 12 of the National Agreement on Closing the Gap?

What evidence supports the assumption that reunification timeframes are achievable within the current NT service environment, including in remote communities?

What safeguards exist to ensure families are not permanently separated due to inability to access required services within the statutory reunification period?

If a family is unable to complete required reunification programs within the two year limit due to departmental delays, service waitlists or lack of access in remote areas, does the court retain the absolute discretion to extend short-term orders?

Will the Government table a statement of compatibility with the UN Convention on the Rights of the Child, ICCPR Article 27, and UNDRIP before debate?

What practical safeguards will replace the current participation protections removed from section 12?

What evidence supports the proposition that weakening Indigenous participation protections will improve safety, permanency or child wellbeing outcomes?

Has the Government considered the alternative path of retaining the current participation rights while still introducing the Bill's permanency and early-intervention reforms?

Has the Government obtained advice regarding the constitutional and procedural implications of linking Local Court Family Responsibility Orders to compulsory Commonwealth income-management outcomes? Will that advice be released?
Has consolidation been considered?

What projection has the Government made of FRO-driven referrals per annum?

What impact assessment has been conducted on the financial consequences of an extraordinary 70% welfare quarantine for affected families?

What safeguards prevent Family Responsibility Agreements or Orders being imposed where the child has committed no criminal offence and the family has not previously received child protection intervention or support?

conclusion

The Bill's most consequential provision is new s.12C, supported by new s.7(4).

The Statement gives this provision minimal substantive treatment and presents it as clarification of pre-existing intent. The textual record of existing s.12 does not support that presentation. The change is substantive: a recently-strengthened body of rights is being

removed and replaced with hortatory language disclaiming enforceability. The change is structural to the rest of the Bill. The change is racially differential in effect because the affected cohort is approximately 90% Indigenous.

We are told the Bill aims to improve long-term stability and permanency for children. However, aspects of the framework may instead generate significant legal uncertainty, including potential challenges under the Racial Discrimination Act and broader procedural concerns regarding review pathways and court-linked income management consequences. Prolonged legal and administrative uncertainty risk undermining the very stability and permanency objectives which Government claims the Bill will achieve.

recommendation

The Bill should not pass in its current form. At minimum, proposed s.12C and s.7(4) should be withdrawn pending substantive consultation with ACCOs; appropriate exploration of compatibility with RDA s.10, Don Dale RC recommendations and UNDRIP; and an evidence-based justification.

I remain interested to participate further in improved decision making.

Contact

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Appendix
Cumulative operational effect: a hypothetical case study

Analysis of the Bill clause by clause does not capture how the provisions interact in operational practice. The Family Responsibility Agreement and Order machinery, the participation-rights downgrade, the compressed reunification timeline and the Commonwealth income-management referral pathway each have a standalone justification in the Explanatory Statement. Their cumulative effect on a single family is not addressed.

The following hypothetical aims to illustrate that cumulative effect. It is not a prediction or a description of a real case. It is composed from documented patterns in NT child protection, youth justice, and social-support service delivery. These patterns are established by the Royal Commission into the Protection and Detention of Children, successive coronial inquests, and SNAICC's annual Implementation Reviews.

The purpose of this appendix is to make visible the operational machinery the Bill creates as a whole, in a way that clause-by-clause assessment cannot.

the family

K is nine years old. She lives with her mother, an aunt, and four siblings in a remote NT community. The household is overcrowded. There has been intermittent family violence in the home over several years. K has an untreated cognitive disability that affects her behaviour. The nearest disability assessment service is a six-month waitlist away. The nearest family violence support service operates one day a week from a town two hours' drive distant.

the trigger

K begins missing school. Her behaviour at home and around the community becomes harder for her family to manage. Local police attend the household several times in response to reports of anti-social behaviour involving groups of children in the area. K is below the age of criminal responsibility. She has committed no criminal offence.

The new broad "event of concern" definition is engaged by each of three pathways simultaneously: K is a school-age child not attending school; police interactions raise anti-social-behaviour concerns; and events are adversely affecting her wellbeing.

Police may refer the matter to the CEO of the Department of Children and Families following continued interactions involving a child below the age of criminal responsibility.

escalation path

The CEO has two options under the Bill. The CEO may invite K's mother to enter a Family Responsibility Agreement. Alternatively, they may apply directly to the Local Court for a FRO. The FRA is not a precondition for the FRO, and refusing to enter an FRA is itself a trigger.

K's mother is invited to enter an FRA. The CEO is required to ensure that any facilities or services reasonably required by the family to comply with the agreement are reasonably available. The disability assessment service, the family violence support service, and emergency housing are not in fact reasonably available; the agreement is entered into anyway. The Agreement poses responsibilities, like school attendance, and engagement with services, that are difficult to fulfil given the structural conditions.

Six months later, the CEO considers the agreement unsuccessful. The Bill does not define unsuccessful. The CEO may apply for a FRO. The Local Court makes the FRO, directing the CEO to issue a written notice to the Secretary of the Commonwealth Department under the Social Security (Administration) Act. This puts K's mother on the enhanced income management regime with a 70% quarantine rate on her support payments. The order also directs the CEO to provide information about K's mother's conduct to the CEO of NT Housing for the purpose of considering an acceptable behaviour agreement under the Housing Act.

K's mother now has less liquid income in a remote community with limited cash-economy access. Her tenancy is under conditional review. Her engagement with services becomes harder, not easier.

participation

Under existing section 12 of the Act, K's family members had a right to participate, and to be enabled to participate, in each significant decision in this sequence. They had a right to identify persons of cultural authority, members of their kinship group, and members of an Aboriginal community-controlled organisation to participate with them.

Under the new section 12C, those rights are replaced by an opportunity to participate. New section 7(4) confirms that the principles in Part 1.3 do not create any right or enforceable entitlement.

The CEO must give the opportunity; the CEO is not required to enable it. In a remote community with limited transport, limited communication infrastructure, and limited access to legal or advocacy support, the difference between a right to be enabled to participate and an opportunity to participate is operationally decisive. K's family is given notice of decisions and the formal opportunity to be heard. The Court records compliance.

proactive-efforts framework

The CEO must make all reasonable proactive efforts to reunify a removed child with the child's parents, or with a family member if reunification is not in the child's best interests, within two years of removal.

The Bill places particular emphasis on intensive reunification efforts within the first six months.

A protection-order application may be made by the CEO some months after the FRO is in force. The Court can make a short-term parental responsibility direction for one year. If K is then placed in care, the CEO is now responsible for two simultaneous functions in respect of K's

family: prosecuting the protection proceedings, and undertaking the "proactive efforts" toward reunification.

The proactive efforts the Act requires include addressing the grounds on which the child was removed. The grounds, in K's case, are structural: untreated disability, overcrowded housing, intermittent family violence, social isolation, poverty exacerbated by income management. The agency prosecuting the proceedings against K's mother is the same agency responsible for resolving the structural conditions. Its capacity to do so is constrained by the same challenges that produced the original "event of concern."

From here, the two-year reunification timeline begins. Disability assessment and treatment for K, for which she remains on a waitlist, may not be available within the timeline. Family violence support, which operates one day a week two hours away, cannot be engaged with at the intensity the timeline requires. Housing remains overcrowded with no immediate prospect of change.

permanency outcome

After two years, the CEO is unable to satisfy the reunification framework's expectations.

The Court may make at most two consecutive short-term parental responsibility directions. After two such orders, the Court must consider a long-term parental responsibility direction or permanent care order.

The Court cannot hear an application for a permanent care order or a long-term protection order unless K is legally represented, or has made an informed and independent decision to decline representation, or the matter is heard as a matter of urgency. This safeguard arrives late in the pathway, after many of the practical pressures shaping the outcome have already occurred.

The Court may ultimately make a long-term parental responsibility direction or permanent care order. K is then permanently separated from her mother, her aunt, her siblings, her kinship group, her community, and her country.

Within the Bill’s framework, this outcome may be characterised as permanency and stability.

cumulative outcomes

K is a hypothetical. The dynamic this hypothetical case describes is not.

K's mother has committed no criminal offence. K has committed no criminal offence. The CEO has not alleged deliberate parental neglect. The pathway from the first police visit to permanent separation has been driven by the interaction of:

- broadened triggers for state intervention
- a coercive escalation framework with no defined threshold for what counts as success or failure

- court-ordered referral into a Commonwealth income management regime that further constrains the family's capacity to comply
- compressed reunification timelines that cannot accommodate the time required to resolve structural conditions
- limits on consecutive short-term protection orders that push the system toward permanent care
- a participation framework that has been downgraded from rights to opportunities
- the CEO's combined role as support-provider and adversary in the same family

Government has framed each of these provisions as oriented toward child safety, stability, or accountability. Their cumulative effect on a family experiencing structural disadvantage is to risk turning that disadvantage into the basis for further state intervention, escalating across a compressed timeline that ends in permanent separation.

The Bill expands the on-ramps while the budget neglects the off-ramps. The proposed amendments widen the entry points into state coercion without expanding the support architecture that would allow families to meet the reunification expectations the Bill simultaneously imposes. Where structural conditions are the cause of the behaviours that trigger intervention, the Bill's machinery does not address that cause.

available alternatives

An alternative path exists. It is the path Aboriginal Community Controlled Organisations and peak bodies have publicly advocated for, and which the Royal Commission recommended. It includes:

- properly resourced ACCO-led family support services delivered in community;
- Aboriginal Family-Led Decision-Making processes embedded in legislation as a procedural requirement rather than an administrative option;
- service-availability obligations on the State that match the responsibility obligations the State imposes on the family;
- preservation and strengthening of participation rights as procedural-fairness guarantees rather than discretionary opportunities; and
- a permanency framework that accepts that "permanency" for Indigenous children includes permanent connection to family, kinship, community, language, and country.

That alternative does not require new legislation: it requires investment, and depends on existing rights in law. It requires Government to take responsibility to address the conditions that produce child protection contact, rather than punishing families for being affected by those conditions.