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Litchfield Room, Level 3, Parliament House, Darwin

Inquiry into the Care and Protection of Children Amendment Bill 2019

Members: Mr Tony Sievers MLA (Chair), Member for Brennan
Ms Kate Worden MLA, Member for Sanderson
Mrs Lia Finocchiaro MLA, Member for Spillett
Mr Yingiya Guyula MLA, Member for Nhulunbuy
Mr Lawrence Costa MLA, Member for Arafura

Witnesses:

North Australian Aboriginal Justice Agency
Clara Mills: Managing Solicitor, Civil Law

Law Society NT
Russell Goldflam: Policy Officer

Central Australian Aboriginal Family Legal Unit
Anna Potter: Legal Practitioner

Danila Dilba Health Service
Joy Mclaughlin: Senior Policy Officer, Strategy and Reform
Jackson Bursill: Policy Officer

Northern Territory Legal Aid Commission
Jaquie Palavra: Managing Solicitor, Family Law Section

Private Individual
Rose Lanybalanyba

Territory Families
Jeanette Kerr: Deputy CEO Families and Regional Services
Luke Twyford: Executive Director Strategy, Policy & Performance
Seranie Gamble: Director Strategy and Policy
Joy Simpson: Senior Practice Leader, Clinical and Profession Practice Leadership Directorate

INQUIRY INTO THE CARE AND PROTECTION OF CHILDREN AMENDMENT BILL 2019

North Australian Aboriginal Justice Agency

Mr CHAIR: Clara, on behalf of the committee, I welcome you to this public hearing on the Inquiry into the Care and Protection of Children Amendment Bill 2019.

I acknowledge my fellow committee members: the Member for Spillett, Lia Finocchiaro; the Member for Sanderson, Kate Worden; and the Member for Nhulunbuy, Yingiya Guyula. The Member for Arafura, Lawrence Costa, will be arriving shortly.

I welcome to the table to give evidence to the committee Ms Clara Mills, Managing Solicitor, Civil Law. Thank you, Clara, for coming before the committee. We appreciate you taking the time to speak to the committee today and we look forward to hearing from you.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Clara, could you please state your name for the record and the capacity in which you are appearing and make an opening statement if you wish?

Ms MILLS: My name is Clara Mills. I am the Managing Solicitor of the Civil Law section of the North Australian Aboriginal Justice Agency (NAAJA).

NAAJA thanks the committee for inviting us to address you on this bill.

NAAJA welcomes this bill as an essential first tranche of reforms set to improve the care and protection of Northern Territory children, both in the provision of early intervention services to strengthen families and keep children in their homes and providing young people with experiences of out-of-home care so that they have the foundations to grow into resilient and strong adults and ensuring that all children have a plan and that their best interests form the early decision-making when contemplating an order to be made.

We know that in 2018 the number of children in out-of-home care rose by 1%. We know that 89% of those children are Aboriginal. We know that only 34% of those children are placed with Aboriginal carers. We also know all too often how traumatised children move from the out-of-home care space into the youth justice space.

NAAJA notes the work that Territory Families has been undertaking to introduce signs of safety and other strength-based reform frameworks in implementing the royal commission and we say that this bill embeds into legislation a strengthening of and focus on the principles of the best interests of children, a priority on cultural preservation, early intervention, clear communication, kinship care, Aboriginal decision-making and accountability.

In preparing for today, I re-read the case studies of the young people who provided evidence to the royal commission at chapter 29 and the systemic issues identified. In contemplating this bill, I would encourage the committee to revisit those powerful stories.

Like DG telling the commission that when you get taken away from the community, from cultural way, it is really hard—and the homelessness that she faced when her accommodation ended when she turned 18 years of age.

Or DS giving evidence that she applied to be the kinship carer for her grandchild but her application was not referred for assessment for 11 weeks, and nearly six months later still had not been completed. In DS's case, limited consultation with family and language barriers led to family not understanding why their grandchild was removed, and removed the ability of misunderstandings of the department to be clarified and resolved early.

Case studies like DG and DS are not isolated but rather form the all too common experiences of families and young people represented by NAAJA 18 months on.

Reforming child protection systems require not just the good policy and departmental reforms that Territory Families are currently undertaking, such as implementing signs of safety, but also that these core principles be embedded in the legislation. Keeping children at the forefront of all conversations and allowing them to grow into strong, resilient Aboriginal adults, connected to their country, breaks cycles.

We encourage both parties to show bipartisan support for this first tranche of reforms and commitment to the future reforms of the single act. Thank you.

Mr CHAIR: Thank you Clara. I have a few questions and then I will open it up to the committee.

NAAJA has called for amendment to proposed section 85A that supports to maintain a young person's living arrangements not be conditional on educational enrolment. Can you provide more detail to the committee regarding your concerns about this proposed amendment?

Ms MILLS: Certainly. The amendment to section 85A is a good start. It is essential that when the government becomes the parent of a child, that they have an ability to remain involved and supportive of that child's life after they turn 18 years. As I said earlier, the case study of DG showed a perfect example of a child turning 18 and the department being confused about how they could support that child moving forward.

We know, however, that lots of children by the time they reach 18 years of age are traumatised, are going through lots of different systems and are often interfacing with youth justice system, so to tie the support that the Territory can provide with the amendments in section 85A to the child being enrolled in school limits the supports that the Territory can provide to a young person.

We would say that it is more important that there are not caveats on how the Territory can support a young person, but rather that the Territory and the young people, in consultation, move forward in how that young person requires supports so that we do not see people like DG entering into homelessness rather than being supported by her parent.

Mr CHAIR: Thank you. In your submission you note that one reform that has not been implemented is a mechanism to enable foster or kinship carers to seek independent review of any adverse decision. You further note that the royal commission recommended that NTCAT be given review powers in relation to a range of decisions with regards to fostering kinship carers.

What types of adverse decisions do foster or kinship carers generally seek reviews on?

Ms MILLS: One example would be the length of time that it takes for a kinship care assessment to take place. Examples are for very sophisticated urban kinship carers, it takes at least 26 weeks for them to be assessed for kinship care.

I have a colleague who had to communicate with Territory Families 57 times before she was made a kinship carer for her niece. Her niece was six months old when she went into care and by the time the kinship care assessment was processed that child had spent more than half her life in foster care and had become securely attached to the foster carer. This then creates a second layer of trauma for that child when they are removed from their family, then removed from their foster carer, then placed with their kinship carer and then potentially removed from their kinship carer, if things go well and moving forward.

We would like to see an ability for decisions such as—under one of the regulations you can have urgent kinship care assessments and that is not always implemented. It would be good if that sort of decision-making could have a review mechanism, where appropriate, so that there is oversight on how families track through systems and how decisions are made for the placement of children, particularly for very young children, where what we are talking about is their whole lives.

Mr CHAIR: What types of review and decision-making powers do you consider should be granted to NTCAT? What decision-making powers would you like them to have?

Ms MILLS: You want some decision-making powers so when an order is made by the court for a child to be placed into the care of someone with parental responsibility, the only decision that the court can make at this point in time is who has parental responsibility. But if you are looking at other jurisdictions like the *Family Law Act*, the courts have broader powers to determine how children spend time with other important family members, how decisions are made for children.

One good example would be: we often see care plans made for a child—the current legislative recommendation is every six months. But you often see that that care plan is a bit cookie-cutter and does not really fit with the needs of that child. An example would be an Aboriginal child staying connected with community but it will often not be a decision that relates to the cultural needs of that child.

Being able to go to NTCAT when decisions are being made in care plans that do not fit with the cultural or family needs of that child would enable better decision-making or accountability, I suppose, for the department when it is making decisions for children in its care.

Mr CHAIR: Great, thank you. I will open it up. Lia, do you have anything?

Mrs FINOCCHIARO: I want to ask about section 8. In your submission, you talked about what is in the best interest of the child. Could you explain how you feel section 8 strengthens the test to ensure that focus is on the best interest of the child?

Ms MILLS: Sure. The current test is 'best means to safeguard a child' and it is quite an open and subjective test. The amendments to section 8 would move the test to unacceptable risk, which is a test created by the High Court in the case of *M v M* in 1988, as the test followed both in family law, but in other jurisdictions like Queensland and New South Wales, I believe.

The purpose of unacceptable risk is that it becomes a strengths-based focus on the best interest of the child, rather than a hearing of the nature of the abuse in and of itself. You do not have to have a positive finding that abuse definitely occurred. What you have to think about is how does this order, in the least intrusive way, meet the best interests of this child?

It creates a more objective test, a law, but it also creates a test that is solely focused on the rights of the child as opposed to—we know in the *Care and Protection of Children Act* the rules of evidence do not apply. But when you have broader and more subjective tests, it makes the hearing about whether you can make out that the harm occurred as opposed to what is the unacceptable risk to this child.

Mrs FINOCCHIARO: Okay. Do you know what types of factors would be included so it would not just be the safety of the child? Does the unacceptable risk test go broader than safety?

Ms MILLS: Can I take that one on notice?

Mrs FINOCCHIARO: Yes, sorry. That is fine.

Mrs WORDEN: Clara, I am interested in the second part of this question. You have explained some of the difficulties with the assessment time lags. Where is the balance between the departments obviously having safeguards in place? I understand where you are coming from. We have seen it repeatedly. Do you have any options for yes, if those timelines were sped up, to build in those safeguards that do not then put the department at risk?

Obviously, the issue here is you have a government department making decisions and it is often criticised when those decisions are wrong, even with the current regime. This changes the regime, but also what you are talking about shortens the timeline for those assessments. That is why this is written like that. Do you have any suggestions for better safeguarding if you want those timelines shortened?

Ms MILLS: Absolutely, the department has to approach kinship care with caution. That is why we often see timeframes move quite slowly. The department does what it is required to do for kinship care under the regulations, which is quite broad, and then it has a very narrow interpretation of how to apply those regulations.

For example, I think the regulations only require them to be satisfied of a place check but the department then, on top of that, will require all adults in the house to also have an Ochre Card, not just a police check, which is how then, particularly in remote areas, it is quite bureaucratic and difficult for families to obtain Ochre Cards beyond the police checks.

I think by creating the ability of the courts to be the ones that are making the decision, it creates a lot of protections for the department because the courts cannot make a decision without hearing the appropriate evidence. The department would be putting on the evidence about their outstanding concerns and families would be able to put on evidence about why those decisions, in that particular circumstance, are too onerous.

We do see it now already, in terms of families seeking joinder to the care and protection matters, to seek parent responsibility for children where they would otherwise be excellent candidates for caring for a child, but would not satisfy Territory Families' kinship carer assessment because of reasons of remoteness, overcrowding or those sorts of issues. That becomes a test for the court to determine. How is the safety of this child met and how is the court satisfied that the department, the families and everybody has considered how to best safeguard the safety of these children.

Mrs WORDEN: That is the current system?

Ms MILLS: What I am saying is it would be good for families not to have to apply to court for parental responsibility, but for them also be a way for them to consider still being kinship carers so they can still be working with the department.

We think that would create additional safety for children, because when families apply for parental responsibility, because it is too difficult for them to go through the kinship care systems, it means that a decision is made for those families to be the ones who have daily care and control and parent decision-making for that child. It removes Territory Families from the picture, it removes that safeguard of Territory Families continuing to work with families.

Often, what it also creates is a circumstance where families will want to come in and care for a child but the element of someone working with the parents to stay engaged with the child is difficult for carers to be involved in. If they have had to apply for parental responsibility it then falls to the grandparents or aunties and uncles to make decisions about how mum and dad remain involved.

What we would like to see is mobility for families to have children placed in care but decision-making around how mum and dad, who have perhaps been problematic in the past, spend time with children or remain connected to children. This still remains in the ambit of Territory Families.

By moving it into a space so the courts can have more control, I think you can have more creative orders which create better protections for children by placing children with grandmas and grandpas but allowing Territory Families to remain involved in important elements of decision-making.

Mrs FINOCCHIARO: You feel that this bill delivers that and that that should be the outcome?

Ms MILLS: I think this bill strengthens the considerations that need to go into the cultural needs of a child. I think it strengthens what the court needs to know, at the outset. It requires Territory Families to file a care plan for a child, either immediately or within 21 days, which is appropriate if you are making decisions about how we are going to meet the best interests of the child. It is essential that we are all thinking about how the needs of this child is met in the first instance.

As we said in our submission, this bill does not quite go far enough, but we are not suggesting that this bill should be amended at this stage. It is a good first tranche. Things like empowering NTCAT to review decisions around kin-care and decision-making for a child in the future, we say is an important next step.

Mrs WORDEN: Eighteen-year-olds are really tough, regardless of a lot of circumstances, but obviously those kids who have gone through trauma and there are significant issues... I have seen plenty of examples where 18-year-olds are trying to go forward.

I understand where they are coming from with education, I thought in some ways it is clever. Do you think that we could add in a couple of alternatives to education so that would satisfy? Obviously, engagement in something external is not just about engagement at the time, but about future.

Often, those children who get to 18, which we are talking about today, have not engaged all the way through. So, their education needs to—there are other places for education once you have reached 18 to catch up, if you like. The intent of the bill, obviously, is to serve those children well into the future. That is the intent. That is how I read it.

What other things do you think—leaving it open is tricky, because it provides support with nothing. It takes away the incentive for a two-way street. You want that support. Let us work together on this.

Ms MILLS: I take your point. The bill has been carefully drafted, though, because it says 'may' not 'must', which allows for that limiting factor.

Mrs WORDEN: That is true.

Ms MILLS: If we say that a child—if we link it to things for a traumatised child who has been through a long system, it takes away our responsibility as the parent of those children, to be working with that child. It is important for the children and the authorities that it stays a 'may', and is not a 'must'—that there is an ability …

Mrs WORDEN: I agree.

Ms MILLS: Also children might not want that. There might be a point when they turn 18 that they might want to move away from the system. There might be a point where there is not that two-way street in a suburb. If we do not allow that opportunity for the Territory—which is these children's parent—to parent these children until they are 25—just as we were all parented by our families…

I always think my brother is a good example because he dropped out of school when he was 15. He would not have satisfied any of these requirements—not that he was in the protection system. He did not go back to university until he was 25. Now he is a first-class honours and PhD and travelling around the world.

There are opportunities for children. We know that neural pathways are still developing when they are at that age and that decision-making about how they will grow into strong and resilient adults is difficult for them, particularly if they have a trauma background.

Putting the responsibility on the child in the legislation also sets children up to fail …

Mrs WORDEN: Too narrow.

Ms MILLS: … when our responsibility as the parents of these children—when we are saying we should have parental responsibility for these children, we should also be supporting them to become strong and resilient adults through that initial stage. The protection you are talking about is in the softening of the language from a 'must' to a 'may'.

Mr CHAIR: Great. All right.

Mrs WORDEN: The intent is clear. The intention …

Ms MILLS: The intent is there and we just should not limit it with education. We know it is common for these children for education not to be the priority at 18. But that does not mean that they will not come around after that.

Mrs WORDEN: For a lot of kids beyond 18.

Ms MILLS: Exactly.

Mrs WORDEN: Thank you. That is it for me.

Mr CHAIR: Okay. There are no further questions. Thank you, Clara, for coming in today. On behalf of the committee, I appreciate your answers. If we have anything further, we will follow up with you.

The committee suspended.

Law Society NT

Mr CHAIR: Good morning, Russell. I will just go through some items we need to go through. On behalf of the committee I welcome everyone, and you, Russell, to this public hearing into the Care and Protection of Children Amendment Bill 2019.

Russell, on the committee we have Lia Finocchiaro, the Member for Spillett; Kate Worden, the Member for Sanderson; and Mark Guyula, the Member for Nhulunbuy. Lawrence Costa, the Member for Arafura, will be joining us shortly.

Russell, welcome to the table to give evidence to the committee. We thank you for coming to the committee. We appreciate you taking the time to speak to the committee and we look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply.

This is a public hearing also, Russell, and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website also. Russell, if at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Russell, could you please clearly state your name and the capacity in which you are appearing here today. If you like, you can make an opening statement to the committee.

Mr GOLDFLAM: Thank you, Mr Chair. My name is Russell Goldflam. I am appearing on behalf of the Law Society of the Northern Territory. I am a lawyer who has been a member of the Law Society for many years. I am currently a member of the Law Society's committee which has been recently set up to work on the implementation of the recommendations of the royal commission into the Protection and Detention of Children. It is for that reason that I was approached by the Law Society's Chief Executive Officer, Ms Grainger, yesterday, who is unable to appear before this committee today, and asked if I could stand in her place, which I was happy to do.

Mr CHAIR: Great. Russell, in the submission that was made to the committee, we understand that there were a few concerns about the proposed sections 104A and 124 in the bill. Would you like to go through that for the committee?

Mr GOLDFLAM: Certainly. I will make an opening statement, if I may?

Mr CHAIR: Thank you.

Mr GOLDFLAM: I will come to sections 104A and 124. The first thing to be said is that the society strongly supports this bill and the amendments contained in it. The society also is strongly supportive of the thorough, rigorous and comprehensive consultation process which was involved and led to the drafting of this bill in its current form—particularly through the process of the Legislative Amendment Advisory Committee of which I have been a member, wearing another hat as a representative of the Northern Territory Legal Aid Commission, which is an employer of mine.

The Law Society has also been involved in the LAAC, as it is commonly called, and that has been working on this bill, on and off, for the best part of two years. The quality of the bill reflects the complicated and sometimes tedious process, but a very important process, of really drilling down with stakeholders to make sure that issues are properly addressed.

The other very important aspect of this bill is that it is part of the process of implementing or building the roadmap that was laid down by the royal commission. This bill, almost completely, faithfully follows the specific recommendations of the royal commission.

As Clara Mills was saying in the session immediately before this one, this is only a phase, a stage, and we are looking forward to two major further phases of the reform program involving this law.

One being the next phase of amendments which will put in place the very important measures that are being recommended for the use of family conferencing and alternative dispute resolution measures to resolve the arrangements to be made for children who are at risk or are already in care.

Secondly, the big project, which we have already started working on in the LAAC, of creating a unified bill or Act which deals both with child protection and youth justice. These two systems are intimately linked and they need to be legislatively articulated and collaboratively administrated.

For many years, we have been hampered by the fact that there is a division, not just in the different acts of parliament dealing with youth justice and child protection but in the way those two systems work on the ground. They need to be working as one system, because so many of the children who are in the youth justice system and have got themselves into trouble by committing offences are, or were, children in care.

As far as the specific parts of the bill, a very important part is, as we say in our submission, the primacy that has been given to early intervention and support and, this being the Economic Policy Scrutiny Committee, I am sure the committee would be particularly interested in the economics of child protection.

I refer the committee to the very interesting submission by Danila Dilba Heath Service in which they cite authority to the effect that for every dollar you invest at an early stage in child protection by way of prevention or early intervention, you are going to get a $17 saving. Children, when they are in their late teens, can be a very expensive burden on the community, if they have got themselves into serious trouble.

There are enormous benefits economically to be gained by what we call front-end loading, putting the resources and efforts in before the trouble really takes root. The provisions in this bill per the intervention support are very important.

The next issue that we have raised is under the heading 'meaningful participation'. We appreciate the way this bill will, if enacted, improve the quality of representation of children but also the capacity for children themselves and young people to participate.

As an example, clause 11 of the bill which would introduce section 72A where children are specifically encouraged and facilitated to participate in the planning process for themselves.

Similarly clause 13 of the bill, which goes into reviews of care plans, provides that the children are to be involved. They are to be involved by: being told what the plan is in language that is appropriate for them, whether that is English or another language (we can use interpreters).

…not just whether it is English or an Indigenous language. Because we are talking about nine out of 10 children, we are talking about our Indigenous children and young people… also for it to be explained in their terms, terms which will be meaningful to them.

The next issue is preserving a connection with a stronger support and attention to investment in culturally-targeted intervention.

The Indigenous child placement principle is really embedded in this Act in a much more thorough and meaningful way than under the current Act. It is part of the paramountcy principle of what comes first and above everything else is the interest of the child. Part of applying that principle is paying attention to their cultural heritage—not just their heritage but their community, language, culture and family. That is embedded right through the Act at all different points. There are numerous references to this feature and that is really important. We support that.

Some examples of that are in clause 8 of the bill, which amends section 42 of the Act—sections 42(1)(a) and 42(1)(c). Perhaps more importantly, sections 42(3) and (4) have been introduced and they provide very strong impetus for the department to deploy preventative and support services, particularly in Indigenous communities. They are all terrific things.

There have been some amendments that have been suggested by some of our friends in the NGO sector who have made other submissions. We have not commented specifically on these in our submission. I am a little circumspect about being able to say we adopt all of those submissions because I have not had the opportunity to discuss those in detail with the Chief Executive Officer of the Law Society or their policy office staff. I do not work for the Law Society, I am just a member of the society.

If I can put it this way, there are some interesting and compellingly argued submissions made by other agencies such as NAAJA, Danila Dilba, my employer, the Legal Aid Commission, which would strengthen the sorts of measures that I have been talking about. I ask the committee to pay very close attention to those very important recommendations.

Now, the only issue we have raised in our submission from the Law Society where we are seeking to have some changes made to this bill is in relation to sections 104A and 124, where there is reference to the carer being—it would appear—made a party to an application and proceedings in the Local Court which may result in a child being placed in care.

We are not quite sure what was intended by the use of the term 'carer' but the way it reads, it appears to us to embrace the current foster carer of a child. That, in our submission, is problematic. Currently, and indeed as far as we are aware anywhere in Australia, parents or adults who temporarily have taken over the responsibility—and the burden and privilege—of looking after a child who is at risk are not brought into

proceedings where it is decided whether or not a declaration will be made if the child is placed in care, and whether or not orders are made for responsibility and care of the child.

There are very good reasons for that. It can result in a conflict being heightened between the birth family of the child and the people who are currently looking after the child. It can result in all sorts of allegations being made about the birth family which come to the attention of the foster carers, even though the proceedings are closely—they are secretive settings; it is a closed court. There is no capacity to publish anything that is said in that court for very good reasons. But if the foster parents are part of the proceedings and they find out all of these allegations—some of which may be completely untrue, no doubt... In any event, the safest course is not to drag them into the proceedings.

It may be that this is not what was intended by sections 104A and 124. I understand the committee will be having sessions this afternoon or later this morning with Territory Families, so they will have the opportunity to clarify. I am hoping that they will say, 'No, that is not what we meant and we should amend this part of the bill to delete any suggestion that the foster parents are being made parties to the proceedings'. But the way it reads at the moment, that is how it looks to us.

Mrs WORDEN: While we are on this point, I am not a lawyer but my reading of this, particularly at 104, was more on the carer being notified. Does the carer actually know there is something afoot, a notification, rather than them sit on the outside and not actually know that there is a legal matter proceeding?

Mr GOLDFLAM: That is possibly what was intended and what is its effect, but subsection (2) of section 104A provides, 'in addition the CEO may give a copy of the application with the notice if it is practicable to do so'.

Attached to an application in these matters, is an affidavit, which sets out in substantial detail all of the circumstances that the department's CEO is relying on in support of the application that the child be placed in care.

Mrs WORDEN: It is the details rather than them being notified that is the issue here?

Mr GOLDFLAM: Yes.

Mrs WORDEN: We are meeting with the department later. I get where you are coming from, but in my understanding it looks like it is a courtesy that the carer is included in that notification. I could be completely wrong, but we will examine that later with the department. Thank you. I wanted to qualify because my reading is different and the issue for you is the details that they have.

By them getting the details legally, does that make them a party to it?

Mr GOLDFLAM: It might. If you look at section 124, clause 22 of the bill, my reading of that and the Law Society's reading of that more importantly, is that because that section goes into details of how service is to be effected on everyone who is served, which includes the carer, that appears to imply that everyone who is served is a party to the proceedings. That is how you get made a party; you get served.

Mrs WORDEN: That is where my lack of legal knowledge does not serve me well. I thought that just because someone got served, they actually would have to participate in the proceedings, which does not indicate a carer would. Thank you for clarifying that for me.

Mr GOLDFLAM: I must say, Mrs Worden, you may be right. It is not quite clear. I am sure Territory Families can clear that up for you later today.

Mrs WORDEN: Yes, we will definitely do that later. Thank you Russell.

Mr GOLDFLAM: That all said, the society is not putting forward the position that foster carers—particularly in cases where children have been in care and the foster carer has developed a strong relationship with the child who might have been in their care for years, and then the matter comes back before court because an application has been made to vary, extend or revoke the orders, as the case may be— should not be allowed to seek to intervene.

At the moment under section 125 of the Act, there is provision for a foster carer to make an application to become a party and, reading from section 125 of the current Act, which is not going to be changed under this bill, if the court considers that the foster parents, or anyone, has a direct and significant interest in the wellbeing of the child, then leave can be granted to have them joined as a party.

Similarly if there is a review of a pre-existing order, this is where it is much more likely, where there is a foster carer who has a much stronger and deeper connection with the child. When applications are first made to the court, often the child will have been in the care of their family and the CEO is seeking to have the child removed and placed with foster parents—so there will not be any foster parents yet. But where there is a variation and revocation of order application—that is dealt with under section 137 of the current Act.

Again, our reading of the Act—or mine certainly—is that foster parents will have the opportunity, if they are made aware that there is an application afoot, to seek to intervene and become a party so they can be involved if they have a strong reason to do so and if the court accepts that their reasons are legitimate. That is as it should be.

The bill is good in that it provides that when there is a review of a care plan, the carers should be given a copy of that so they can see what the department is planning to do and will have the opportunity to either support that or seek to have it changed. That is consistent with recommendation 33.8 of the royal commission's recommendations. That is contained in section 74 under clause 13 of the bill.

Mr CHAIR: Yes, great. All right. Thank you, Russell, I will open to the floor. Lia, do you have any questions?

Mrs FINOCCHIARO: No, I was going to ask about the concerns about 104A and 124. Thank you for explaining that in detail, Russell. We will certainly ask questions because it is not clear. The language changes. It has 104—the application 'may' be given to the carer and 124 says the CEO 'must' give a copy. Yes, we will look into that.

Mr Goldflam, were there any other questions that you think would be useful for us to ask Territory Families this afternoon?

Mr GOLDFLAM: No, not from the society. There will be other questions to ask Territory Families that come up from some of the other submissions from the sector.

Mrs FINOCCHIARO: Yes, agreed.

Mr GOLDFLAM: I am sure the committee is alive to those issues. I should say there is one other submission that has been made and that is the one by the Northern Territory Legal Aid Commission which also deals in some detail with the issue I have focused on. But I do not think any other submissions that have been made have particularly addressed that issue. It may be—for example, the Danila Dilba submission, as I read it, appears to assume that carer means a family member who happens to be caring for the child, rather than a father or mother. The Danila Dilba submission does not address the possibility that carer might include foster carer. That just goes to the point Mrs Worden was making, that it is just not necessarily clear precisely what the intended effect of that section was.

There is one other thing I can point the committee to, which may be of assistance in relation to the role of foster carers and how they work in the system. I should say in passing that the royal commission has made some important recommendations about strengthening the support given to foster carers, making sure, for example, that there are no foster carer arrangements unless the foster carers are involved in the case planning and case management and they are paid properly and supported. I refer the committee to the royal commission's recommendation 33, which deals with foster carers, among other things.

I can also refer the committee to an important decision of the Supreme Court that was handed down by Justice Barr on 9 January of this year—this is after the royal commission's findings had come out. The name of the case—they use initials, of course, in these cases because they are all de-identified, these people—is *REF and SJP against the Chief Executive Officer of Territory Families*. It is recorded as case number [2019] NTSC 4.

That is the case in which some foster parents of a child who had very significant disabilities and psychological and psychiatric diagnoses—which made it very challenging to care for her—had been caring for her for three years interstate. The foster parents were a paediatrician and his partner, who is a social worker, and they first came into contact with this child when she was born at the Alice Springs Hospital.

A few weeks after she was born, they fostered her with the department's support and then they moved interstate. The department decided that this child coming from an Indigenous remote community in Central Australia should be returned to her maternal grandparents. There were never any proper arrangements made to undertake the complicated and challenging transitional arrangements that needed to be put in place.

The foster parents had to engage lawyers, bring interstate barristers from Queensland and make a complex application to the Supreme Court, which went on for months. Eventually Territory Families backed off and accepted that the plan was not a proper plan at all and the child should not be taken from the only family she had known and placed in a completely unknown environment, even though it was in support of the Aboriginal placement principle. In that particular case, it was not properly done.

The case is an important one. It shows how important it is to involve everyone who is a stakeholder right from the beginning, so the planning is done in a consultative fashion. It also highlights the fact that, although this was a case where there were some very well-resourced foster parents who were able to get terrific lawyers and come along and intervene, for most of the people who have a real issue to raise with Territory Families because a child has not been given the planning that the child deserves, they have not got those resources. Most of those people are Aboriginal people in remote areas, or in impoverished circumstances, who have got no hope of being able to engage a firm of lawyers and barristers and run off to the Supreme Court with a judicial review application.

This case is a stark reminder of how important it is that the front-end loading that this bill will introduce is so important, and that proper consultation with all the affected people takes place right from the beginning to prevent this sort of very sad things unfolding, as happened in that case.

Mr CHAIR: Thank you Russell. It also shows how complex these things can be. On behalf of the committee, thank you for appearing today. If there are any other questions, we will contact you.

Mr GOLDFLAM: Thank you.

Central Australian Aboriginal Family Legal Unit

Mr CHAIR: We welcome Ms Anna Potter to the committee today via teleconference. I will introduce the committee: the Member for Nhulunbuy, Mr Yingiya Guyula; the Member for Arafura, Mr Lawrence Costa will be joining us shortly; the Member for Spillett, Mrs Lia Finocchiaro; and the Member for Sanderson, Mrs Kate Worden.

We welcome you to give evidence today to this hearing on the Inquiry into the Care and Protection of Children Amendment Bill 2019. We appreciate your time and look forward to hearing from you. We appreciate the time you are taking to speak to the committee, and look forward to hearing from you today.

Anna, this is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing, Anna, and is being webcast through the Assembly's website. A transcript will be made for the use of the committee and may be put on the committee's website also.

Anna, if at any time during the hearing you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Anna, could you please state your name and the capacity in which you are appearing to the committee today. If you like, you can make an opening statement, Anna.

Ms POTTER: Good morning. My name is Anna Potter. I am a legal practitioner from CAAFLU, the Central Australian Aboriginal Family Legal Unit. I will make an opening statement this morning.

I thank you for providing the opportunity to speak on this important reform. I have worked in the Barkly region out of the Tennant Creek office for two-and-a-half years. Although my understanding of the issues across Central Australia—I have some understanding, but I am mostly informed by my experience in the Barkly region specifically.

We assist Aboriginal victims of domestic violence and sexual assault, and a significant area of our practice involves child protection matters. In these matters, we typically represent the mother of the child or children concerned.

We support this bill in its current form. However, there are a number of areas where we would like to see additional amendments. I will outline some of the key areas of reform that we believe are most important for achieving the best outcomes for families and their children. I have grouped this into a few areas, namely prevention, procedural fairness and for the child, maintaining a strong connection with family and culture. If

you would like, later I can provide some case studies in these areas to demonstrate the importance of reform under these topics.

First, I will touch on prevention. We strongly support the proposed amendments to place an obligation on the CEO to provide or facilitate preventative and support services for those who require them. We too often find that engagement with services comes following a significant crisis that may have been preventable with earlier support.

We also believe this obligation should extend to facilitating or providing those services for families throughout their engagement with Territory Families, particularly in the periods immediately following intervention—when there is often significant grief and families fracturing—and consistently, leading up to and after reunification occurs.

In the Barkly, we often have trouble where Territory Families require families to complete programs that are not available here. That extra support would be much appreciated.

In procedural fairness, we support the strengthening of the notice provisions. I heard Russell Goldflam pointing out some ambiguities that will, hopefully, be resolved. We have encountered many instances where injustices have occurred. For example, I had a client who was not provided notice because the department had not realised that she was in ICU in hospital, and proceeded to make the application in court.

We also think the notice provisions should include a requirement for the CEO to provide an explanation to that person about their right to appeal and how to appeal, and an obligation to offer a referral to a relevant legal service. At present, people are often handed a large wad of paperwork with all the documents and there is a page—maybe a couple of pages in—with a list of the legal services. A lot of our clients do not have telephones or English might not be their first language, so it is quite an unrealistic expectation, or they may not understand the urgency.

People are often coming to us too late and it is very hard to help when there has already been a couple of mentions. Usually, there is already provisional protection or temporary protection orders made. It is much better if we are able to assist earlier on.

Regarding care plans, we strongly support the proposed amendments. I particularly want to highlight the importance of providing up-to-date care plans to the court before any decision is made. This was also supported by Justice Hiley in the Supreme Court decision last year, *BJW v EWC and Ors.*

We have had significant issues with delays and lengthy and ambiguous care plans that have made it very difficult to determine what is expected of the family and what the arrangements are for the child.

I have heard some discussions earlier this morning that there are future plans to perhaps create some sort of administrative review mechanism and extend the powers of the NTCAT. This is something we would definitely support to review decisions on child placements, contact with the family and decisions that impact on a child's cultural connection that are currently not able to be reviewed by the court.

Regarding maintaining strong connection with the family and culture for the child, we strongly support the inclusion of these factors within the definition of the best interests of the child. Previously, other factors were seen as more important—about stability and permanency—which did not support reunification of the family.

We also support the amendments to ensure that the families are not held to the same standard as non-family carers for the long-term protections orders. We also support the inclusion of the voice of the child, family kinship or representative group. We think that is very important. In addition, to facilitate that, there should be some sort of child advocate appointed for every child to ensure that child's voice is adequately heard and represented—someone who is trauma informed, culturally appropriate. Whether that is a social worker, community worker or legal representative, there needs to be someone who is in a position to build a relationship with that child and maintain that relationship throughout the process.

We also believe there needs to be some sort of accountability mechanism for adherence to the Aboriginal placement principle. Currently, there does not seem to be any transparency for us about what steps are taken by the department to place children with family. We are repeatedly frustrated with them not providing that information. There are bewildering decisions where there are many family members who may want to look after a child but, for whatever reason, are overlooked. We would like them to be accountable for that. We suggested perhaps a requirement for them to file affidavit material in court to advise the court what steps have been taken to adhere to that principle. Otherwise, for example in the Barkly region, we often see children

not only placed with non-family members, but moved hundreds of kilometres from their families which creates that extra barrier to connection.

I also heard discussed before—perhaps this is an amendment for a future bill. I am not sure if you want me to touch me on family group conferencing, but that is also something we strongly support. There were recommendations in the royal commission. It is just a matter that the department does not have the organisations set up to facilitate that, so I am guessing that is the reason why it is not included in this bill. Perhaps they can clarify that.

At present, how it operates in the Barkly is we arrange ad hoc family meetings. But there is usually only one lawyer for Territory Families for the whole of Central Australia, so we have to wait for that lawyer to come to Tennant Creek, which used to be every six weeks—now I think it is monthly—to arrange a family meeting. It is highly problematic to get everyone in the same room and those delays create a lot of stress for the families.

There seems to be a lot of miscommunication. In general, communication does need to be improved and family group conferencing is an important way to do that and give the family agency in the decisions that are made. At present there is no trust between the community and the department.

I can explain the communication challenges, I am not sure if this is unique to the Barkly. Our organisation is in the same building as Territory Families in Tennant Creek but our advocates, our legal representatives, are not able to talk to Territory Families case managers unless we go through their lawyer. But of course there is only that one lawyer so there are huge delays. That is for both legal and non-legal matters. The situation is very difficult in terms of communication. I am not sure if there is any way that can be tied into procedural mechanisms of the bill, but in terms of the way the system communication model works, at the moment, it is quite ineffectual.

Mr CHAIR: I have one question, and you have already answered it, on the referral to relevant legal services. The department feels that that is standard practice, but you are saying that there is a piece of paper with where they can go—but you would like to see more done in that area?

Ms POTTER: Could you please repeat that question?

Mr CHAIR: You spoke about referral to relevant legal services and the department is saying that is standard practice. However you are saying that there is just a piece of paper they get with where they can go?

Ms POTTER: It is difficult for us to know what conversations take place. Usually, if someone is handed all the documentation, there will be the application on the front and at the back of that application, maybe page three, four or five, there is a list of services. I am not sure what steps the department takes at the moment, whether they suggest a particular legal service and call them. I think it happens in some cases; I have seen it happen in court.

We are concerned that it is not happening at an early enough stage of the proceedings. I am not sure whether that is the issue or whether they are doing that and our clients are just not understanding the urgency and waiting a week or two before they can follow up.

Mr CHAIR: Or there is a communication breakdown. I will open it up to the floor.

Mrs FINOCCHIARO: Thank you, Ms Potter, for appearing today and providing us with your organisation's position on the bill. I wanted to ask on the amended sections 8, 10A and 129 in your submission on the higher threshold test. You expanded on your second page, but noted that you would support a definition of unacceptable risk and harm that includes a definition and guidelines for what constitutes cumulative harm. Could you expand on that a little?

Ms POTTER: The challenges we found in cases which particularly involved what we would term cumulative harm—there has been quite an inconsistency in the department's approach on when they decide to intervene. I am not sure if there are some subjective factors within that. We would like to see more of a consistency, particularly we have seen cases on both ends of the spectrum, where we believe the department has intervened too early, when the issues are with poverty or the Housing department not providing maintenance or, on the other end of the spectrum, intervening after there has been an horrendous crisis of violence or child sexual assault.

We would just like there to be—I do not have a proposed definition, but there might be some case law. Did that come from a case of unacceptable risk of harm test? Perhaps something could be added to ensure that

there is some sort of objective element? At the moment it is very open to interpretation when the department should intervene.

Mrs FINOCCHIARO: Are you saying that cumulative harm is an important element to consider when making that decision—when assessing the unacceptable risk of cumulative harm, as defined, however that may be consistently applied—should be a factor when considering the unacceptable risk of harm?

Ms POTTER: Yes. In cases that are not involving cumulative harm, it can be easier to make that assessment of when it is an unacceptable risk. With cumulative harm cases, it is often quite difficult because you might have repeated notifications that are quite minor, but over a longer period of time they have a serious impact on the child. So, with those cumulative harm cases, yes, we would like to see, perhaps, some sort of working definition of that to be included in that new standard. If that makes sense.

Mrs FINOCCHIARO: Thank you. I want to ask about amended section 10. On the front page of your submission, it says:

> *Inclusion of connection to family and culture in factors used to determine 'best interests' of the child so as not to be overridden by the need for permanency.*

Could you explain what you are saying in that sentence?

Ms POTTER: Sure. I will try to find the list of—sorry, I am looking up the best interest of the child current list.

From memory, there are some factors that could be perceived as competing against one and another. There is no guidance in the legislation about which factors should be prioritised over which factors.

If you give me a moment, I will look up the current legislation.

For example, under the current legislation, Best interest of the child at section 10(2)(e), it says:

> *… the child's need for permanency in the child's living arrangements …*

And in (2)(f):

> *… the child's need for stable and nurturing relationships …*

We have encountered cases before where that is used as a justification to keep children with non-family carers to create that permanency and stability for the child. If we are now including those factors about the importance of family connection and culture, they could potentially be perceived as conflicting, but hopefully, in the broader interpretation of the legislation that is now reinforcing the importance of connecting with family that will not occur.

Mrs FINOCCHIARO: Thank you.

Mr CHAIR: Thank you, Anna, for appearing before the committee. On behalf of the committee, I thank you for today. That concludes our session with you. If we have any further questions, we will certainly get in touch with you.

Ms POTTER: All right. Thanks very much.

The committee suspended.

Danila Dilba Health Service

Mr CHAIR: Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing some additional information from you today.

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If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Could you please state your name for the record and the capacity in which you are appearing. We are happy for one of you to make an opening statement.

Ms McLAUGHLIN: Joy McLaughlin, Senior Officer, Strategy, Policy and Research, Danila Dilba Health Service. We are both appearing on behalf of our CEO, Olga Havnen.

Mr BURSILL: Jackson Bursill, Policy Officer, Danila Dilba Health Service.

Ms McLAUGHLIN: I thank the committee for the opportunity to make an opening statement on the Inquiry into the Care and Protection of Children Amendment Bill 2019.

I acknowledge that this public hearing is being held on the land of the Larrakia people and I pay my respect to Larrakia elders past, present and emerging.

Olga Havnen has asked me to pass on her apologies to the committee, as she is unwell and unable to attend.

Danila Dilba Health Service, by way of background, is an Aboriginal community-controlled health organisation, but we have taken a special interest in care and protection and youth justice over the last couple of years.

The reason why we take an interest—because some people wonder why a health service is so interested in these matters—is largely because we are guided by a public health paradigm in our work, which means that we do not just confine ourselves to primary health care.

We understand that there are a whole of range of factors that relate ultimately to people's health outcomes and we view health on a broader perspective of 'health and wellbeing'. Everything has a really close connection between health and care and protection of children—and also because we are an Aboriginal-controlled organisation and we do not have an Aboriginal-controlled care and protection organisation in the Territory.

We note that 90% of the children in out-of-home care are Aboriginal children and 50% of Aboriginal children in the Territory have been the subject to notification to child protection by the age of 10. We recognise the complex layering of intergenerational trauma which are contributing to poor outcomes and poor wellbeing for children.

We believe, and I am not speaking for myself but for Danila Dilba, that Aboriginal people and organisations are best placed to provide early intervention programs and to support the voice of Aboriginal people in the care and protection sector.

I also will say that I am not speaking purely from Danila Dilba Health Service perspective here. Along with some other people, on behalf of AMSANT last year, I conducted some extensive consultations around the Northern Territory on a number of matters related to child protection. We visited Milingimbi, Galiwinku, Nhulunbuy, Tennant Creek, Katherine, Alice Springs and Darwin and spoke directly to a lot of community people and service providers about their views on child protection and the involvement of families. We published a report which I am happy to table for the committee's benefit, which might add another layer to the committee's work.

We support the tabled amendments to the *Care and Protection of Children Act*. You would see that from our prepared submission. We note that they reflect the key recommendations of the royal commission, well some of them. It is a step towards implementing the full recommendations of the royal commission. They also reflect input from stakeholders and we would like to acknowledge that we are grateful, as Danila Dilba, to have been a continuing part of the Legislative Amendments Advisory Committee, which is led by Territory Families and gives a voice to a number of organisations across the sector in developing the detail of these reforms. We think the bill is quite faithful to the work that was done in the LAAC, which is the abbreviation I will use for that committee.

We have raised some minor concerns or minor areas where we think things could be improved in our submission, but having said that, overall we are in support.

A couple of extra points we would make is that we think that at some point—and this is probably more to be carried out through the single act for child protection and youth justice that the government has committed to—that it will be important that that Act should be under pinned by certain, very important principles for child protection, including that the best interest of the child must always be paramount—not just important but paramount.

Also that the child or young person's family—and I use 'family' in a fairly broad sense, their extended family, the people who have cultural authority over that child—should participate in making decisions about what happens for that child. Any interventions must be the least intrusive in the child's life as possible but still consistent with the child's best interest.

The family and extended family should have the primary role and responsibility of bringing up children. The relationships between a child and young person and their family always need to be preserved and strengthened even in challenging circumstances.

Decisions should adopt a holistic approach that considers all of the things about the child and their family—their cognitive ability, their age, their maturity and so on—and these principles should underpin youth justice which is not what is on the table today of course.

Children or young people should be supported to maintain their cultural connection and cultural identity, not removed from that and kept separate from it. Timeframes should be appropriate for the young person or child's sense of time and children and young people have the right to special treatment and protection due to their potential vulnerability.

The last thing I would just like to touch on is the importance of kinship care. So although this bill does support kinship care, obviously we would like to see a stronger approach to kinship care and the importance of kinship care. Our performance against the child placement principle is quite poor in relation to kinship care.

Specifically we will be looking either here or in the longer run for provisions that ensure that Territory Families must always ensure that all efforts are made to engage family and extended family as possible carers for any aboriginal child before children are removed or before they are placed.

The CEO must be able to satisfy himself or herself that that work has been done before approving placements and ways forward for children. Finally, we also need to be sure that appropriate support has been offered to potential kinship carers to make it easy for them to take on that role, rather than difficult. If you have a chance to review the report that we have distributed—there was quite a lot of feedback from kinship carers and potential kinship carers about some of the barriers they have faced and the challenges that they have in taking on that role.

I think that is all for my opening statement, I am happy to answer any questions.

Mr CHAIR: We have a few questions but you have already answered some of that stuff in your opening statement. One thing that has come up through your submission is your recommendation that section 74 be further amended to include a substantial change in the living arrangements of the person caring for the child as a trigger for review of the care plan. Can you please expand on that important change and why it should include a special trigger for the care plan review?

Ms McLAUGHLIN: Sorry, I will take a moment to check where I am at. It is simply because the decision on where to place the child is made based on the life and circumstances of the carer at that point in time. The absence of a requirement to review, if there is a substantial change in that living arrangement, could place children at risk or in a worse situation. For example, if the family was to move to a different location that was less amenable to keeping the child in contact with his or her family, if the family's income or work arrangements were to suffer some dramatic downturn, that might affect the child.

People might come in or out of the household who may be beneficial or not to the child. So, we think it would be wise, in the interest of the child, to always be ready to review those kinds of changes to see that it was still a suitable and safe placement.

Mr CHAIR: Yes, great. In your submission you spoke a bit about being an advocate for Aboriginal community-controlled organisation to be given the opportunity to take a greater role in the provision of services to provide support for Aboriginal children and their families. How do you envisage that being implemented? What would that look like?

Ms McLAUGHLIN: That is quite a big question.

Mr CHAIR: We have done it with a lot of health services across the Territory.

Ms McLAUGHLIN: Yes. If you look at the Aboriginal community-controlled health services, for example, it has taken us more than 40 years to get to where we are with Aboriginal community-controlled health services from Redfern in about 1973 to where we are now.

I guess there are a few ways to do it. Government really needs subsection (1) to commit to the idea that we should be moving to a system of Aboriginal-controlled organisations in out-of-home care and child protection, and implement policies that support that to happen.

If I look at what happens now, it is very difficult for a new organisation to break in to the child protection and out-of-home care space. There are big contracts in place. Many of the services are big and complicated, so they are difficult for a brand new organisation to take on.

If we go back a few years, we tried the Safe-T model in the Territory and that was not a great success for a number of complex reasons. Some of that, though, was about failure of government—this is my opinion—to back up that one organisation with capacity building, supports and a clear role. There were challenges and we could learn from that.

I would probably go for building it from the ground up. If you look at the out-of-home care strategy that SNAPE and APONT wrote for government—I do not know if they are public documents yet, so I should not speak too much about them. On both sides of that, SNAPE and APONT were advocating for building capacity from small organisations from the ground up. But government has to facilitate that and recognise that that stuff is not free. You cannot build an organisation with no resources and support. You need to resource it, allow it to happen and also put in place policies that cause the big NGOs that are currently in the sector to start moving towards genuine partnerships to build the capacity of Aboriginal organisations locally.

Mr CHAIR: Great. All right. This came up earlier as well with other services presenting today. In your submission you comment that mandated family group conferencing mechanisms are the appropriate way to pursue family and community-led decision making in relation to the care and protection processes. Can you expand on that as well and how you see that working?

Ms McLAUGHLIN: We were initially guided by the models adopted in New Zealand, across both child protection and youth justice for family group conferencing.

At a principal level, we believe that families should be involved in a meaningful way in important decisions about their children. Family group conferencing is a mechanism to achieve that. We say it should be mandated simply because, although the capacity exists in the existing legislation for forms of conferencing, it is not common for those to happen. We think you need to mandate it in order to ensure that government does it and resources it.

Mrs FINOCCHIARO: Why do you think it does not happen, if there is the capacity?

Ms McLAUGHLIN: I probably could not comment because I do not work in child protection on the ground. I could reflect on some comments people made in our consultations, where people suggested that often, particularly where there are not many local workers from child protection, the child protection workers do not know who to engage with. There are some challenges on knowing who to engage with in family. There is a lot of advice in our report on what people said about how to address that and how to make that work a bit better.

Child protection workers in the system are very over-worked; people are under a lot of pressure. It takes a lot of time to put together family group conferences. Being the legislation is one thing, but someone being resourced and empowered as the public servant or the non-government person to make it happen is quite different.

I guess family group conferences could be quite a big, complex thing. If you look at some of the video of the stuff they do in New Zealand in youth justice, which is quite a big process, there are a lot of people there and they are very effective with youth in that setting.

If you are making small decisions about a child, maybe the family group conference is a less formal kind of process, with the parents and the child protection. But if you are at the point of actually saying we are going

to want to remove this child and place them in foster care, you might need more family, and cultural authority figures from the child's own community. The parents might want their lawyer there and other people, for example teachers.

The idea is to bring together the people who know the child, who have an interest in the child and have some authority for the child, to all come together with what could be a plan for this child for his or her wellbeing. That needs to have some authority, the outcomes of those conferences needs to have some weight. It cannot be something you do and then you can ignore it. You have to have taken notice of the plans and suggestions.

Mrs FINOCCHIARO: Referring to your submission of section 42, I have been thinking this myself, just because something is in the bill it does not necessarily mean it transpires or happens in the way that you want it to.

In the submission from Danila Dilba it says that, when we are talking about section 42(3):

> *(3) the CEO must take reasonable steps to ensure that the services provided under this Act include, where appropriate:*
>
> *(a) preventative and support services to strengthen and support families …*

Your submission says that there should be greater onus to actually provide that support. I want to better understand reasonable steps is obviously one threshold, I take it that I am correct, Danila Dilba are advocating for a higher threshold, more than just reasonable steps.

In practice, is that a legislative issue or is it more of an issue with how the department operates? If it is in the law, that is the law. Do you understand what I am saying?

Ms McLAUGHLIN: I do. I would prefer to see the higher threshold in the law, because then it gives families, advocates, and organisations a much stronger basis to come back to ministers and the department to say, 'You are not fulfilling the requirements of your own legislation'.

Mrs FINOCCHIARO: I guess in my mind I think about why that is not happening already.

Ms McLAUGHLIN: Perhaps that is a question for government to answer later today.

My feeling would be that it is about the sheer number of children and the levels of resourcing. The budget is very tight generally, so the capacity to fund organisations to provide the services you might want to refer the family to is quite tight.

Mr CHAIR: Yes, and fairly complex.

Mrs FINOCCHIARO: Or even it is fine if you are sitting in Darwin, but if you are in a very remote area, how do you deliver the …

Ms McLAUGHLIN: Yes, and that requires some creative solutions. But those solutions exist and that is what we found when we sat with people in communities—some remote and some not—last year. If you can be quiet and let people talk to you, the people in those communities know—they have a lot of plans and ideas and a lot of capacity for service delivery. But someone needs to hear what community people are saying, because the solutions to how you provide services are not the same in Milingimbi as they are in Tennant Creek.

There is a lot of existing capacity. Many people would be as bit surprised to see how good the capacity is and how committed people are. You can do it. It does not need to be a $1m service in every location. There are more creative ways of looking at that problem.

Mr CHAIR: Yes.

Mr COSTA: More innovation as well in the community.

Ms McLAUGHLIN: And people out there have plenty of innovation in their heads. You guys know this. You get out on community.

Mr COSTA: Yes, I agree.

Mrs WORDEN: I have one question. It is a bit similar, but specifically in the area. I note some of your comments—I think in your opening statement, Joy, you said you would like to see all efforts made by the CEO to place a child with family before—and I picked up on the word 'removal'. Obviously, it is a very contentious area because there is risk that if you do not remove a child quickly where there is harm, you will inflict more harm.

I can tell you there is massive support for kinship carers, from the government's perspective. Obviously, we know it is a model that works. How do you propose that that can practically—picking up that is the flow-on from the question just asked. Once you legislate something then somebody not doing that breaks the law.

In fact, if we then put into legislation that all efforts must be made before the removal of the child, do you not agree that would put the department, or the CEO particularly, in a very precarious position? If they do not do that and then the early removal of the child, if you like, would be in the best interest of the child—how do you propose that would be resolved? From my perspective, putting that into legislation before 'removal'—when we say the word 'removal' in legislation that does not mean permanent removal, that means just simply removal from harm at that point in time?

I am questioning that. I wrote it as you said it. If we look back in *Hansard*, it says, 'all efforts be made by the CEO to place with family before removal'. Could you explain a little more how that would work?

Ms McLAUGHLIN: First, I might clarify that because often when you are speaking rather than writing, language is a little looser.

Mrs WORDEN: Exactly, which is why I thought we would …

Ms McLAUGHLIN: Going back to that principle, we propose that the interest of the child must be paramount. We obviously do not object to a child being removed to safety in an emergency situation. Clearly, if a child is at imminent risk, somebody must take some quick action.

I guess we are talking about a couple of points in the process. Many children who are removed, are removed due to neglect. There has been involvement prior to a point at which someone needs to make a decision.

There has been involvement with the family and with Territory Families, so what we would like to see is all of those options around kinship and who the kin for this child is, and who has capacity with this child to be explored before the point of an emergency removal.

I am not talking about that really immediate danger where you know something is likely to happen to that child. But also, and possibly more importantly, before the point at which decisions about the ongoing care of the child are made all of these things must have been explored.

Mrs WORDEN: So you would agree that legislation that simply says 'or must be' would be too restrictive, that there must be caveats on that where the interest of the child must be paramount—only in an emergency situation, et cetera—and that those things should be fleshed out more?

Ms McLAUGHLIN: Yes, but beyond emergency situations, we think these processes should be undertaken and if—I guess part of a whole bigger picture—if we have worked towards more Aboriginal community-controlled input—and I am talking about Aboriginal children here—if Territory Families and other people working in the sector have a better knowledge of the cultural authorities in community of who they need to talk to so that they can understand the kinship structure for each child, then you can undertake these steps much more quickly than if you are starting from a standing start where you do not know very much about the child and you do not who to talk to. You can speed up this process of identifying kin potentially for the child as we improve our practices.

Mrs WORDEN: Would you agree then that we have to be very careful about how we put this in legislation?

Ms McLAUGHLIN: Yes.

Mrs WORDEN: However, some of the processes which would sit within the department could underpin that outcome better than perhaps legislating for it at the moment, which I think would increase risk significant to the CEO. I think it is a bit of a no-win if you start legislating something so restrictive at this point that the department could do better. I mean it is something that we can talk about with them later to make sure that the processes support what you are talking about.

Ms McLAUGHLIN: I encourage you to do that, but we do think it is so important that ultimately it needs to be in legislation because we are simply performing so poorly against the Aboriginal child placement principle in the Territory.

Mrs FINOCCHIARO: And presumably Territory Families—often if it a case of where a family has had multiple notifications then that work could be done parallel, well in advance of any pointy end decision about removal.

Ms McLAUGHLIN: I think that is what I was trying to say, but just not quite so articulate. Absolutely, so you would be well placed to already know who might be the right support …

Mrs FINOCCHIARO: Know who everyone is and if something arose.

Mr COSTA: What you are saying is maybe take it back to the locals (inaudible) in the communities …

Ms McLAUGHLIN: Yes.

Mr COSTA: … where it is more culturally appropriate—because they know the system, the kinship and all that stuff, and let them decide or talk further.

Ms McLAUGHLIN: You could go all the way to delegating that decision straight to an appropriate cultural authority in the community or you could go to having a strong voice through a family group conference. I so not feel well equipped to be the person to say which it should be.

Mr COSTA: I know in our case on Tiwi we have four skin groups, and those leaders of the skin groups actually talk on all these issues. Whereas, where old man is from is different again—one size does not fit all.

Ms McLAUGHLIN: That is right, and Tennant Creek area has a different cultural authority group. What I found interesting in our consultations was that every place that we visited, people described cultural authority structures that existed in each of those places. They know what it is, you know what yours are, people know. It is just a matter of going out and finding out, and knowing who you should be dealing with.

My only caution about totally making the decision at community level is that—as I said, it is not really for me to say too much about it—it puts a lot of risk on to the community and takes some risk away from the government. Personally, I would rather see more shared so that the community does not bear all the risk for if something goes wrong—'Well, it was your fault.'

Mr COSTA: Yes.

Ms McLAUGHLIN: Other people will have different opinions on that.

Mr CHAIR: All right. Joy and Jackson, thank you for coming in today and appearing before the committee. Thank you for answering our questions. We will be in touch if we have any more, thank you.

Ms McLAUGHLIN: We are happy to provide any further information the committee might need.

The committee suspended.

Northern Territory Legal Aid Commission

Mr CHAIR: Thank you, Jaquie, for appearing before the committee today.

Ms PALAVRA: Thank you for inviting me.

Mr CHAIR: I will introduce the committee. We have Lia Finocchiaro, the Member for Spillett; Kate Worden, the Member for Sanderson; Lawrence Costa, the Member for Arafura; and Mark Guyula, the Member for Nhulunbuy.

Thank you for coming to the public hearing into the Care and Protection of Children Amendment Bill 2019. We welcome you to give evidence today. We appreciate you taking the time to speak to the committee, and we look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time, Jaquie, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Jaquie, could you please state your name and the capacity in which you are appearing today. We welcome an opening statement from you.

Ms PALAVRA: Thank you and good morning. Jaquie Palavra is my name. I am the Managing Solicitor in the Family Law Section at the Northern Territory Legal Aid Commission.

We provide assistance and legal representation to families that are involved in the child protection system. Our clients include both Aboriginal and non-Aboriginal clients. Unlike NAAJA and some of the other agencies, we have that mix of different families.

By way of background, I am a solicitor and have been working in this area for many years—family law, child protection and family violence. I have worked in three different jurisdictions—New South Wales, Queensland and the Northern Territory. In my capacity as a lawyer, I also represent the best interests of children in family law proceedings. I have represented the best interests of children in child protection proceedings in Queensland. I come from a unique perspective of providing assistance to families and children involved in the system.

Having the benefit, I suppose, of the three different systems across the three different jurisdictions, I have taken a very keen interest in providing some input and submissions to the bill and other proposed amendments. You have probably seen from some of our submissions, we have addressed some issues that were not contained in the bill—some ambit claims that we would like to pursue during the later stages of the other amendments.

By way of introduction, thank you again for inviting us to provide further evidence and submissions. The Northern Territory Legal Aid is largely supportive of the proposed reforms and consider they are significant in working towards implementing some of the key royal commission recommendations.

We are particularly pleased with the focus on the early intervention and strengthening of sections relating to Territory Families' obligations to preserve and promote the relationship between children and their families, including extended families and connection to culture, community and country; particularly in the Northern Territory.

In respect of some of the key reforms we support, the proposed amendments to sections 8, 10 and 10A, in our submission, send a very strong message to Territory Families to focus on keeping children with their family wherever possible and to do what is necessary to keep them safe. These principles promote greater accountability and transparency of Territory Families and guide their actions.

The overriding consideration continues to remain the best interests of the child, to ensure that these principles are treated as an ancillary concern so children are kept safe from abuse and neglect.

We strongly support children's participation and the better use of care plans. The increase of children's participation in proceedings complies with Australia's obligations under the United Nation's Convention on the Rights of Children and will encourage the legal representatives acting for children to turn their minds to people who have played a significant role in a child's care, welfare and development, including outside their immediate family, and how best to ensure their support for children during proceedings.

That is of particular relevance, in my view, because we have many situations where, unfortunately, parents—certainly in legal proceedings—do not participate in the legal process. Oftentimes what you will have, particularly in Alice Springs, is only the CEO being represented in proceedings, so clearly the CEO is required to consider the best interests of the children and promote those best interests as well as ensuring that they are protected from harm.

Unfortunately we do not consider that there are appropriate checks and balances in place if you only really have just one party to those proceedings and that is the CEO. Even though a child is a party to the proceedings and is noted in the application, often times the court will not make an order for a child representative to be appointed.

So you do not have anyone, even though the CEO will argue that they represent the best interest of the children—but being the only party to the proceedings there are really no checks and balances in place to ensure that all the relevant evidence is before the court and perhaps some of the evidence that has been provided by Territory Families has been counted or tested—or further evidence that is relevant is before the court.

A number of the amendments, relating to the care of a child and designed to encourage a meaningful participation and clear parameters for reunification, are highly beneficial. We commend the Northern Territory Government for entrenching this practice into the legislation, making it incumbent upon Territory Families to prepare and file a care plan contemporaneously with their application, or alternatively 21 days after the application is made.

The desired effect being to prioritise the sourcing of an appropriate placement arrangement, even if it is only a temporary placement arrangement—because sometimes what you will find, particularly in court proceedings, is that temporary placement arrangement may continue over many months, if not 12 months or more, until the court proceedings are finalised and a final child protection order is made or the application is dismissed.

Looking at determining what the care and protection concerns are and what the needs of the children are—what support the children can receive while they are in either temporary care or permanent care - is really vital.

A care plan would also provide greater comfort to families because it allows them to know what is happening, what plans are being made for their child or children, and assists the parents in gaining some more insight into what their children's needs are and improving their parenting capacity to address those needs.

Representing many parents as we do—oftentimes in a state of crisis, suffering trauma and being faced with court documents that have been filed in a language which is totally foreign to them, not understanding what the care and protection concerns are or what they need to do to improve their parenting capacity and address those concerns. It is a significant hurdle for a lot of these parents and family members.

From a litigation perspective—unfortunately we have an adversarial system and, as a Territory, we need to be working on and moving more towards a therapeutic model. One thing that we struggled with as practitioners representing families is this issue of procedural fairness.

So we welcome some of those amendments that the government is proposing to those provisions of the Act. Particularly in circumstances where in a public area of law such as this the gravity of the government's intervention in a family is quite significant.

We also welcome the least intrusive principle for when a court is required to make an order and the CEO making an application. It is certainly a well-established principle in other jurisdictions and more recently in our case law, we do have an important recent decision of Justice Hiley, being *BJW v EWC & Ors* [2018] NTSC 47 that does consider this principle of least intrusive orders and Territory Families seeking short-term orders wherever possible.

It was a case that involved a child who was placed with a family member, but that child also had other much younger siblings who were in the care of their mother. In that application, in the original proceedings, Territory Families had applied for a long-term order until the child turned 18 years.

That case looked at, for example, things like their desirability of the least intrusive order, shorter-term orders wherever possible and the importance of that sibling relationship, which is often very important. Certainly, in circumstances where there needs to be an order, we need to always be mindful of a child's need not only to be connected to, for example, immediate caregivers or extended family, but also siblings who may no longer form part of that child's family unit. The case is also a relevant one in relation to the importance of care plans and care plans being done early at the point of application for an order.

The other things that we are very supportive of, are some of the directions to be made in protection orders. What we have experienced as a legal assistance service, is the court's difficulty in making any orders, even

temporary or short-term orders, for children to have contact with their family, particularly when interim daily care and control orders are being made while proceedings are still underfoot and moving towards final resolution. We often find there being some pushback from Territory Families in committing to certain contact arrangements during interim orders.

Oftentimes we have seen, because of resourcing issues and the time constraints and pressures, which are acknowledged on Territory Families, that they are limited in how much contact they can provide a child with their family. That can be quite significant where both children and families are grieving over the removal of a child. Parents themselves, or family members, may also be experiencing other significant pressures like losing housing and financial assistance. It is a downward spiral for them to then not also be able to maintain some regular contact with their children and is really difficult.

I can certainly understand the rationales, sometimes, of Territory Families because they have had to remove or felt compelled to remove children because they consider that they have been harmed or are at risk of harm. But irrespective, what you are finding is that there is collateral trauma or damage that is being inflicted on children by losing that contact.

Some people have been their primary caregivers for example, which is extremely difficult, or lived in their wider community from where they have been removed and placed in a really foreign environment and away from their communities; sometimes not even speaking the language of the environment they have been moved to.

That contact is absolutely vital, which is why we say these directions being proposed to section 123 placing a positive obligation on the CEO to, for example, facilitate more regular contact, is going to be really important.

Some of the other proposed changes to the bill that we would suggest, and you have heard from my colleague this morning, Mr Goldflam, are about foster carers participating in proceedings as a matter of course. I was fortunate to listen to some of his submissions. I have also read part of Territory Families response to the submissions.

If I could clarify, first of all there is no definition of '*carer'* in the Act. It could be anyone from an informal kinship carer to a formal foster carer. You have heard some evidence this morning about why some submitters have indicated it is probably not a good idea to serve them with the lengthy court documents. We have seen, in our experience, that some foster carers or carers become long-term carers. They could be either family carers, kinship carers or they could be professional foster carers.

You have a wide range of who that carer may very well be. While they play a crucial role in the care of children, they do not necessarily need to play a role in the forensic aspect of an application for a protection order unless they have a significant interest in wanting to remain a carer for the child; in which case they have the option of potentially intervening in the original application.

There are some secrecy provisions in the Care and Protection of Children Act that would cause some difficulty in providing carers with certain documents, particularly some of the evidence and material that is contained in court documents which, in my submission, would not assist the children nor the process if the carers were privy to it. That is not to say that carers should not be made aware that proceedings are afoot and what the nature of the application is, but that can be done in different ways without the need to actually provide them with copies of the court documents.

I think I heard Mr Goldflam indicate that if a party is served with an application for a child protection order that they may be a party. That is not the case unless they have actually been listed as a party to the proceedings. If they wanted to be a party and they are not named on the application as a party, then they would have to make an application to intervene in the proceedings which some foster carers have done.

I think there has been a recent decision before Judge Armitage, where foster carers intervened in the proceedings and applied for the child to remain in their care. That will be published, if it has not been already, on the Local Court's website.

I am just wondering whether you had any other questions in relation to the serving of foster carers or carers with court documents or applications.

Mrs WORDEN: I did ask that question earlier and it did worry me, but I guess not having a legal background—obviously my colleague Lia does—it is those sorts of things that we need to make sure of. I am really grateful

for your clarification because that question had come up around the serving of a document and whether that actually binds one.

That is an important question for today, but that only resolves 104; there are some ongoing questions in 125 that we need the same clarity around not just the service but whether those provisions actually do—it is just a matter of how much information the carer would then get. I agree with you; I think a carer needs to know that those things are afoot. In fact it would be a denial of any natural justice completely if they did not.

Ms PALAVRA: We have often had feedback from carers that they have been left completely in the dark, they are not told things by Territory Families and it does make it difficult for them to provide care for the children without knowing what is actually happening in the child's life. Children may be having contact with their families and carers are not really aware of what the children know or are exposed to, so it is really important that they have that information.

I suppose a good way for foster carers to have that information is, for example, to be provided with a copy of the care plan and to be consulted about the design for the care plan. What I find is really lacking in this jurisdiction, which is very important in other jurisdictions, is a holistic assessment of the family which should include foster carers.

Other jurisdictions have children's clinics or clinicians—social science professionals who will prepare a report to the court setting out or mapping out what the family situation is, and that includes interviewing family members and children, doing parenting assessments, cognitive assessments and speaking to foster carers. Queensland, for example, have provisions for the preparation of social assessment reports. You will have a social science professional, before an order is made, preparing a report for the court that will speak to Territory Families, the foster carers and the children; observe children with their family members; consider the documentation; and consider even some of the notifications and things on the departmental file.

In other jurisdictions there is an obligation on Territory Families to provide full and frank disclosure of the evidence, of all the material they are relying on. In some jurisdictions, they actually need to provide all their documents, whereas here we do not have that system and we are reliant on the use of summonses, which are often opposed by Territory Families. Getting the necessary evidence before these report writers, who assess that family, is really important and then before the court.

There are ways that the input of foster carers can be maximised. I found that very worthwhile, because they feel like they have a voice and they are an important source of information about how the children are progressing in care. Oftentimes I have found a lot of the foster carers are supportive of reunification or return of children back to family. Some of them will actually work with family members to transition a child from care back to their families.

I have had wonderful situations where courts have been creative around the reunification plans, where you have a slow return of children and modelling of really good parenting by a foster carer, with family members and primary caregivers. We need to get creative about how these things are done. Carers are invaluable, but to provide them with some of the material that may not have been tested, may be inflammatory or incorrect, or find their way in some of the court documents, would not suit that purpose. They will not be assisted by that.

Some of the other things that I would like to further submit—there are ongoing improvements we would recommend be made to the Act, which have not currently made it in this Bill. You have probably seen from my submission that there is that catch-all construct in a couple of sections of the Act that require the CEO to consider, when making an application for a child protection order, looking at whether or not a child is in need of protection or would have been in need of protection but for the fact that the child is in the CEO's care - and a consideration also for the court.

That provision troubles me. I have made reference to the only similar provision around the country which finds its way in the NSW Act. It troubles me because there may be circumstances where a child may find their way into the care of the CEO but the child may not necessarily have been in need of care and protection or is no longer in need of care and protection, and it may well be that the order is not appropriate.

The way this provision is designed seems to give a lot more latitude to an order or application being made. Some of the examples I am referring to—where temporary protection orders may have been made without involvement of the family with very limited evidence before the court. As you have seen from my submissions, there are no appeal rights from the Temporary Protection Order now to a higher court. That is troubling of

and in itself because of the rules of natural justice and the length of the orders that can be made—14 days for a Temporary Protection Order plus a further extension of that to another 14 days, so that is 28 days.

In circumstances where parents or family members may not be aware that this order has been made and there is no other evidence before the court, it may well be that the evidence that has been put before the court was limited. Perhaps Territory Families had very limited evidence itself or incorrect evidence, which was the grounds for the making of the application. Later, with a bit more scrutiny or an opportunity for further evidence to be placed before the Court, perhaps that order was not necessary in the first place.

That is something that troubles me. I see Territory Families have acknowledged that in their submission and is requiring better scrutiny and further submissions to be made about that. It is just something that would be important, particularly because ex-parte orders are made in this jurisdiction, often times where the only party represented is the CEO, as I have referred to previously. It is something we need to be mindful of.

I talked about appeals from Temporary Protection Orders. As a rule of natural justice and given how serious the nature of these proceedings are, there need to be rights of appeal. Queensland, for example, has rights of appeal where a three-day temporary protection order is made. If we have a situation where an order can be made for a whole month, and there is no other right of review or repeal, that is a serious natural justice issue for us.

The only other thing I'd comment on is the other submissions that have been made. NAAJA touched upon NTCAT and the reviews of administrative decisions. The Northern Territory Legal Aid Commission made some submissions about that. I see that is being considered by Territory Families, which may form part of the later reforms. I recommend that be pursued because from my practice in Queensland, where there is a way to review administrative decisions made by the department, which can range from, for example, whether or not somebody is a foster carer, or where a child is placed, to what contact a family member can have with their child. There are a range of decisions that, in my view, should be reviewable. Again, it is a natural justice issue for the Territory and something that will be very important for this government to consider in the not-too-distant future.

The other thing I will mention is the lack of mediation in this jurisdiction. There has been a bit of conflation between family-led decision-making compared to mediation—court-ordered mediation or CEO-initiated mediation which are the two sections in the current child protection Act. The two are similar but they are not the same thing. That is something we need to be very mindful of—family-led decision making, also known as family group conferencing, is about getting family and Territory Families together to brainstorm and look at different ways that the child protection issues can be addressed and what may be the way forward in getting buy-in and empowering the families to problem-solve.

Mediation is different because it imports that there has been some sort of dispute or disagreement about what is considered to be necessary as a way forward for a child or children; looking at a way of resolving that dispute between the family and Territory Families. Currently, our *Care and Protection of Children Act* has enabling regulations for CEO-initiated mediations before proceedings have commenced, but we do not have enabling regulations for the court-order mediations—for a court to order the parties to go to mediation.

The current practice is informal case assessment conferences between the CEO, the parties and maybe their lawyers, which is not chaired by anybody and is really borne out of a desire for a way forward to try to resolve the matter without then proceeding to a judicial determination. They work well, but they are not what is embodied in the Act.

Again, drawing from my experience in Queensland, that Act has court-ordered mediations, which are enabled. A matter cannot proceed to a final hearing unless the parties have gone to mediation. They have been extremely successful and tend to resolve more than 70% of the disputes.

Having someone independent, that was embedded in the Department of Justice, who was mediating them, was effective. It meant you had the independent person, your family members, their legal representatives, Territory Families equivalent and sometimes even the child reps who were involved, dealing with the child protection issues and concerns and then looking at what evidence there was to support the application that was before the court; testing some of that, while you were in the same room looking at them and trying to problem-solve some of those issues - was very effective and often ended up with some consent orders that were then filed in court.

Mr CHAIR: I had a list of questions, but you answered them. On behalf of the committee, thank you. If we have any follow-up, we will be in contact with you.

Ms PALAVRA: Thank you.

The committee suspended.

Rose Lanybalanyba

Mr CHAIR: On behalf of the committee, Rose, thank you for coming today and appearing before the committee. I will introduce the committee. We have Ms Lia Finocchiaro, the Member for Spillett; Ms Kate Worden, the Member for Sanderson; Mr Lawrence Costa, the Member for Arafura; Mr Mark Guyula, the Member for Nhulunbuy; and me, of course, Tony Sievers.

Welcome today to the public hearing into the Care and Protection of Children Amendment Bill 2019. We welcome you to the table to give your story and evidence. On behalf of the committee, we thank you and appreciate you taking the time to speak to the committee, and we look forward to hearing your story today.

Rose, this is a public hearing which is being webcast through the Assembly's website. A transcript will be made for the use of the committee and we may put the transcript on the committee's website as well.

If at any time during the hearing you are concerned that what you will say should not be made public, you can ask the committee to go into a closed session and talk in private.

If you want to communicate through Mr Guyula, then you can in language. Yes, we are happy to support that as well.

Rose, could you please state your full name and the capacity in which you are appearing today. Then you can make an opening statement or go into your story straightaway, Rose. Thank you.

Ms LANYBALANYBA: Thank you for your welcome. My name is Rose Lanybalanyba and I have been working as an interpreter for 18 years, meeting all of the people from Territory Families, going out through the courts, and visiting the community and talking to lots of people about what I have experienced. I will be talking more about my experience.

Mr CHAIR: Yes, go ahead.

Ms LANYBALANYBA: What I have experienced is that some of what I have seen has been putting us in a tough situation and we have been trying—I have tried to interpret to many people. I have seen lots of my people back in the Top End were a bit hurt because the children were taken away to some other foster parents rather than back into the community—but taken away to somewhere interstate or in Darwin. That made life for all Yolngu a little complicated; it was a tough situation.

I tried my best interpreting and consulting the other Mala leaders, which are the Yolngu authority, trying to find a solution to be able to sit down and give more understanding to the government and Territory Families. We need to be able to sit down and explain our Yolngu way of law.

We only sat down once at the community with these people, talking about Yolngu law that goes around in cycles—these children who have been taken away come from a very large immediate family. Families can be residing at other communities as well. We were never given a chance to be able to sit down, talk and explain that these children can go across to this other community and be with other family, like Märi and Momu (maternal and paternal grandmother).

We are trying to fix that back in the olden days, in Yolngu system, from our Yolngu way of perspective. A lot of us children that are grown up today were raised by our grandmother, if mum or dad was sick, and if there was a family they could send us away to other families in other communities. We would stay there and come back when we are grown up.

Extended family was never really involved when we were visited by the Territory Families and many more, taking the children away, because they were not consulting the Yolngu authority, Yolngu law, because within Yolngu you need to be able to consult the Mala leader in both areas, both paternal and maternal. That has not been happening.

It is good, but we had a few people coming in through the clinic—we had teleconferencing, big conferences were held. I have been there all the time as an interpreter. We tried to mediate, and we tried to say that we respected your law. We have seen many issues that has been happening within the community, but it was complicated for all of us to put through Yolngu law. That has not been recognised; it is not in the list. There could be all this law, but no Yolngu authority. We are urging that to be there and to be recognised.

We need to consult the senior cultural authorities, share the authority, talk together and try to find the best option, rather than sending our children interstate or many other places, like long-way country. Some of our children have been taken to Groote Eylandt and many other communities, like Sydney, Adelaide or whatever.

We want our children to stay back in the community, a lot of our children are missing funerals. They do not know that their grandmother or grandfather is passing away, they do not attend the funeral and they have been kept away from us.

We do not want this to happen again, we do not want this to go on. We need to understand each other and keep the people together. As I said, there is not one law over the top of the other. Our law has not been recognised. We have been trying our best, pushing and encouraging people, we have been working through it.

It has not been recognised. We want that to be recognised, we need to sit together and law and accept that. That is what we want, we do not want our children to be scattered. We want them to stay there to learn cultural activities, the law and the language. We do not want our children to lose their culture.

I think there was five children months ago—they have lost their mother and we tried to ask Territory Families—they have been away for a couple of years their aunty passed away, and they are not even there.

We feel so remorseful, we worry about them, with the children being away we cry. We are Yolngu people who want to try and let the government to recognise our law. It is not something bad; we just need to be there to be looked at and recognised.

Mrs WORDEN: Rose, do you mind if I ask you a question while you are talking?

Ms LANYBALANYBA: Yes, sure.

Mrs WORDEN: Do you think there are any situations at all where you think that children would need to be taken out of the community even if it is just for a short amount of time? I am not asking this question with an answer in mind; I am asking your opinion because you have a lot of experience in this area. Are there any circumstances—and we do not need to know the details of those circumstances—where you feel that, even just for just short amount of time, it might be in their best interest to leave the community?

Ms LANYBALANYBA: I think Larrakia country in Darwin is closer and more comfortable for everyone. The children can be taken here, just closer where family can come and see them. Rather than sending them away to a long-way country this might be a better place for each family to come maybe for a short while to see them and go back.

Mrs WORDEN: Even just as a pressure release.

Ms LANYBALANYBA: Exactly. So it has been a lot of struggle for all of us. We have tried our best talking to people who have come to visit each community and our MLA, Mr Guyula, knows that a few of us have been running around like crazy, telling people, speaking out and trying to get recognition for people to be able to cooperate with our law.

We Yolngu people are capable of looking after our children these days. We can manage to take the children to school; we can manage to take our children to outstations and islands to look at the things that are in the sea or in inland systems, the bush tuckers—they may be doing a little ranger work. We are capable of doing that.

What we decided last year—if a lot of our children are lost and if there is a young mother who does not know how to manage, there is always a grandmother or an aunty closer there to take the kids and if they say, 'We don't have enough money', Yolngu law works that we can say that we lend you this $50 without paying back—'I will look after both of you.'

This has been going on for many years—the law is still there; it never changed. So we still share. We live together, look after each other and want everyone to understand the law. We are capable in many things and looking after the children.

Mr CHAIR: There has been some suggestion today throughout submissions that a more community-controlled model, like Miwatj health system—I am not sure your opinion on if that is working. That is more of an Aboriginal-controlled organisation now instead of the government system. Would that work over there? Do you think moving that way, more community-controlled or a mixture of that—how do you think that would sit?

Ms LANYBALANYBA: I saw a few things last year—I have been here for a while. Miwatj come and visit each camp, visiting young mothers. They sit down and encourage them how to cook healthy food, how to feed the children each day and teach them how to invest the money and all that, and teach them hygiene as well. So that seems to be working. There has been a little improvement, I would say.

It has been working. We are quite happy about Miwatj going around. I cannot remember—Mark's Mrs is working in the clinic—a very nice person. She sends these people who work in clinic to come and visit each camp.

Mr CHAIR: Oh, good.

Ms LANYBALANYBA: Yes. Encouraging the young mothers how to look after the children. Things are improving a little.

Mr CHAIR: That is good. Great. Lia, do you have any questions?

Mr GUYULA: (Speaking in language). Some areas in the region of Nhulunbuy, like Miwatj Health Centre, do not really understand or know about (speaking in language) people in Miwatj region. That is why it is always best to go and sit down with the people …

Ms LANYBALANYBA: Exactly. Sit down with people. It is a language communication sometimes (speaking in language). But throughout the Top End there is always one language: Djambarrpuyngu. That is a common language. Lots of people communicate with that.

When this happens, I am always there. People call me and I have to sit down and interpret, so I have been there for a couple of weeks at Nhulunbuy as well. I have spoken to Miwatj. I sat with them and I spoke to Galiwinku as well. There has been a bit of misunderstanding, but as we got together, we spoke. We had this other nice lady coming in from the communities who sat down and spoke, setting an example. Things worked out good.

Like I said, it is a little improvement. We still want that. We still need more help to be there.

Mr CHAIR: Rose, you talk about the two laws—cultural law and …

Ms LANYBALANYBA: Yes, cultural law and any foreign law work together, but also the foreign law has to understand Yolngu law. What we have is strong as well. Like I said, we are capable in looking after our kids.

The foods that are in the shop, this does not work. Lots of community go out fishing for fresh food in the sea and inland. So, we are still teaching them and we are working.

Mr CHAIR: Good. Great. Mark, do you have any questions?

Mr GUYULA: No questions, no.

Mr CHAIR: Lawrence.

Mr COSTA: It is good that we are having this discussion because I see it in my communities as well. All of us mob, our song lines and our blood line all run all throughout this country. We have to respect our culture, our law. We understand the Westminster law, but Westminster has to understand traditional Aboriginal law.

I know where Rose is coming from, because I see it in my communities. Instead of placing families in care down interstate we need to keep families here in the Territory. For example, say if someone from Tiwi Islands was mucking up or getting into trouble, we would not want to send that person down to Brisbane, Sydney or

Melbourne. We would rather send that perpetrator to say, family in Milingimbi, Galiwinku or Maningrida. At least that way, you still have that strong family connection. That is what our government, or all governments, need to understand and work with Yolngu mob and other groups to try to get that message across. We have to start somewhere.

Rose, I thank you for talking on behalf of our mob.

Ms LANYBALANYBA: Thank you.

Mrs FINOCCHIARO: Rose, in your experience, when children are removed from a family and taken interstate, is Territory Families currently providing any support or contact with the family?

Ms LANYBALANYBA: It might have been the last five years or so I have been working—things were earlier a bit complicated. We were caught in some tough situations when the family was trying their best to ask for the children to be removed from the foster parent and send them back to the other community. It was closer and they could learn. It became very hard because Yolngu is not used to looking at all the paperwork you need, to sign the paper, go to the court and talk about a lot of things. Yolngu does not understand, we are not used to that. We just need to bring our children back to where they belong.

Today we are still finding a few things are hard. I have been sitting there looking at things, as an interpreter. My job is just to interpret, not to add up. It hurt me. I thought, where can I find a person who might be able to stand up and speak? Looking back to the cultural authorities of Aboriginal people, I have visited a few communities and I said I have experience through interpreting and this is what is happening.

The people thought, is that right? We do not want that to happen, this happened many years ago and it must not happen again. We want the children to come back and learn more cultural things, the language. We cannot keep them there for a long time

Signing papers is not what Yolngu does. In Yolngu community, if the children are taken away, the parents or paternal grandfather or great-great grandfather, say I give permission to her grandmother. She takes that child away for a year and returns when the child has grown up. With this law, it becomes complicated for Yolngu people. That is where we are trying to ask the government to recognise who we are and what we are doing.

Mr GUYULA: I have experience working with children, following up where the children are. I am not sure whether it is a Territory Families policy or it is how foster parents react when children go away. They have been told not to speak language anymore. Children have spoken to us, who quietly go on the telephone and ring up their biological parents and say, 'We have been told not to speak our language anymore'.

Does that policy lie with the foster parents or the department? Our people, we especially in Arnhem Land and over this way, are multilingual. It is good they can learn another language from their foster parents but do not stop them from learning their own language or maintaining communication with parents.

Mr CHAIR: On behalf of the committee, Rose, we want to thank you for coming here today, we appreciate your input. It is a big trip for you.

Mr GUYULA: I am happy with the way it is going at the moment, we would like to work together towards community control and work together towards raising children.

Mrs WORDEN: Maybe there will be a day when we will have non-Indigenous kids placed with Indigenous families.

Mr GUYULA: Come and live with me.

Mrs WORDEN: Expansion of their minds very early will probably go a great distance in our nation in the future.

Ms LANYBALANYBA: Thank you.

The committee suspended.

Territory Families

Mr CHAIR: Welcome, everyone, to the public hearing on the Care and Protection of Children Amendment Bill 2019. I will introduce our panel. We have Ms Lia Finocchiaro, Member for Spillett, Ms Kate Worden, the Member for Sanderson, Mr Lawrence Costa, the Member for Arafura and Mr Mark Guyula, the Member for Nhulunbuy and me, of course.

I welcome to the table to give evidence to the committee Seranie Gamble, Luke Twyford, Jeanette Kerr and Joy Simpson.

Thank you for appearing before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you all today.

This is a formal proceeding of the committee, and the protection of parliamentary privilege and the obligation not to mislead the committee applies. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for the use of the committee and may be put on the committee's website also. If at any time during the hearing you are concerned that what you will say should not be made public then you may ask that the committee go into a closed session and take your evidence in private.

I ask you all to please introduce yourself and state your names and the capacity in which you are appearing here today. We are happy to hear your opening statement if you introduce yourselves first.

Ms KERR: My name is Jeanette Kerr, Deputy Chief Executive, Families and Regional Services, Territory Families.

Ms SIMPSON: My name is Joy Simpson. I am the Senior Practice Leader for the Clinical and Profession Practice Leadership Directorate in Territory Families.

Mr TWYFORD: My name is Luke Twyford. I am the Executive Director Strategy, Policy and Performance in Territory Families.

Ms GAMBLE: My name is Seranie Gamble. I am the Director of Law Reform in Territory Families.

Mr CHAIR: Thank you. Jeanette, we welcome an opening statement.

Ms KERR: Thank you, Mr Chair and committee, for providing the opportunity to talk to you about the Care and Protection of Children Amendment Bill 2019 that was introduced to the Legislative Assembly on 20 March 2019.

I would like to start by acknowledging that this public briefing is held on the land of the Larrakia people and pay my respects to the Larrakia elders past, present and emerging. I would also like to pay my respects to other Aboriginal people present here on this land today.

You have already been introduced to my colleagues and I would like to confirm we have already had the opportunity to provide written responses to the committee about the bill. We are grateful for this further opportunity to discuss the bill.

The bill marks the first legislative reform to the Care and Protection of Children Act by this government. It supports the journey to reform the system in a way that achieves better outcomes for children, young people and their families. The Northern Territory has significant demands on its child protection system as this committee no doubt knows. And this bill compliments and enables the reforms that are already underway.

This includes reforms designed to intervene earlier, improve practice and promote better outcomes for children in care. Our current reforms include enhancing early intervention and family support services; improving our response to notifications, including introducing stronger triage and service referrals in the central intake process; improving care planning and the process of transitioning from care; implementing a new child protection model of practice and integrating this with domestic violence informed practice in the care and protection field; investing in Aboriginal organisations to increase the number of families and relatives that can care for their children; and transforming the out-of-home care system through redesign procurement and governance based on a new procurement model and service design model.

Before I turn to the specifics of the bill I can provide you with the following context of the child protection system in the Northern Territory. In the financial year to 31 March 2019 Territory Families received almost 18 000 child protection reports relating to 9534 children. We have completed 4405 child protection investigations with 1156 substantiations of harm or risk of harm made in relation to 1134 children.

In response to these findings there have been 713 family support cases commenced and 201 children have come into the care of the CEO. As at 31 March 2019 there were 1080 children in out-of-home care although at the end of last month it was 1075 and it is one of the first times the number of children in care has gone down month on month or year on year.

Eighty-seven per cent of those children are Aboriginal children and more than half are in care until they reach the age of 18 years.

Just over half are in home-based or family and kin or foster care placements. This year, we have made significant advancement in children placed in kinship care households. Children in kinship care households have increased 18% and children placed with Aboriginal carers is up 13%. It has been a significant focus of our reform work.

It is within this context that this bill seeks to make amendments across a number of major areas in the care and protection system. First, the bill introduces the principle that interventions in the life of a child are to be the least intrusive and consistent with the best interests of the child.

The bill confirms the role of the CEO of Territory Families to provide or facilitate the provision of early intervention and prevention services and support to children, families and communities.

The bill also recognises the importance of maintaining a child's connection with their family and acknowledges that all children have a right to their culture and the tradition and language of their family and community.

The bill makes several amendments to improve care planning. It requires that care plans be written in plain and clear language, contain a cultural care component and where appropriate, include reunification and transitional arrangements.

These new changes are complemented by investments we have made in our workforce, in particular mobile technology to allow staff to spend more time on the ground with children and families, and a new case management system which will make it significantly easier for our staff to perform administrative tasks required to complete care planning.

The bill also recognises and articulates the rights of families to participate in the development of care plans and requires that, where appropriate, a person from the family or kinship group of the child, or an Aboriginal representative organisation, can participate in the development of care plans.

The bill also adds more explicit requirements to use interpreters.

The bill improves court orders by requiring that the court make the order which is the most appropriate and least intrusive means to safeguard the wellbeing of the child.

The bill also requires the court to consider the steps taken by the Territory to provide services to reduce any risk of harm to the child. It also permits the court to issue supervision directions to the CEO of Territory Families and any other party with parental responsibility. This could help to facilitate contact with family where appropriate, or other services and supports that are necessary for children.

The bill improves access to the legal system for vulnerable families, by requiring more effective notice of temporary protection orders to parents and personal notice for a protection order in a manner and language that is understood.

Finally, the bill formalises the transition of children and young people in care to independent living. This is done by ensuring that they are provided with the necessary supports to live independently.

Mr Chair, the bill includes a proposed commencement that is on a date fixed by the Administrator by *Gazette*. It is intended that this date be six months following passage of the bill to enable Territory Families to undertake a robust implementation process.

One final and important point to make is how much targeted consultation has occurred to develop this bill. This bill has been produced in collaboration with the Legislative Amendment Advisory Committee, the LAAC, which was created by Territory Families in March 2017.

The role of the LAAC is to assist government with the identification of legislative solutions to implement reforms to the youth justice and care and protection systems. The LAAC is a unique committee that has enabled stakeholders from outside government to work alongside cross-government representatives, and LAAC members also contributed to the design and development of this bill over the last 16 months. Several LAAC members have made submissions to the committee already in general support of the bill.

Territory Families has also run multiple workshops and information sessions for staff to contribute to the development of this bill, and additional briefings have been provided to members of the Law Society of the Northern Territory, the Secretariat of National Aboriginal and Islander Childcare, Tangentyere Council, the Fostering Kinship Care Association of the Northern Territory and broader members of the Northern Territory Council of Social Services.

Mr Chair and committee, I thank you for your time and confirm that the Territory Family representatives are here to discuss each of these areas with you and welcome any questions on the bill.

Mr CHAIR: Thank you, Jeanette. We have a number of questions to go through. I am happy for the committee members to ask those questions.

I will start. Territory Families has stated that it is not feasible to define unacceptable risk of harm within legislation, but would be supporting Territory Families staff through policy and training should this bill pass. What policies and training will be implemented to ensure consistency and understanding in the application of the term 'unacceptable risk of harm'?

Ms KERR: I might start, then refer to my colleagues. In terms of policy and training, it is clearly part of the implementation plan, but it absolutely has to be essential practice guidelines policy on definitions of what the words could mean, examples case plans, case mapping et cetera.

It is quite extensive, we have a three-week induction program for all Territory Families care and protection workers and this would be incorporated within that.

Mr TWYFORD: The change proposed by this bill is to replace the words 'no other way to safeguard the wellbeing of a child' with the words 'unacceptable risk of harm'. Generally our training already is focused on that broader discretionary decision-making that child protection workers have when they are faced with individual cases that occur throughout the Northern Territory in the child protection system.

The reason we would want a definition in policy and training is so that it can be readily changed as appropriate, as circumstances change. Social workers and other qualified child protection workers are expert in making decisions on child rearing, child safety and risk to harm and development.

In our training and policies we are able to articulate case studies where someone may be an unacceptable risk of harm but those case studies are not comprehensive and do not seek to cover the entirety of the definition. There has to be room for professional judgement. Part of Joy's role as a practice leader is to work with frontline workers on how certain situations fall or do not fall within definitions.

Ms SIMPSON: If I could add to that? Territory Families has adopted the 70:20:10 learning model. Basically what that means is we believe that 70% of the learning actually occurs from practitioners by experiencing the practice in the field and being supported. The practice leaders are based in each work unit. The 10% is what we do in the formal training room, which is what Jeanette has already spoken about.

Our real emphasis since August last year, is to focus on the 70% and 20% which is providing in-field mentoring, coaching and role modelling, from very experienced practitioners who are based in those work units.

In addition to that, we run intensive practice sessions. Where we identify these gaps in practice, the practice directorate will formulate some PowerPoint presentations and link it to a case study, then have lots of conversations with staff about how they would apply certain procedures into the work, in reference to that case study. It is hands-on. The practice leaders go out into the field and are walking alongside the families and the new and experienced workers.

Mr CHAIR: You mentioned triage. There is no standard screening tool you go through on unacceptable risk?

Mr TWYFORD: The definition that is proposed here is specifically in relation to the principles part of the act and only applies to the test or the question on removal of a child. At intake there are very clear thresholds on whether to investigate or not investigate using structured decision-making tools. They are an actuarial tool that is recognised internationally and has grown out of child protection practice over many years.

The decision and the threshold that we will, as a department, respond to a concern, is one that is strictly defined. What would flow from that then is an investigation and exploration of the child's circumstance, what is occurring within the family. This test proposed to change is one that is applied at the decision point of whether or not a removal is necessary.

It is also important to note that other jurisdictions use this terminology. By making this change we are aligning ourselves to other jurisdictions and are able to draw on their expertise, their lessons learned and their best practice models. The sharing of the common language enables that ability to draw on practitioners and expertise from those partnering jurisdictions.

Mr CHAIR: Thank you, great.

Mrs FINOCCHIARO: Can I confirm that unacceptable risk of harm will not be defined in the bill? I cannot find my note on it, but I think one of the submitters said that there was a recent Supreme Court decision detailing what unacceptable risk of harm is. Territory Families is proposing that unacceptable risk of harm will, in a sense, not be defined but there will be a guide for practitioners on what that means. Is that correct?

Ms GAMBLE: Member for Spillett, I will respond to that one. You are correct in identifying that this term has first been used and accepted in the Commonwealth case law. It actually originates from a High Court case that was exercising family law jurisdiction and has then since been interpreted as a non-binding judgment, but a term that has been adapted according to the different context across Australia.

There is a case that is applied within the Northern Territory. Building on from what Joy has identified, the emphasis on our practice reforms and best practice generally is how this adapted in a local context. There has not been an agreed need to define this from our practice leaders and stakeholders who have been heavily involved in contributing to this bill. We need guidance that is adaptable and appropriate to what we need in the Northern Territory on the ground.

Mrs FINOCCHIARO: Something that just came out today was that inconsistency on how thresholds are applied. My questioning goes to how Territory Families provides that guidance in determining what that is. One of the submitters asked whether it would include a definition or guidelines for what constitutes cumulative harm and that there had been historical inconsistencies in establishing what cumulative harm is.

Mr KERR: Sorry, Member for Spillett. The crux of the question is about inconsistency?

Mrs FINOCCHIARO: Yes, I guess. You have obviously made the decision not to crystallise a definition in law. There will be guidelines and practice direction-type material. You clearly want to build in flexibility, but also then how do you ensure that your practitioners are applying it equally?

Ms KERR: Consistently, yes, absolutely. No one individual practitioner will make a decision to remove a child. It actually goes through a process following family meetings, safety planning and planning for what will happen in the removal. That is a decision that will be undertaken in a group—probably a case conference meeting which involves managers, practice leaders and Aboriginal practice leaders in the decision.

Then, the actual assessment of unacceptable risk of harm to take a child into care would be a decision also for the courts to assess whether we have reached that threshold.

Mr TWYFOLD: I also add, every case in child protection is different. Whilst we seek a level of consistency and the same standard within our practice, when we are entering homes and inquiring into the lives and wellbeing of children, there is a great degree of individuality to each case. Therefore, it would not be appropriate to try to make a formula that clearly legally defines when something is unsafe. It requires a judgment call from professionals and a department that is working together to create that common standard, using training and procedures in case studies and reflective to inform itself around the consistency of the practice.

But to try to attempt to lock a formula into the legislation that says this is unsafe and this is not becomes very complex when you enter into the homes of the children that we receive through our notifications.

Ms SIMPSON: Can I also just add, the benefit for the practitioners to have guidance on what cumulative harm is and what to look for—cumulative harm is probably more important than having a definition of acceptable or not acceptable harm.

The process that we now go through with the implementation of signs of safety into the workplace is very much a collaborative process. We actually gather all information from all the parties involved in that young person's life, in particular what the family identifies as a support network for that young person and they are included on what we call a case mapping.

That informs Territory Families on what the actual danger is before us and also the safety goals that we need to consider. The process of the case mapping is now a new process that we have implemented to ensure that the most significant people in that child's life are around the table with Territory Families so those decisions are made with consideration of what information is being provided and in a very transparent process.

The judgement scale that we use to determine if a child has been harmed is also done in consultation with the support networks sitting around that table with us. So it is a totally different way of doing it—just going back to the cumulative harm of course that is really important for us to look at, we do look at the type, severity, frequency and pattern of harm that will not change it is just done in a more transparent process with the support network.

Mrs WORDEN: Can I just ask, would that support network include family members?

Ms SIMPSON: Absolutely. If a child is removed under provisional protection from family the next day we ask the family to bring in the support network for the child and that is nominated. The family decides who they bring in to the meeting to talk about where to from here and what some of the concerns are for Territory Families.

If the family is unable to identify members for the support network, that is when we suggest other services that may be able to support them, but what we are trying to empower families to do is identify the support network within the networks that they already have in their family and that will always remain in their family, whether than is friends, kin et cetera.

Mrs FINOCCHIARO: I think one other submitter raised a matter of lack of clarity around the definition of 'carer', so I suppose referring to clause 124 that the CEO must give to each parent and carer of a child a copy of the application and that language is replicated in the couple of other sections—104 and maybe 8—and 104A(2) says in addition the CEO may give a copy of the application with the notice if it is practical to do so. And then I think 124 says 'must'—that is at 124(1) and 124(2).

I guess the question was, was it intended that the carer of a child would receive a copy of the application and, if that is the case, how does Territory Families intend 'carer' to be defined? Does it extend to foster carer?

Ms GAMBLE: It was the intention of these amendments to create more accountability to provide notice and personal service of application to parents. The definition of carers is already contained in section 84 of the act and we are not proposing any change to that.

We have worked very closely with stakeholders including the Law Society in the development of this bill and we have taken notice of what has been raised in the submissions and today in evidence. We have had specific briefings to discuss some of those matters and we are committed to working through them and considering any amendments that may be necessary to achieve the intention of these amendments.

Mrs FINOCCHIARO: In section 84 of the current act, does carer extend to foster carer?

Ms GAMBLE: Section 78. It is not specifically defined there, but reference to carer is contained there. The connection of foster carer, kinship carer…

Mrs FINOCCHIARO: It is 'carer' in the broad sense of the word?

Ms GAMBLE: Yes.

Mrs WORDEN: There was discussion earlier about the use of the word 'carer' and that flowed to that information sharing and how important it was. In fact we have been left unsure about the intent of those sections 104A and 124.

The real point of contention is what carers are going to be or can be given, because there might need to be some clearing up of 'must' and 'may' across those two sections. Is it possible to make the information clear? There is some concern, that carers should not receive the full details of an application and we wondered whether the intent of those sections is about informing that something is afoot as against the details of what is afoot? Can you give us some assurances on that and is there a way to tighten that?

We are confused and that has flowed through from some of the parties who have put in submissions.

Mr TWYFORD: We have been looking at the written submissions the committee have received and listened today. We do take on board that language in section 124 may need to change.

Our intention in both provisions are a little different. In section 104 it is the notice of a temporary protection order being sought. At that point it would not be normal for a child to be in foster or kinship care and the use of the word 'carer' was intended to ensure we covered the basis if the TPO is taken when the child is not with someone who is defined under the act as their parent, or someone who holds parental responsibility. That is one element.

The section 124 amendment is seeking to ensure that foster and kinship carers are seen as part of the care team for the child. They are, within our system, people with the closest and longest contact with children in out-of-home care, whereas our case managers may see the child fortnightly or weekly. It is the foster or kinship carer who is with them day-to-day, takes them to school, gives them dinner, and brings them home.

It is important that they are empowered to provide the best care for those children and that often requires, as a matter of course, them knowing the child's background, their life story, their individual therapeutic needs and in fact foster and kinship carers are required, or asked, at times to meet those therapeutic needs—to drive the young person to counselling, to support them after family contact.

So there is an intent in the proposed amendments to section124 to empower the information that we do give to foster and kinship carers. To make it very clear they are part of the process to seek a new protection order, that they are aware we are going to court for what would be a second or further protection order, if the child is already in care.

What we were proposing was that they would receive the notice of the application and the application form. The concerns raised about the affidavits which might go into the background of the parents' details, we take on board; we need to think about. It was not the intent that they would receive the detailed backstory of the parents' situation.

Mrs WORDEN: To add to that, the concerns are clear. If someone is temporarily caring, their focus needs to be on the child. An affidavit, as we know, can sometimes be false and fabricated. They are the concerns coming through, some of the accusations are inaccurate and yet to be contested in the legal setting. Just because it is an application does not mean it is necessarily true. They are the concerns we need to fix.

Mr TWYFORD: We will certainly take that on board and provide advice back to government.

Mr CHAIR: Thank you. Moving on. In responding to a query regarding what consideration has been given to ensuring compliance with Aboriginal child placement principle, Territory Families has provided a list of mechanisms designed to monitor compliance, including the Children's Commissioner's monitoring activities and various reporting requirements. These mechanisms appear to provide information on whether the principle has been complied with, rather than actually ensuring compliance. What guidelines or procedures exist for ensuring that decisions made by staff comply with this principle? I have another question on that too. Luke?

Mr TWYFORD: Mr Chair, the process of placing a child into what we call a place of care—which is broadly residential care, foster care, kinship care or other types of care—is for the case manager to make a placement request form and make that application to an independent decision maker within our department who approves the placement of the child against the information detailed in the placement request form. It includes a copy of the care plan and it may include other documents that exist in our system like an essential information record detailing that child's needs and background.

That placement decision-making is really the point where the Aboriginal child placement principle is operationalised through our decision-making process. Obviously, the case manager of the child is focused on meeting the child's needs and will specify whether the child is Aboriginal or not. Through that process, the person making the placement decision will identify the most appropriate place and follow the order of priority set out in Aboriginal child placement principle as presented in our current act.

To support that work during the child protection investigation and during the case management of a child that has entered care, our staff maintain a genogram—a picture of the family kinship network. That not only helps the placement decision making, but is pre-emptive to the identification, recruitment, registration and approval of any one of those family members as a kinship carer. It is a system that is not a linear decision-making process. It is one that starts from the commencement of a child protection investigation where it is indicated that a child might come into care.

Family mapping commences, the genogram starts to be constructed, certain individuals on that genogram will be identified as the most appropriate carer, the care registration and support team will be engaged, or under the changes we implemented this year, an Aboriginal organisation has received funding and may be asked to conduct the process of finding family for that child.

Within practice, there are very clear and diverse roles amongst our department to find Aboriginal family to care for children in out-of-home care, to register them and then to enable the person charged with the placement decision-making power to have those options available.

Mr COSTA: So, there are cultural protocols and guidelines in place for all that stuff?

Mr TWYFORD: I may get Joy or Jeanette to answer the specific cultural protocols regarding kinship assessment. We are relooking at our kinship care assessment process. One thing we have done as a department recently is launch our Aboriginal cultural security framework in recognition that we can do more to be a culturally safe and competent organisation.

Ms SIMPSON: I will add to that. When the decision has been made to bring a child into care, because of the way we do things very differently now and talk to the entire support network, part of those discussions will be about determining whether anyone within that support network can identify or put their hand up to be assessed as an emergency carer.

Prior to the case management team actually submitting a placement request to the placement unit, which is a centralised unit, the work unit can assess those people who put their hands up. There is a process very early on now which we are being encouraged to use. What we are hoping through engaging support network people in the child's life is they will also be able to identify who can be assessed as carers before the child is even brought into care. If we have to bring the child into provisional protection, then it is a really quick process of getting people to be assessed within, and approved for, a 72-hour period before it goes to the placement unit for a longer assessment. That is clearly written in the cultural protocols for removal of children.

Mrs FINOCCHIARO: I am sure someone mentioned the requirement to have an Ochre Card. Could you please explain?

Ms SIMPSON: There are a couple of assessments that family members need to go through. One is they need a criminal history check and we know that can take some time. We have an understanding with police that they can provide that information quickly.

The process is that they then apply for an Ochre Card to be a longer term carer. That will not hold up the emergency placement for a 72-hour period. The longer-term process is medical, to see if they can care for the child longer-term, referee checks from two people they nominate to provide a reference. There is also a house check to make sure if they have a pool and electrical cords are not hanging down. The Ochre Card process will not hold up an emergency carer assessment being approved.

Mrs WORDEN: I would like to ask a question based on the timeline. There was comment this morning that those assessment times are taking too long. Because they are taking too long, the children who have been removed, possibly in an emergency situation, then form an attachment to the family they are placed with. Whether it is temporary care and that becomes an additional layer of trauma for those children to go back.

In your opinion, do you believe that this bill will improve assessment timelines?

Ms SIMPSON: I can talk from a practice assessment and then I will hand over to Jeanette to talk from a bill perspective.

Mrs WORDEN: Could you keep it to kinship care, rather than broadly? That is where we are receiving feedback.

Ms SIMPSON: Yes. The focus is to improve the way we do things in the placement support unit and the carer assessment unit have been redirected to focus on kinship care. In the greater Darwin region, all the placements that are identified as kinship are being prioritised. Whilst we acknowledge that historically, they have taken too long and we hear and have acknowledged the attachment issue, we have reprioritised the work. Hopefully that will definitely speed up the kinship carer assessment process.

Ms KERR: I can add, Member for Sanderson, that when it came into place that there was a recommendation that the former agency took on assessments for family and kin carers, the foster care assessment model was applied to it.

What we are undertaking, as part of transforming out-of-home care project, is a working group under that, which includes a large number of our Aboriginal staff and external stakeholders, which is the family and kinship care working group, focused on removing barriers to kinship care.

We are in the process of designing assessment that is more fit-for-purpose for kinship care and does not have the culturally inappropriate barriers in it that we do have with some of ours now, that recognises Aboriginal child rearing practises.

In addition, across the Territory, and we are yet to do restructure reform in the greater Darwin area, our workforce has gone from a silo workforce where someone will take the intake, someone will do the investigation, then it will go to strengthening families, then it might be short-term care or long-term care et cetera and the child is moved through the system.

We have integrated our teams and gone to a large number of regional and remote areas where we are working on the ground—where the staff, service, the ward or the community are Territory Families staff. If we get a notification, the same people who are doing that and working with the family doing those initial assessments and family meetings, are parallel planning and identifying potential kinship carers right up front and starting the assessment right up front. We are not waiting to the point where a child has come into care in an emergency, and then carer services think, 'Oh, we need to go'. It is a much more seamless model.

We are also finding particularly in Central Australia where it is quite progressed, that it is preventing matter escalating because we are on the ground early and doing early intervention. I hope that answers the question.

Ms GAMBLE: Through the Chair, if I could add one final point?

Mr CHAIR: Yes.

Ms GAMBLE: Bringing it back to the bill, I want to emphasise that the bill does not change anything about the approval process for carers. But by placing more emphasis on family involvement earlier, it will speed up registration processes.

It is important to emphasise a few key things and acknowledge that it does some things that have been recognised earlier this morning and through the submissions about: the way we have recognised the importance of family, culture, language and connection to country by introducing new principles to consider about determining the best interests of the child; imposing requirements that government engage with and provide information to children and families in a manner and language they understand and, for the first time, recognising in the legislation that, if necessary, that can be through the use of interpreters; improving the rights of families and Aboriginal representatives to participate and be involved in care planning process; ensuring care plans include cultural components; and make sure that children and families are given that notice provisions information in a language and manner they understand.

It has been a key focus of trying to reconcile how we can improve the way we work with families, recognise all culture as well. There are specific broad considerations around that. That is a key intent of this bill.

Mr COSTA: On the cultural component. I know you are out there all the time. Do you engage with the shires, the land councils or with other government agencies like the health clinic, the schools and all that stuff? Is there a one-stop shop you go to, and do you bring other service providers in to talk and discuss …

Mr TWYFORD: The short answer is absolutely we do. That is the expectation that child protection safeguarding the wellbeing of the children is seen as a community role. So, working with as many organisations as we can is part of our practice reform. Joy will talk to the process.

As a case study, one of the key achievements we have in kinship carer recruitment and support in the last 18 months has been the Aboriginal carers grown-up Aboriginal children grant round we run. We now have Tangentyere, Mutitjulu and Larrakia Nation as key partners in kinship carer recruitment. To reflect on those statistics, we have seen the biggest increase in kinship carer households registered this year as a part of that empowering the community organisation—which goes to your question—an increase of 31 kinship places of care in nine months, an 18% increase—the biggest increase since we have started collecting data or in any of the data we can collect. There is a significant flow-through effect of the number of Aboriginal children placed with Aboriginal carers, up from 32% 18 months ago to 38% now. It still is not near where we want it to be—we would like to see it much higher—but a significant increase, in part, because we are empowering the organisations, community groups and shires, to play a role in our system.

Mr COSTA: That is the reason why I asked that question. I hear all the time I go out into my electorate that sometimes the department will only talk to a certain mob or a certain agency. Then they say, 'Well, so and so was taken'. They came and spoke to us about that case and all that stuff. We hear it all the time in our communities. Saying it is improving, but it certainly can go a long way with that communication out there and linking those other services together.

Ms SIMPSON: We certainly acknowledge that historically we have not done that very well. But we are looking at doing that very differently, yes, and including a range of services and families in the community. Also, as Jeanette said before that in a lot of the communities, we have Aboriginal staff on the ground so they can advise us on who we need to speak to.

Mr CHAIR: Thank you.

Mrs FINOCCHIARO: I have a follow-on from that. Seranie, originally you talked about the timeframe. Do the care plans now have to be completed within 21 days or 30 days—or something. I think there is a time frame in the bill. Is that right.

Mr CHAIR: Yes, there was a timeframe of 21 days, I thought it was.

Ms GAMBLE: The changes generally to care plans come from a recognition of what is already in practice directions that are required by the court. The majority of the amendments we have made there came through working with our practitioners and stakeholders to make them workable in legislation, to essentially reflect what should be best practice.

Originally, the royal commission recommended that all care plans be filed within three weeks of the original application. We have workshopped through what that amendment means and said it should not necessarily be from the first time it is initially filed, but from within three weeks of the first mention.

There are still provisions that enable some flexibility with that, but it is backed up by an amendment to, I think it is section 130 that says that the final protection order cannot be made until a care plan is in place, which reflects the expectation of what should be occurring in practice.

Mr CHAIR: While we are on care plans, there has been some submissions about the checks and balances on them and the triggers for review of the care plans. Some have mentioned that even the carers' change of residence should trigger a review. What are your thoughts on that?

Mr TWYFORD: There are a couple of points there. I have seen that submission. If a carer was to change their residence, it would be a condition of their registration as a carer that they inform us, as a department, prior to that. We would, through our case management staff, be talking to the child and other related people to the child about the proposed move. In particular, we might have views that we would not enable that if it was an inter-jurisdictional movement or one that impacted on the schooling or healthcare needs of the young person. It would be a case-by-case decision.

If a new adult joined the house—which I saw was part of that submission—that would trigger a carer re-registration for that house to be an approved carer house. It is a distinction between what we do in the carer registration process.

With specific regard to the question about care planning, we have opportunities and options to update a care plan. That should be seen as a living document where, if an address changes or someone's mobile phone number changes, the care plan is updated as soon as possible to reflect that one thing has changed.

Our policy then says if there is a significant change to the child's circumstances, the care plan should be reviewed, or every six months, distinguishing between what is a matter that requires a care plan to be updated—which will be simply updating the content, maybe talking to one or two relevant parties about that change, and a review which is actually a legislated and practice-driven wholesale rewrite of a care plan almost. You are expected, in a review, to recontact both parents, kin and family, and talk to school and health provider and do a needs assessment.

Trying to distinguish in law between when a review is required and when an update is required is how we have landed with the bill the way it is, and why some of those submissions could not be supported in law.

Ms KERR: In relation to the care plan reviews, a lot of the domains in them will not change for the child or young person—the education, the health needs, recreation and sporting—for most of the changes in, say, a residential move by the carers. To mandate a review where it is not necessary will actually cause a huge amount of unnecessary work and administrative burden that will take staff away from doing work on the front line.

Mr CHAIR: Yes. They also stress the family, 'What have we done wrong?' …

Ms KERR: The family …

Mr CHAIR: … when they are doing nothing wrong.

Ms KERR: Yes.

Mr CHAIR: I understand. Do you have a question, Mr Guyula?

Mr GUYULA: Have you done any consultations on this legislation, and which communities have you consulted? How was the consultation conducted please?

Ms GAMBLE: I will respond. The starting point for this bill began following the response to the royal commission into the Protection and Detention of Children in the Northern Territory. As you would know, that report was based on comprehensive consultation that took place over an 18 month period and specifically targeted 10 remote communities that Aboriginal Legal Aid Services identified as having a higher need of kids in protection and involved in the youth justice system. A number of recommendations were specifically made for legislative amendments to the *Care and Protection of Children Act* and that was the starting process of this bill.

As we mentioned earlier, we have involved representatives on a Legislative Amendment Advisory Committee, which includes representatives from Aboriginal community controlled organisations that have board members and membership that spreads out to those remote communities. We recognise there is consultation fatigue on certain things and that a lot of what this bill was trying to achieve is what is already the product of comprehensive consultation and evidence.

If I can emphasise, we have since gone on to work with our regional offices and connect with organisations in those places, including, as an example, AMSANT is a representative organisation on our Legislative Amendment Advisory Committee. We have had a specific briefing with Miwatj to talk through, in more detail, some of the specific provisions of the bill and talk about our approach to reform as well. This is a product of multiple reforms coming from the royal commission and we acknowledge it is one part of a complex puzzle. There is more work to do.

Some of the submissions have referred to the 'single act', which is a commitment this government has made in response to the royal commission and, even before them, was in recognition of the philosophy that we need to work more holistically with children and what Territory Families stands for—youth justice and child protection go hand in hand from a child's perspective.

We are looking at creating a new system through legislation and our information management to reflect the needs of the child. Through that process, we hope to do more comprehensive consultation with community, where we will be touching on more aspects that have not been the subject of what the royal commission considered.

In terms of this specific bill, we have relied on our partners that do have that more appropriate reach into communities, to rely on their expertise to keep feeding into the work we are doing. We hope to continue working with them to reach out ourselves more into those communities through the next stages of legislative reform.

Mr GUYULA: I acknowledge the improvements to child protection made through this bill. But it does not go far enough as other submissions have stated. Amendments should recognise Yolngu and Yolngu authority.

Mr COSTA: One thing I get asked in my electorate, and I am sure the Member for Nhulunbuy, and where the Member for Nhulunbuy is coming from. When a lot of our kids go into foster care, whether it is Darwin or wherever, that cultural connection with country is lost. Is there any support, for when ceremonies are happening in communities, for those teenagers to return and participate in ceremony, law and culture? I see it in Tiwi and I know it happens elsewhere in Central Land North.

Ms GAMBLE: Those are really important questions about what Joy has already mentioned about how we are seeking to change practise in recognition of that great need. As I mentioned, there are a few key elements of the bill that seek to specifically recognise the importance of connection to country and culture and for the first time that is actually embedded in this legislation through an understanding of the role of the family and the role of Aboriginal children.

The legislative framework is just the start of what that actually means in practice. It is through the work that we will do with children, with our partnering organisations, to make sure that connection means something, that will be what is occurring in practice on the ground.

Mr COSTA: The reason why I asked that question is because I have seen a young child who has been in foster care for 10 years. Before she left she could speak full Tiwi. Now she can only speak broken—all half and half. She cannot understand her dance or things like that. When she was smaller, she knew it—because she could not come back …

Mr TWYFORD: Acknowledging that case and some of our past practice in not being up to standard, we are proposing, through this bill, to add a new section. It is clause 9 in the bill, section 70 to be amended, in particular subclause (5) which is specific to a care plan for an Aboriginal child and it must include reasonable actions to maintain and develop the child's Aboriginal identity and encourage the child's connections to Aboriginal culture, traditions, language and country of the child.

In ensuring that a care plan articulates the specifics of those and that that care plan is tabled before the court, and given to the family, we are seeking through this bill to build a more accountable system where the department can be transparent about what it is doing to protect culture and also held to account, where we have a plan and we need to come through on that plan.

Mr COSTA: Thank you.

Mr CHAIR: Thank you. We are noting time. We will run out of time. However, we might have some questions that we will put on notice to the department.

Going back to the consultation question, we heard Danila Dilba and AMSANT had done a paper review. Did you take that into account into your bill? Yes?

Ms GAMBLE: Mr Chair, if I could clarify the paper review?

Mr CHAIR: Yes.

Ms GAMBLE: I am very familiar with that consultation report. Danila Dilba undertook that report as part of their work through AMSANT and spoke broadly to members of the community about reforms generally. There is a lot of reference in there about the creation of a single act and what that should look like. We have taken that into consideration in the work we are doing, and have had members of Danila Dilba and AMSANT at all of our LAAC meetings. They are both recognised as organisations on the LAAC, so the work they are doing currently through ongoing consultations about reform, as well as previously in supporting people to appear at the royal commission, and the voice they bring to the table every time we work through the bills, is part of this process.

Mr CHAIR: Member for Sanderson

Mrs WORDEN: I put on record that I have three things I would like to ask. We will run out of time. If you would be able to provide some notes and Hansard will record it so you probably do not have to write it down. I want to make sure I get it right too.

The first one is, it was suggested to us whether the New Zealand model has ever been considered for family group conferencing. There was another term used for it. I am really interested to get some details from the department about whether a family group conferencing and, if we are going down that pathway, and perhaps which points we are embedding—whether it is legislation, policy or procedures? If we could get some information, that would help us as a committee.

The second one is, we have heard a great deal of feedback about rights of appeal. Do you want to add to that question?

Mrs FINOCCHIARO: The other word for family group conferencing was family-led decision making.

Mrs WORDEN: Yes, thank you. Do you need me to say that again because I did not have my microphone on?

Committee Secretary: You just heard it. I was just telling him it was off.

Mrs WORDEN: I am chipped regularly by Hansard. That was about how family group conferencing will be used and considered through, whether it is in the bill, in policy or procedures.

The second one is about rights of appeal. We have heard quite extensively about possibly even NTCAT having a role. But beyond that, we also heard about mediation options and how the department is considering that. It would be useful to have some feedback if you are considering that and, if so, how that process might be imbedded.

The third one I am interested in is that it was suggested this morning that the bill should note that instead of—I am not sure of the language, it might be 'every effort'. You might be able to review *Hansard* with Danila Dilba—I think it was—submission that all efforts be made by the CEO to place kids with family before removal. I am really concerned about clause 8(3). It currently says 'reasonable steps', the submission is around 'all efforts'. I have some concerns on 'before removal'. Obviously there are circumstances that might not… I would appreciate some feedback from the department about some of the difficulties that particular change might bring.

I understand where the submissions are coming from, but we need to learn more about that space without going into specifics of cases. I am worried that replacing it with 'all efforts' might put the department in a precarious position.

Mr CHAIR: A couple of questions the committee would like feedback on. Once a child turns 18 years there are no more support services. We would like to look at that. There was also some talk about the CEO representing to the courts instead of the family or other representation, we would like feedback on that as well.

Mrs FINOCCHIARO: One comment was that the factors in section 10 are not prioritised on what should be considered. Firstly, if you could provide us some information about how that is intended to be approached? Do we currently have a court ordered mediation mechanism and if not, why was that not part of the bill?

Mr CHAIR: There are some other questions we did not get through, we will get those to you.

Mr TWYFORD: We are happy to take those on notice. Broadly, noting those issues we have seen through the submissions, what we are attempting to do with this bill is to progress improvements to the *Care and Protection of Children Act* in the current state and recognising the current services and staffing and the practice reforms we need to deliver.

Then the group conferencing we can deliver within our current powers and we propose to do that noting that things like appeal rights, formalising the group conferencing legislation, reflecting on obligations to provide family support are part of a big system. They are not to be added lightly. Making those changes into legislation through a single act enables us to tease out what the implications are in practice, in funding, in NGO and community service delivery.

We will provide formal written responses to those questions.

Mr CHAIR: We have heard there are further amendments to come and also there is a query on NTCAT and where that sits. We are interested in that as well.

On behalf of the committee, we thank you for your time and the improvements to the bill. It is refreshing to hear there are some big changes involving culture and all the checks and balances.

The committee concluded.
