

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

Jumbunna Institute for Indigenous Education and Research,
Research Unit

May 2026



Introduction

Jumbunna welcomes the opportunity to provide a submission to the inquiry into the *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026* (“Bill”).

The Research unit at the Jumbunna Institute for Indigenous Education and Research is an interdisciplinary team of scholars and practitioners, working toward a common principle that our work is driven by Aboriginal and Torres Strait Islander people, and contributes to their strength, self-determination, sustainability and wellbeing. Our work includes a longstanding focus on systems that continue to disproportionately remove Aboriginal and Torres Strait Islander children from their families, specifically the child protection and juvenile justice systems. We engage in research, system design, and evaluation alongside Aboriginal and Torres Strait Islander communities, as well as direct advocacy alongside Aboriginal families seeking justice in the face of systems, policies and practices that demonstrably harm our children, our families and our communities. We stand with Aboriginal communities seeking the transformation of these systems, and the logics on which they are based, in the interests of Aboriginal children, families and communities. We are driven by this experience and expertise, including our work in support of Aboriginal children, families and communities experiencing child protection interventions, in considering the likely impacts of the reforms in the proposed Bill, particularly with respect to the experiences and outcomes of Aboriginal children and young people.

We note at the outset that the process for establishing these reforms has been significantly flawed, in particular due to extremely limited consultation, with interested individuals and organisations granted only a little over one week to respond to the inquiry. The child protection system, including but not limited to its legislative framework, represents our collective responsibility as communities to children and young people. The power of the state to intervene in the lives of families is significant, and few actions are as impactful as that to disrupt the composition of families. As such, reforms that expand the power of the state to intervene in the lives of families warrant significant scrutiny and public discussion. Further, such reforms are clearly likely to disproportionately affect Aboriginal and Torres Strait Islander children and young people, their families and communities. As such, reforms should particularly engage with these populations in their design and development.

This is not merely about a political process, however, and notions of transparency and participation in the legislative process. It is also essential to achieving the intended impact of these reforms. Put simply, child and family systems require the engagement and participation of communities to function effectively. Where there is distrust of these systems, where efforts to engage support instead mobilise surveillance, coercion and intervention, communities are less likely to see them as helpful or effective, and are less likely to engage. This also affects mandatory reporting systems, with community members most likely to benefit from health and family supports less likely to engage them the more they are associated with systems of surveillance, control and intervention.

Conversely, systems that are seen as trusted, supportive and effective are more likely to effectively enjoy the benefits of engagement and participation of local communities. This means that there is a greater opportunity to identify risks early, respond effectively earlier, and in doing so, prevent harm, improve developmental outcomes, and avoid the need for more difficult, intensive and expensive responses in the future.

Critical to this discussion is the ongoing positioning of Aboriginal children, families and communities within historical and contemporary child protection system practice and policies which continue to contribute to collective distrust. This distrust is a direct consequence of the historical and contemporary state child removal practices and policies that produce ongoing harm and negative outcomes for Aboriginal and Torres Strait Islander children. This harm and its impact on relationships with the state have been evidenced extensively through lived experience and expert testimony in government-initiated commissions and inquiries (see for example Bringing Them Home Report, the final report of the Royal Commission into the Protection and Detention of Children in the Northern Territory, and the Royal Commission into Aboriginal Deaths in Custody), as well as Aboriginal community led inquiries and discourse. The approach undertaken by the Northern Territory Government to this Bill and the current inquiry, arguably, produces further alienation and exclusion of Aboriginal and Torres Strait Islander community members, through further excluding and minimising the role of Aboriginal community-controlled organisations in both the design process and substance of the proposed Bill. This approach further erodes relationships through excluding participation and engagement, sitting in stark tension with the Closing the Gap Partnership Agreement.

By excluding communities from the design process, and offering only a limited opportunity for engagement with the reforms, the NT Government undermines their own goals to address “ongoing cycle[s] of harm, risk and uncertainty... and better outcomes for both children and their families.”¹ Again, this is particularly likely to undermine positive impact with respect to Aboriginal children and families, where distrust is already high.

As such, our **primary recommendation** is to support calls from the NT Children’s Commissioner and the National Commissioner for Aboriginal and Torres Strait Islander Children and Young People to halt any proposed legislative changes, and implement a Board of Inquiry that is Aboriginal-informed and led. Further, we urge immediate and genuine engagement with Aboriginal communities, their organisations and peak bodies, in the development of reforms towards the shared goals of safe and thriving children, families and communities.

Bill – Areas of Concern

In addition to the inadequate consultation and drafting process of the reform, the substance of the proposed Bill is also of concern. First, we note that child protection reforms in the Northern Territory, like New South Wales, occur against “a well-trodden reform landscape that is littered with comprehensive and often unimplemented recommendations for reform.”² Disappointingly, but unsurprisingly, the Bill appears, with some exceptions, to be untethered from this existing evidence, and in doing so ignores the ongoing experiences of families and communities, and outcomes experienced by Aboriginal children and families. Indeed, it is unclear what evidence the present Bill is grounded upon, other than general recognition that change is needed. However, like

¹ Media Release: Minister Cahill Minister for Child Protection, “Every Child Matters - Landmark Amendments to the Care and Protection of Children Act” (13 May 2026).

² Davis, M. 2019. Family is Culture: review report

efforts to support families, broader system reforms should be grounded on some reliable evidence that increases confidence that those actions are likely to produce their stated outcomes. As noted below, some of the proposed reforms, such as the removal and weakening of key safeguards, contradict the findings of inquests and other reviews that found them as critical, though often neglected, frameworks for safeguarding Aboriginal children and young people.

Our Approach

Jumbunna's approach to the Bill and this submission includes consideration of a human rights framework, informed particularly by our responsibilities to children and young people as rights-holders in their own right, with reference to the Convention on the Rights of the Child, and other related instruments. Further, we are informed by the developmental science literature (see for example the various resources produced by the Center on the Developing Child at Harvard University), including particularly their evidence-informed 'design principles' intended to improve outcomes for children and families. They state:

"To be maximally effective, policies and services should:

1. *Support responsive relationships for children and adults*
2. *Strengthen core skills for planning, adapting, and achieving goals*
3. *Reduce sources of stress in the lives of children and families.*"³

Further, the Center on the Developing Child identifies how these principles operate across different levels to support improved outcomes:

"At the individual level, services can focus on active skill-building for both kids and adults. At the human services level, systems might focus on the critical role of relationships in promoting healthy development, supportive parenting, and economic productivity. At a systemic level, policies can reduce structural inequities and institutionalized sources of stress, such as unequal access to high-quality health care and child care, disparities in school funding, and bias in lending. These and other long-standing inequities continue to create lifelong challenges for children and make it extraordinarily difficult for adults to thrive as parents and breadwinners.

This science-based framework offers a guide for generating new ideas to address these challenges—and, in the end, achieve significant improvements in outcomes for the children and families who are the foundation of our communities and our shared future."⁴

This provides a useful, rights-informed and evidence-based rubric against which to consider the proposed reforms. We note that, contrary to this framework, the Bill broadly diminishes important rights for children, including the holistic best interest principle, and the right to participate in decisions that affect them. Further, the changes appear largely inconsistent with evidence-based approaches to improve outcomes for children and families, particularly those experiencing crisis, by undermining relational practice,

³ See 'Three Principles to Improve Outcomes for Children and Families - Center on the Developing Child at Harvard University', <https://developingchild.harvard.edu/resources/report/three-principles-to-improve-outcomes-for-children-and-families/>

⁴ See 'Three Principles to Improve Outcomes for Children and Families - Center on the Developing Child at Harvard University', <https://developingchild.harvard.edu/resources/report/three-principles-to-improve-outcomes-for-children-and-families/>

offering only very limited support for effective and active skill building, and being substantially likely to increase, rather than address, structural inequities and sources of stress. As such, we conclude that the proposed Bill is ill-informed, and unlikely to improve outcomes for children and young people, nor their families.

We note that the Explanatory Statement accompanying the Bill describes the intent of the reforms as follows:

These reforms seek to systemically address the drivers of statutory child protection and youth engagement by providing a stepped escalation pathway and shared accountability for addressing the needs of children and families living in the Northern Territory (Explanatory Statement).

However, in our view, the proposed Bill is unlikely to achieve this stated intent. There are few provisions, nor supporting policy or investment, directed to “systemically address the drivers of statutory child protection and youth engagement”. While the inclusion of a ‘proactive efforts’ provision is broadly positive, it is unclear how these provisions will be successful given other provisions oriented towards intervention, and other limitations in the current drafting (discussed further below). This intent is further undermined by a consistent thread throughout the Bill that increases the likelihood of ‘escalation’ across the system. The likely result is increased crisis, both for families and the child protection system more broadly, while outcomes for children and young people that are positioned as beneficiaries of the Bill continue to be poor.

Jumbunna agrees that significant reform of the Northern Territory Child Protection System is needed to better promote the safety and long-term wellbeing of children in the Northern Territory. Further, such reforms should be carefully considered with respect to their likely impact on Aboriginal and Torres Strait Islander children, given the child protection system’s disproportionate intervention in their lives. As noted above, the proposed changes, in their totality, are unlikely to achieve either of these goals, and may prove to deliver the opposite outcomes – further stretching already overwhelmed child protection infrastructure by increasing the removal of children from families and communities for a false sense of safety, and removing safeguards intended to ensure that fundamental practice principles are extended to Aboriginal and Torres Strait Islander children.

In particular, we note that the proposed reforms:

- Introduce, contrary to the principle of best interests itself, a hierarchy in best interest determinations. This limits the Court’s ability to effectively weigh factors related to best interests for each child, by emphasizing certain factors, and diminishing others. In doing so, it also undermines other important provisions that draw upon consideration of the child’s best interests.
- Significantly shifts the child protection system towards removal, and in turn, towards long-term orders, by lowering the threshold for removal, reducing the duration of short-term orders, and elevating the involvement of carers in court proceedings. Importantly, lowering the threshold for removal reduces the responsibility of the child protection authority to adequately demonstrate the need for removal that is critical to the integrity of the family. The forcible removal of children from their families is a significant state power that warrants greater, not diminished, public and independent scrutiny.
- Introduces additional powers for child protection authorities to demand compliance from parents and families, as though this represents an effective and sustainable pathway to addressing risk that families may be experiencing.

- Remove, and significantly dilute, safeguards for children and families, and particularly Aboriginal children and families, despite evidence that they remain critical, yet often poorly implemented by the NT Government.

Underpinning these reforms is a popular but outdated notion that the necessary response to risk and crisis affecting families is the coercive control of those families, and ultimately the permanent removal of children from their families and communities.

In our view, this approach to child protection is not adequately supported by evidence. For example, in NSW, the 2015 Independent Review of Out of Home Care, known as the Tune Review,⁵ found the child protection system was ineffective and unsustainable, while producing poor outcomes for the children it ostensibly served, including poorer lifelong health, mental health, and justice outcomes. In particular, experiences of out-of-home care has been linked with increased likelihood of facing child protection intervention in their families as adults, demonstrating a cycle of removal across generations.

Given the totality of the proposed reforms, we find ourselves in agreement with Professor Megan Davis, whose comprehensive review of the experience of Aboriginal and Torres Strait Islander children and families in the NSW child protection system – the 2019 ‘Family is Culture Review Report’ - provided a valuable roadmap for reform. In a recent op-ed, Prof Davis made the following observation:

*"Parents cannot turn their lives around without support. There is nothing cultural or inevitable about Aboriginal child removals or child deaths. The question is whether Australian governments are prepared to build a child protection system organised around care, support and prevention rather than risk management, liability and crisis politics."*⁶

The current Bill represents a further entrenching of a system built on an organizing principle of risk management, liability and crisis politics. This is unlikely to be effective in improving outcomes for all children and families that experience statutory child protection system involvement. Further, it is likely to compound child, family, and practitioner wellbeing, while placing even greater pressure on families and carers to support healing for children and young people that experience such interventions.

However, the opportunity remains to partner with communities, including Aboriginal communities, to found a child and family system organised on alternate, evidence-based logics. This system should be focused on prevention, care, and proactive responses that engage effectively with, and offer meaningful supports to families, kin and communities to create safety and shape positive futures for children. In our view, this is the essence of the five elements of the Aboriginal Children Placement Principle, emphasising prevention, partnership with communities, and prioritising placement of children within family and kin networks when safe to do so. This recognises the improved outcomes associated with these placements⁷, promoting participation of children, families and communities in decision making about how best to meet children’s developmental needs (including the

⁵ Tune, D. (2016). Independent review of out of home care in New South Wales–final report. *NSW Cabinet Expenditure Review Committee*.

⁶ Davis, M. (2026) ‘Bureaucrats, not Indigenous culture, are failing children’ *The Australian*, 15 May 2026

⁷ SNAICC. 2017. *Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle*. <https://www.snaicc.org.au/resources/understanding-and-applying-the-aboriginal-and-torres-strait-islander-child-placement-principle-a-resource-for-legislation-policy-and-program-development/>

need to be safe from harm and toxic stress), and the protective role of culture for children.⁸

Given the rushed nature of the reform process, this submission will focus particularly on the most problematic aspects of the Bill, including changes to the best interest principle, lessening of the threshold for removal, and removal of critical aspects of the Aboriginal Child Placement Principle.

Best Interests

The best interests provision is an important guiding principle of the *Care and Protection of Children Act 2007* (“the Act”), implicated in numerous decisions across the overall legislative framework. As such, it is important that the principle is properly constructed. In our view, this should reflect both the obligations of the state to safeguard and promote the maximal enjoyment of the rights of children and young people, as well as insights from developmental science that underpins the wellbeing of children and young people.

The current Act clearly states (s.10(1)) that the ‘best interests of the child are the paramount concern’, and provides (at s10(2)) a list of factors that the Court may consider in determining the best interests of the child. This approach is consistent with the NT’s obligations under the Convention on the Rights of the Child, and enables appropriate space for an individualized assessment by the courts regarding the best interests of each child.

In contrast, the proposed Bill prescribes a hierarchy that Courts must follow when determining how the best interests principle is to be applied. In doing so, it transforms the best interests principle from its holistic consideration of the child’s rights and development, and the responsibility of states to promote the full enjoyment by children of all of their rights, into a narrower construction that prioritises certain matters and actively diminishes others. In our view, this is an inferior approach that is less aligned to both human rights frameworks and in our view developmental frameworks that emphasise that those factors are not independent of each other, but rather deeply interdependent, with each matter for consideration contingent on each other in some way or to some extent.⁹

In considering these approaches to operationalising the best interests principle in decision-making intended to safeguard children, it is useful to consider commentary shared in the Australian Law Reform Commission Report 84 specifically relating to children’s participation in legal processes. While commentary on best interests is primarily considered in relation to the Family Law Act, the commentary has wider insights and usefulness for contemporary legal proceedings relating to children. While the ALRC Report 84 acknowledges critiques and challenges relating to the best interests principle in decision-making, particularly critiques that it lacks certainty, they state,

“submissions to the Inquiry generally considered the principle to be a useful basis for decision making concerning children.[18] It is said to ensure that children’s interests are preferred over those of any other party, an important consideration because children’s participation in proceedings is so limited.[19] It also allows each matter to be considered and determined on its own particular merits and allows changing community expectations to be taken into account in determining cases.”

⁸ See Center on the Developing Child (2015). The Science of Resilience (InBrief). Retrieved from www.developingchild.harvard.edu.

⁹ See Center on the Developing Child (2015). The Science of Resilience (InBrief). Retrieved from www.developingchild.harvard.edu.

(ALRC Report 84, *Seen and heard: priority for children in the legal process, 1997*)¹⁰

Notably, in the proposed Bill, children's interests, particularly their wishes and views are not prioritised in the current drafting, in which they are ranked as the sixth consideration on the list when determining Best Interests. Further their 'rights' to participate in proceedings under the proposed Bill shifts away from the previous rights-based language in section 12(2) of the Act to a lower requirement under the proposed new amendment at section 12C of the Bill which is framed merely as an 'opportunity to participate'.

Similarly, the importance of relationships with parents, family, and connection to culture are relegated in the Bill to lower standing in the legislation. The proposed hierarchy potentially reproduces known issues in the misapplication of developmental considerations in sociolegal settings. For example, the hierarchy prioritises the 'need for stable and nurturing relationships' and 'permanency', often interpreted within child protection systems in favour of placement arrangements rather than enduring familial relationships, which are alternatively noted at point (i), at the bottom of the proposed hierarchy. Building on the work of international attachment researchers, who noted the misapplication of attachment theory and evidence by sociolegal systems including child protection systems,¹¹ Wright and colleagues outlined how this misapplication by child protection systems particularly affects the lifelong wellbeing of Aboriginal children.¹² We note that placements with family, community and kin are generally associated with improved outcomes for children and young people.

A study undertaken in the US as part of the National Survey of Child & Adolescent Well-Being, October, 1999-March, 2004,¹³ examined behavioural problems after 18 and 36 months of children and young people in kinship versus traditional foster care. Results from a cohort of 1,309 children entering out-of-home care following a maltreatment report found that "children placed into kinship care had fewer behavioral problems three years after placement than children who were placed into foster care. This finding supports efforts to maximize placement of children with willing and available kin when they enter out-of-home care" (Rubin, et al., 2008, p.2).

Moreover, a review of 62 studies conducted in 2005¹⁴ into the benefits of kinship versus traditional foster care concluded that the "data suggest that children in kinship foster care experience better behavioral development, mental health functioning, and placement stability than do children in non-kinship foster care".¹⁵ Drawing on their original findings, the same team conducted an updated global review, including Australia, between March 2007 and March 2011 of 102 studies, including 666,615 children. They concluded that "children in kinship care experience better outcomes in regard to behaviour problems, adaptive behaviours, psychiatric disorders, well-being, placement stability (placement

¹⁰ Australian Law Reform Commission, 'Seen and Heard: Priority for Children in the Legal Process', 'The Best Interests Principle' (2010 ALRC, Report 84) <https://www.alrc.gov.au/publication/seen-and-heard-priority-for-children-in-the-legal-process-alrc-report-84/16-childrens-involvement-in-family-law-proceedings/the-best-interests-principle/>

¹¹ Forslund, T., Granqvist, P., van IJzendoorn, M. H., Sagi-Schwartz, A., Glaser, D., Steele, M., ... Duschinsky, R. (2022). Attachment goes to court: child protection and custody issues. *Attachment & Human Development*, 24(1), 1–52. <https://doi.org/10.1080/14616734.2020.1840762>

¹² Wright, A., Gray, P., Selkirk, B., Hunt, C., & Wright, R. (2025). Attachment and the (mis) apprehension of Aboriginal children: Epistemic violence in child welfare interventions. *Psychiatry, Psychology and Law*, 32(2), 175-199

¹³ Rubin, D. M., Downes, K. J., O'Reilly, A. L., Mekonnen, R., Luan, X., & Localio, R. (2008). Impact of kinship care on behavioral well-being for children in out-of-home care. *Archives of pediatrics & adolescent medicine*, 162(6), 550–556. <https://doi.org/10.1001/archpedi.162.6.550>

¹⁴ Winokur, M., Holtan, A. and Valentine, D. (2009), Kinship Care for the Safety, Permanency, and Well-being of Children Removed from the Home for Maltreatment. *Campbell Systematic Reviews*, 5: 1-171. <https://doi.org/10.4073/csr.2009.1>

¹⁵ Winokur, M., Holtan, A. and Valentine, D. (2009), Kinship Care for the Safety, Permanency, and Well-being of Children Removed from the Home for Maltreatment. *Campbell Systematic Reviews*, 5: 1-171, p.6. <https://doi.org/10.4073/csr.2009.1>

settings, number of placements, and placement disruption), guardianship, and institutional abuse than do children in foster care”.¹⁶

It is possible that the directed hierarchy in the Bill, in combination with other features such as the shift towards long-term orders and joining carers as parties to proceedings, will have the effect of increasing the use of non-familial foster placements, despite the evidence that children in out-of-home care are better served when supported to remain with family and kin where safe to do so.

This is particularly concerning with respect to Aboriginal children and young people, given additional amendments proposed by the Bill that removes key safeguards particularly for Aboriginal children, including recognition of the benefits to children’s wellbeing of enduring connections to family, kin, community and culture. We note that specific engagement with Aboriginal young people has emphasized that creating a lived sense of safety includes promoting relationships with family, kin and community, as well as enjoyment of culture.¹⁷

Further, Aboriginal community members and experts have asserted that child protection systems have continued to marginalise First Nations perspectives in legislation, policy and practice, including with respect to determinations about the best interests of Aboriginal children. Rather, child protection systems continue to impose narrow constructions of the “best interests”, that are routinely “based on homogeneous, Eurocentric ideas of the nuclear family and child rearing”.¹⁸ In doing so, systems continue to entrench poorer outcomes for Aboriginal children and young people subject to statutory child protection intervention. This emphasises the importance of such safeguards which, far from creating lower expectations and standards of care for Aboriginal children, seek to ensure commensurate consideration of the factors associated with equitable outcomes for Aboriginal children, in response to the demonstrated evidence that child protection authorities fail to safeguard their rights or secure equitable outcomes for Aboriginal children and young people.

As such, empowering Courts to holistically consider these factors in determining best interests is essential to ensuring that the best interest principle, as understood in relevant rights frameworks, is correctly applied, rather than constraining this deliberative process through a prescribed hierarchy. By removing the Court’s ability to consider and weigh the best interest factors holistically, and instead directing the Court on which factors must be prioritised, the proposed Bill diminishes, rather than improves, the current legislative approach to safeguarding the best interests of the child.

Threshold for Removal

The Bill proposes a drastic change to the threshold for removal, proposing in s12A(3) that “A child must be removed from the child’s family if there is a significant and likely risk of harm to the child.” This is a significant lessening of the threshold, which currently notes (in s8(3) of the Act) that “A child may be removed from the child’s family only if there is an unacceptable risk of harm to the child.” In doing so, the Bill significantly reduces the obligation of child protection authorities to demonstrate the need for such significant intervention, requiring child protection authorities to do so on the significant lower ‘likely risk of harm’. This amendment will have the practical effect of leading to more children

¹⁶ Winokur, M., Holtan, A. and Valentine, D. (2009), Kinship Care for the Safety, Permanency, and Well-being of Children Removed from the Home for Maltreatment. *Campbell Systematic Reviews*, 5: 1-171, p.40. <https://doi.org/10.4073/csr.2009.1>

¹⁷ See AbSec (2016) *AbSec Youth Report*, see <https://absec.org.au/wp-content/uploads/2021/08/AbSec-YouthReport-2016-web.pdf>

¹⁸ Libesman, T., Gray, P., Gray, K., & Hermeston, W. (2025). Self-Determination Within a Reconceptualised Relational Human Rights Framework to Attain Equality for Indigenous Peoples in Child Protection. *Genealogy*, 9(3), 86, 6.

being unnecessarily removed from their families, when an alternative approach of providing support and services to the child's parents and family could reduce the risk of harm to the child, and avoid the need for removal and its associated harms. This proposed amendment in the Bill contradicts the well-evidenced trauma and harm that results from removing Aboriginal children from their parents, as well as section 12D of the Bill that recognises the importance of addressing the risks to the child, and preventing the child from needing to be removed from their parents.

The Bill also removes an additional provision within the corresponding section of the current Act (s8(4)(b)) promoting the restoration of the child to their family (as far as practicable, and consistent with the best interests principle). While it is possible that the Bill drafting has omitted this focus on reunification here due in part to the introduced Proactive Efforts provisions (see s12D of the Bill), which includes (at 2), a responsibility on the CEO to "make all reasonable proactive efforts to reunify the child with the child's parents, or if reunification is not in the best interest of the child, with a family member of the child, within 2 years after the removal" this revision introduces a time limited approach that in our view fails to grapple with the reality of children's experience in out-of-home care, including increased instability in adolescence for some children.¹⁹

While we welcome provisions that emphasise the responsibility of the statutory child protection authorities to specifically address the grounds for removal, we note that the current drafting is significantly limited. First, it is contingent on the new, inferior, hierarchical construction of the best interests principle (discussed above), that in our view weights such determinations in favour of removal. Second, it enables the CEO, based on their own assessment, to skip efforts towards restoration with parents, in favour of placement with a family member. Third, it offers no clear mechanisms to ensure compliance, while imposing strict time limits on such efforts, rather than the open-ended approach to restoration that better reflects the reality for many children in out-of-home care, particularly as they enter adolescence where questions of identity and belonging take on greater developmental salience. As such, if the CEO fails to adequately undertake 'proactive efforts' with parents and families within the stated two year timeframe, the Court, limited to just two short-term orders, the hierarchal approach to best interests and other provisions will increase the likelihood that Courts will make long-term orders, rather than ensuring child protection authorities are held responsible to actually attempt to address risks associated with child protection system involvement, including the known harms associated with out-of-home care.

As such, these changes are not adequately supported by the evidence. For example, recent studies have found no meaningful relationship between increasing removals into out-of-home care and improved child safety, such as decreased incidence of maltreatment or child deaths. A recent study based in California²⁰ examined 10 years of data from all 50 states and found "that child deaths did not decrease when states placed more children into foster care, nor did they increase when fewer children entered care. The findings challenge claims that reducing foster care placements puts children at greater risk." Additionally, in acknowledging the evidence of out-of-home care contributing to poorer health outcomes for children and young people, another international study by Gao and colleagues (2017)²¹ investigated the association of

¹⁹ See for example the Bring them Home, Keep Them Home research study undertaken by Newton and colleagues (see further reading).

²⁰ Edwards F, Fong K, Apel R. Foster Care and Child Maltreatment Mortality Rates in the US. *JAMA Netw Open*. 2025;8(12):e2551677. doi:10.1001/jamanetworkopen.2025.51677

²¹ Gao, M., Brännström, L., & Almqvist, Y. B. (2017). Exposure to out-of-home care in childhood and adult all-cause mortality: a cohort study. *International journal of epidemiology*, 46(3), 1010–1017. <https://doi.org/10.1093/ije/dyw295>

exposure to out-of-home care between the ages of 0-19 and later life mortality risks (between ages 20-56). The study provided a 60 year follow up cohort review of 15,000 individuals born in 1953 from Stockholm, with 9% of the cohort having experienced out-of-home care. This study found that “individuals who were placed in [out-of-home care] at any point during their formative years have increased mortality risks across ages 20 to 56.”²² Further, the review found “individuals who were placed in [out-of-home care], in comparison with those who grew up in a family that received social assistance but did not experience [out-of-home care], have more than a 2-fold risk of all-cause mortality (HR $\frac{1}{4}$ 2.14; 95% CI $\frac{1}{4}$ 1.71-2.66).”²³ While not from an Australian jurisdiction, these important findings contribute growing evidence of a connection between out-of-home care exposure and elevated risk of mortality in adulthood. We note, as the authors did, that the study design precluded causal inference regarding out-of-home care exposure, but was strengthened by the inclusion of additional comparison groups, including recipients of social assistance in childhood, and those investigated by child welfare responses but not subsequently removed, with those in out-of-home care showing higher risk relative to these cohorts.

A similar population study in Scotland²⁴, utilising a younger sample, found that the care-experienced cohort had a significantly higher risk of mortality from external causes (such as accident or suicide) than those without care experience, urging additional support for social, emotional and mental wellbeing during and following care – gaps that remain persistent in Australian jurisdictions. While further evidence is needed, this research contributes to growing evidence about lifelong harms associated with out-of-home care exposures that warrants careful consideration, valuing both immediate and longer term safety and risks associated with different policy settings. The longer length of time between child protection involvement and later increased mortality does not make such risks, or the lives and loss they represent, any less important.

As noted above, the Tune Review in NSW reported poor outcomes for children and young people raised in out-of-home care, including health, education, and justice outcomes, with outcomes for Aboriginal children ‘particularly poor’.²⁵ Jumbunna also previously reported to a recent NSW parliamentary inquiry into youth justice that:

“For First Nations children, statutory child protection intervention invariably constitutes disconnection from their culture, community and Country (see for example, Beaufils, 2023; Krakouer et al., 2018). Disconnection from culture leaves First Nations children even more vulnerable to the traumagenic impacts of OOHHC, as exemplified by the following quote by a First Nations cultural therapeutic specialist working to support First Nations children in OOHHC:

“If we had done nothing he would have ended up in the correctional system. He was not going to school, his behaviours were through the roof. I guess when we were supporting him, we were looking at - for him he was taken away from Country, he was disconnected from family. So, his relational permanency wasn't there, his sense of

²² Gao, M., Brännström, L., & Almquist, Y. B. (2017). Exposure to out-of-home care in childhood and adult all-cause mortality: a cohort study. *International journal of epidemiology*, 46(3), 1010–1017, 1014

²³ Gao, M., Brännström, L., & Almquist, Y. B. (2017). Exposure to out-of-home care in childhood and adult all-cause mortality: a cohort study. *International journal of epidemiology*, 46(3), 1010–1017, 1014

²⁴ Brown, D., Gedeon, E., Henderson, M., Leyland, A. H., Wilson, P., & Allik, M. (2025). Mortality outcomes of children and young people who have spent time in care: evidence from Children's Health in Care in Scotland, a population-wide administrative data cohort study. *Archives of disease in childhood*, 110(10), 837–843.

²⁵ Tune, D. (2016). Independent review of out of home care in New South Wales—final report. NSW Cabinet Expenditure Review Committee.

belonging wasn't there. So once those connections started, and he was reconnected with his family, he started going back to school, he started to be engaged in his culture. He had regular family contact, he stopped having connection with police and the correctional system. So, for him, his journey and his sense of permanency changed completely” (Corrales et al., 2025b).”

Research has demonstrated the connection between out-of-home care and future youth and adult criminal legal system involvement, with young people in out-of-home care more likely to experience younger age of entry into justice system involvement, increased use of custodial remand, reduced access to supports at the police station or in court, and exclusion from diversion or bail accommodation services.²⁶ The Family is Culture Report likewise noted the specific contribution of out-of-home care on justice system involvement, including through school exclusion and disengagement from education.²⁷ As such, to the extent that the provisions in the Bill increase the likelihood that children will enter out-of-home care, they similarly increase the burden of poor health, poorer mental health, school disengagement, and youth and adult justice system involvement.

Weakened protections for Aboriginal children

Jumbunna strongly opposes the proposed amendments to section 12 of the Act which remove or weaken specific provisions intended to safeguard the child’s rights and wellbeing. Instead, the Bill replaces these explicit safeguards with a ‘universal’ placement hierarchy (s12B), which:

- diminishes the role of children, the child’s family members, and their kin and community, in “significant decisions” involving an Aboriginal child,
- removes provisions promoting healing focused and trauma-informed decision-making,
- removes the priority for an Aboriginal child to be raised within their culture through placement with an Aboriginal person in the child’s community,
- Removes the requirement that, when placed with a non-Aboriginal person, they are placed with someone that is “sensitive to the child’s needs and capable of supporting the child to develop and maintain a connection with the child’s family, community, culture, traditions, language and country”.

The Bill also proposes additional considerations when making significant decisions about a child, including ‘stable living arrangements that meet the child’s developmental, education, emotional, health, intellectual and physical needs” and legal permanency, as well as consideration of family placement and ongoing positive relationships with significant persons. In our view, based on the developmental science, consideration for every child’s developmental needs necessarily includes consideration of their cultural needs, understood not merely as cultural knowledge, but lived experience of culture²⁸.

²⁶ McFarlane, K. (2018). Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system. *Australian & New Zealand Journal of Criminology*, 51(3), 412-433.

²⁷ Davis, M. 2019. Family is Culture: review report

²⁸ Wright, A., Gray, P., Selkirk, B., Hunt, C., & Wright, R. (2025). Attachment and the (mis) apprehension of Aboriginal children: Epistemic violence in child welfare interventions. *Psychiatry, Psychology and Law*, 32(2), 175-199; Krakouer, J., Nakata, S., Beaufils, J., Hunter, S. A., Corrales, T., Morris, H., & Skouteris, H. (2023). Resistance to assimilation: Expanding understandings of First Nations cultural connection in child protection and out-of-home care. *Australian Social Work*, 76(3), 343-35; Krakouer, J., Wise, S., & Connolly, M. (2018). “We live and breathe through culture”: Conceptualising cultural connection for Indigenous Australian children in out-of-home care. *Australian Social Work*, 71(3), 265-276.

This recognises the way culture shapes the developmental environment through which brains, and experiences, are reciprocally built.²⁹

The omission and removal of cultural considerations throughout this section of the Bill is deeply concerning.

The elements of the Aboriginal Child Placement Principle (ACPP), which includes *prevention, partnership, placement, participation and connection*,³⁰ represent key guiding principles for effective child protection systems and practice for all children. It recognises the primary goal of preventing harm at every opportunity. It understands that children’s families and communities are critical partners in creating safe and nurturing environments, and responding to potential harms, and should be adequately supported in those roles. It understands that all children are best served by remaining in the care of their families and kin, as discussed above. It recognises that better decisions are made for children’s futures when their families, communities, and children themselves, are supported to participate effectively in those decisions. And it understands that enduring connections to family, community and culture are critical to both safety and lifelong wellbeing.

In doing so, the ACPP demonstrates a broad model of child protection that supports both safety and long-term wellbeing^f. These elements contribute to informed and effective decision making that corresponds with the prevailing evidence for effective practice.

Efforts to remove the explicit references to the application of these principles for Aboriginal children are therefore misguided. On the contrary, such explicit provisions about Aboriginal children are still desperately needed, even if the underlying principles were to be enshrined for all children (which, to be clear, this Bill does not do), specifically because compliance with these principles for Aboriginal children remains unacceptably poor. We note, for example, that child protection authorities in the NT, as in other jurisdictions, do not adequately monitor implementation of all aspects of the ACPP for Aboriginal children, and show consistently poor compliance with those limited aspects they do monitor and report.³¹ As reported by SNAICC in 2025 “significant reforms are still needed”. The current report highlighted the disproportionately high rates of Aboriginal and Torres Strait Islander children in out-of-home care and the lack of investment in the Aboriginal Community Controlled sector to deliver prevention, early intervention and ongoing services to children and families.^[2] Together, these elements must be embedded as enforceable requirements to ensure that decision-making authority and resources are appropriately transferred to Aboriginal communities and that the intent of the ACPP is realised in practice, not diminished in application^[3]. However, this is exactly the approach the proposed Bill takes, removing these important responsibilities rather than improving systems and practices to better promote the safety and wellbeing of Aboriginal children.

We further note that the Aboriginal Child Placement Principle has been consistently implicated as a factor in safeguarding the wellbeing of Aboriginal children, and that the proposed changes are inconsistent with the findings and recommendations of coronial inquests into the deaths of Aboriginal children in out-of-home care. For example, in the coronial inquest into the death of Sammy,³² the Coroner found that “after her removal she

²⁹ See Center on the Developing Child (2015). The Science of Resilience (InBrief). Retrieved from www.developingchild.harvard.edu.

³⁰ Arney, F., Iannos, M., Chong, A., McDougall, S., & Parkinson, S. (2015). Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle. *Child Family Community Australia*, Australian Institute of Family Studies, 34;

³¹ SNAICC. 2025. Reviewing Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle Northern Territory 2025. <https://www.snaicc.org.au/resources/reviewing-implementation-of-the-aboriginal-and-torres-strait-islander-child-placement-principle-northern-territory-2025/>; SNAICC. 2025. Family Matters Report 2025 - strong, loved and full of potential <https://www.snaicc.org.au/wp-content/uploads/2026/01/Family-Matters-Report-2025-v3.pdf>

³² Inquest into the death of Sammy [2021] NTL 032

was at no time placed with family or Aboriginal carers. The *Care and Protection of Children Act* permits that to happen however provides a process that should be followed, commonly referred to as the *Aboriginal Child Placement Principle*. That section was largely ignored and not followed.”³³ As such, the inquest recommended that “the Chief Executive of Territory Families ensure that the placement of Aboriginal children is in conformity with the Act.”³⁴

Similarly, the inquest into the death of Yakamurro,³⁵ criticised the documentation of agency efforts to identify suitable kinship placements, and other placements in compliance with the ACPP, that meant that their implementation could not be properly scrutinised. The inquest also noted the absence of planning in meeting the child’s cultural needs, or adequate consideration of the child’s own views in significant decisions about their lives, in an approval process that was acknowledged as ‘demonstrably flawed’. As such, while acknowledging policies within Territory Families regarding a commitment to all five elements of the ACPP, the inquest suggested a “clearer and more direct direction may be called for”, noting that the ACPP principles “are already in place” and “should already be informing all placements decisions.” Finally, that inquest stated:

*“In my view it is essential that a significant transformation occurs urgently. The Tangentyre or like model that increases community control and self-determination for Aboriginal families in the out-of-home care sector must be prioritised. Given the limited information I have available, the submissions of Counsel for Territory Families, the willingness of Territory Families to concede its mistakes and commit to reform, I will not make a formal recommendation in this regard. However, Territory Families are on the record offering to commit to continued work in favour of a model that embraces, where possible, a transition of family and kin care service delivery to Aboriginal community controlled organisations and increases the decision making power of Aboriginal children, families, communities and organisations in relation to the care and protection of Aboriginal children. If there is no progress towards such a model, future governments will continue to fail Aboriginal children and their families.”*³⁶

The Coroner stopped short of a ‘formal recommendation’ to implement models that increase community control and self-determination for Aboriginal families, in part because of the stated commitment of Territory Families to transition service delivery to Aboriginal community controlled organisations along with the transfer of decision making in the care and protection of Aboriginal children. However, the Coroner was nonetheless clear that the failure to deliver on this commitment will result in the continued failure of governments to adequately promote the safety and wellbeing for Aboriginal children and their families affected by the child protection system.

Similar findings in the deaths by suicide of Aboriginal children in out-of-home care in other jurisdictions³⁷ also implicate the failure of statutory child protection agencies to understand the breadth of the ACPP and adequately implement this principle in full. In one such matter, the South Australian Commissioner for Aboriginal Children and Young

³³ Inquest into the death of Sammy [2021] NTLC 032, [38]-[39]

³⁴ Inquest into the death of Sammy [2021] NTLC 032, [104]

³⁵ Inquest into the death of Yakamurro [2022] NSWCC 2018/39328 6

³⁶ Inquest into the death of Yakamurro [2022] NSWCC 2018/39328 6, [391]

³⁷ Inquest into the passing of XY [2024] VIC COR 2021 003810; Inquest into the death of Zhane Chilcott [2023] SA

People, Ms April Lawrie, described the ACPP as a “lifeline” for Aboriginal children, and the inquest concluded that the cumulative effect of various specific failings in the provision of state care was to increase the young person’s risk of suicide.³⁸

These inquests which involved deaths by suicide of Aboriginal children, all of whom spent a significant part of their young lives in the ‘care’ of the state, point to the ACPP not merely as a set of guidelines for practice, but as life-preserving for Aboriginal children in out-of-home care, aligning with the best interests principle.

The current Bill, in dismantling this critical lifeline for Aboriginal children, continues the pattern of governments scapegoating the meagre safeguards that exist for Aboriginal children, rather than living up to their responsibilities to Aboriginal children. Far from countenancing lower standards of safety and care for Aboriginal children, as has been asserted without evidence around the introduction of this Bill, these findings provide evidence both of failure of governments to apply the ACPP, and their devastating implications of this failure of child protection authorities experienced by Aboriginal children. In this light, the Bill represents an effort by the NT Government to further avoid responsibility and accountability as they continue to fail Aboriginal children and families, just as Magistrate Harriet Grahame, Deputy State Coroner (Coroner in Yakamurro) warned.

The proposed Bill dilute rather than maintain and strengthen the full and active implementation of the ACPP. This requires a framework in which the best interests of Aboriginal children and young people are realised through: prioritising *Prevention* by addressing the structural drivers of child protection involvement and supporting families early; upholding *Partnership* by recognising the authority of Aboriginal communities in the design, delivery and oversight of services; ensuring meaningful *Participation* by children, families and communities in all decisions affecting them; prioritising *Placement* within family, kinship and community networks wherever safe; and safeguarding ongoing *Connection* to family, community, culture and Country as a fundamental and non-negotiable obligation.

Proactive Efforts Provisions

In a potentially positive step, the Bill introduces a new principle (at 12D), requiring the CEO to make “proactive efforts to address the risks to the child with the aim of preventing the child from needing to be removed from the child’s parents”, or, if the child is removed, to reunify the child, within two years of the removal. The provision goes on to describe that proactive efforts may include providing, facilitating or assisting with access to support services, consider alternatives to address the needs of the child, their parents and family, activities directed at finding and contacting family or community, and the use of family responsibility agreements, family responsibility orders, or mediation conference.

While this is a positive change, reflecting the ‘active efforts’ provision that has long featured in the *Indian Child Welfare Act (US)* (‘ICWA’), and in many ways shows some similarity with similar provisions introduced in NSW, its drafting is limited in a number of important ways, including in the imposition of limited timeframes and interactions with the proposed hierarchy when considering best interests, which may render it ineffective. Some of these have been discussed above, and will not be revisited here. Instead, this section will note additional limitations. Further, we note NSW is due to report on the implementation of active efforts provisions, and the substance and evidence presented in this report may provide a useful example for further debate and development of legislative

³⁸ Inquest into the death of Zhane Chilcott [2023] SA, [23.4]

reforms in dialogue with communities in the NT. As such, there are additional good reasons to halt the current reforms in favour of a more fulsome inquiry and collaboration with stakeholders on getting the reforms right.

Active or proactive efforts provisions seek to balance the responsibility often placed solely on families by placing an explicit, positive obligation on child protection authorities to actively support families to provide safe and nurturing care to their children. Often, including in ICWA and the NSW provisions, 'active efforts' are defined in terms of timely, practicable, thorough, and purposeful – aspects that are absent from the NT Bill. Compared with similar provision in NSW, the current bill also fails to include reference to the importance of partnering with children and young people, their families and communities, and the provision of culturally appropriate supports. These types of references are important, particularly given the continued absence and underinvestment in evidence-based programs for Aboriginal children and families, and instead an inappropriate reliance on non-Indigenous programs that regularly are shown to under-serve and under-deliver for Aboriginal children, families and communities.

Similarly, we remain concerned, based on our experience in NSW, that the list provided at 12D(4) of the Bill, while intended to offer indicative 'proactive efforts', can become the focus of practice, operating as an ineffective check-box under the heading of 'proactive efforts'. In particular, we note that many of the listed actions come to be understood and operationalised in ways that rather than stretching practice to consider the grounds for removal and act strategically and with to address those circumstances, merely restate basic practice with the new terminology of 'proactive efforts'. In our experience, practices represented as being undertaken in compliance with such provisions lack a coherent, evidence-informed 'theory of change', that ultimately leave them disconnected from the intent noted in 12D(1) and (2) of the Bill.

Other Matters

Similarly, we are quite concerned about the framing of family responsibility agreements and family responsibility orders in the Bill, that shift the focus from the responsibility of statutory agencies to provide timely and effective support to family, and instead create an environment focused on surveillance and compliance for parents and families, which is ineffective and unrealistic. Further, the provisions provide a trigger for a number of more punitive and coercive measures, and appear oriented towards escalation.

While formal agreements with families, supported by highly skilled and effective engagement and practice, may be helpful in some circumstances, the broader framing of these provisions may be counterproductive for many families. Consistent with the models of supporting improved outcomes for children and families, such as those presented by the Center on the Developing Child at Harvard University, increasing the stress experienced by parents through such measures is likely to compound the impacts of chronic and toxic stress that they are experiencing, and in doing so undermine their capacity to develop and implement new skills, engage in effective planning, or other help-seeking behaviours. That is, to make the changes expected of them to prevent the need for removal, or achieve the safe restoration of their children. Finally, as noted above, the absence of useful mechanisms to ensure compliance by statutory child protection systems, and the imposition of strict timeframes, may further render these provisions unfit for their intended purpose.

Conclusion

The proposed Bill is, in our view, deeply problematic. It is inconsistent with obligations to the rights of the children and young people, and is poorly aligned with evidence. It's likely impact will be to increase the likelihood that children of families experiencing crisis will be met with surveillance, coercive and punitive responses, and will ultimately enter and remain in care, despite evidence that increased use of OOHC is unlikely to reduce maltreatment nor child deaths, and is linked with poor lifetime outcomes. Proceeding with the proposed Bill is therefore unlikely to represent an improvement of the child protection system in the NT.

To be absolutely clear, the alternative to this poor Bill, and associated poor process, is not to do nothing. Reforms are urgently needed. However, these reforms should, as Prof Davis suggested, be oriented towards “care, support and prevention, rather than risk management, liability, and crisis politics.” This could commence by heeding the calls of the NT Children’s Commissioner for an Aboriginal informed and led Board of Inquiry, including a comprehensive, independent review of case files to produce a more robust, transparent, and informed basis for reform. It could embrace the findings and recommendations of previous reviews, inquiries and inquests, as well as the commitments already made by the Northern Territory government, and all Australian governments, through Safe and Supported: National Framework for Protecting Australia’s Children 2021-2031, partnering with Aboriginal communities, their organisations and peak bodies through shared decision making in the development of reforms that will improve outcomes for children and families. And it should clearly link amendments with evidence, and include effective independent accountability mechanisms, enhancing the existing Children’s Commissioner role with the necessary mandate and functions to effectively protect, promote, inquire, and report on the rights of children in the NT.

Further reading

The below reflect a limited snapshot of papers that might contribute to an improved approach to child and family systems developed by our team. We note particularly the Special Edition of the journal *Genealogy*, 'Self Determination in First Peoples Child Protection', that includes expertise and experience of Indigenous child welfare systems, advocacy and practice across Canada, United States of America, New Zealand and Australia. The collection of papers offers perspectives on improving outcomes.

Special Edition: Self Determination in First Peoples Child Protection. *Genealogy*.
https://www.mdpi.com/journal/genealogy/special_issues/M137AMST55

Select Papers with contributions by the Jumbunna Team

Butler, C. (2025). The Time Is Now: Reclaiming Child Protection Decision Making Within Australia. *Genealogy*, 9(3), 90.

Edwige, V., & Gray, P. (2021). Significance of culture to wellbeing, healing and rehabilitation.

Gray, P. (2021). Beyond placement: Realising the promise of the Aboriginal and Torres Strait Islander Child Placement Principle. *Judicial Officers Bulletin*, 33(10), 99-106.

Libesman, T., & Gray, P. (2023). Self-determination, public accountability, and rituals of reform in First Peoples child welfare. *First Peoples Child & Family Review*, 18(1), 81-96.

Libesman, T., Gray, P., & Gray, K. (2024). The Shackles of Terra Nullius in Child Protection 'Reforms'. In *Legal Education Through an Indigenous Lens* (pp. 53-70). Routledge

Libesman, T., Gray, P., Gray, K., & Hermeston, W. (2025). Self-Determination Within a Reconceptualised Relational Human Rights Framework to Attain Equality for Indigenous Peoples in Child Protection. *Genealogy*, 9(3), 86.

Newton, B. J., Katz, I., Gray, P., Frost, S., Gelaw, Y., Hu, N., ... & Stephensen, J. (2024). Restoration from out-of-home care for Aboriginal children: Evidence from the pathways of care longitudinal study and experiences of parents and children. *Child Abuse & Neglect*, 149, 106058.

Newton, B. J., Chiswell, K., Parker, C., Tong, N., & Common, S. (2025). 'Playing the Game': How Aboriginal Families Navigate Child Protection Systems to Restore Their Children Home From Out-Of-Home Care. *Australian Journal of Social Issues*, 60(3), 866-875

Newton, B. J., Gray, P., Cripps, K., Falster, K., Katz, I., Chiswell, K., ... & Tong, N. (2025). Restoring children from out-of-home care: Insights from an Aboriginal-led community forum. *Child & Family Social Work*, 30(3), 366-376.

Newton, B. J., Gray, P., Falster, K., Katz, I., & Cripps, K. (2025). Realising Aboriginal Community Controlled Approaches to Child Reunification. *Australian Journal of Social Issues*.