Northern Territory Legal Assistance Forum

Madam CHAIR: On behalf of the committee, I welcome everyone to this public hearing into the Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026.

I welcome to the table to give evidence to the committee representatives from the Northern Territory Legal Assistance Forum, Clara Mills and Andrew Roberts. Thank you for coming before the committee. We appreciate you taking time to speak to the committee and 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 during the hearing you are concerned that what you will say should not be made public, you may ask the committee to go into a closed session and take your evidence in private.

Can you please state your name and the capacity in which you are appearing.

Ms MILLS: My name is Clara Mills. I am the principal lawyer at NAAFLS and have been a child protection lawyer in the Northern Territory since 2009. I am appearing as a representative of the Northern Territory Legal Assistance Forum.

Mr ROBERTS: Andrew Roberts, managing lawyer of the civil section at NAAJA. I am appearing as a representative of the Northern Territory Legal Assistance Forum.

Madam CHAIR: Thank you. Ms Mills, would you like to make an opening statement?

Ms MILLS: Thank you. Together, Andrew and I appear on behalf of the Northern Territory Legal Assistance Forum, which comprises NAAJA, NAAFLS, Legal Aid NT, CAAFLU, TEWLS, KWILS, CAWLS and DCLS. Thank you for the opportunity to appear today.

I begin by acknowledging what we believe is common ground between us, and between everyone who has participated in the consideration of this Bill: we all care deeply about the safety of children; we all want children to be safe; and we all want children to grow up in stable nurturing environments.

Between us, Andrew and I have more than 20 years' experience representing families in the Northern Territory child protection system.

We acknowledge the strength and resilience of Aboriginal families, carers and communities we represent and the central role that they play in raising children, maintaining culture and caring for one another, often despite systemic barriers. I think we also recognise that the Northern Territory child protection system faces significant challenges. We suggest that the key question the committee should be asking itself is whether the changes proposed in this Bill are likely to make children safer. The combined legal services submit that they will not.

Child safety is already at the centre of the existing Act. This is framed in terms of protecting children from harm and exploitation, and protection in the Act is the paramount purpose. There are already broad powers to investigate concerns, remove children, assume parental responsibility and seek long-term orders where necessary to protect a child. Right now, to remove a child into provisional protection all that is required is that the CEO reasonably believes that the child might be in need of protection and that removing the child is urgently needed to safeguard their wellbeing.

A child is in need of protection if, among other things, the child has suffered or is likely to suffer harm or exploitation, and this is clearly directed to the protection of child safety.

In our experience, the issue is rarely whether the department has the power to remove. When things go wrong, it is because the department has not properly considered notifications, has not had the time or resources to investigate notifications, does not have the case workers available to work with families to properly safety plan or to engage them with services, if those services even exist.

The issue before this committee is not whether the law permits intervention; it plainly does. The issue is whether this Bill will improve safety outcomes beyond those already available under the existing framework.

A child can be removed and still be unsafe. Recent monitoring by the Children's Commissioner found that almost one in three children in out-of-home care in the Northern Territory were subject to a reported harm notification. A child can be placed on a long-term order and still experience placement instability.

The 2025 Family Matters Report found that almost half of the children in out-of-home care in the Northern Territory are living in purchased or residential care arrangements rather than in family-based care, and a roster is not a family. A child can have legal permanency and still lack the relationships, connections, supports and sense of belonging that create real stability. Inquests into the deaths of children in care have shown that children in long-term care can often lack the connection to family and community that they need to be properly supported, leading to devastating results.

These examples are important because they demonstrate that safety is not achieved simply by removing the child, and stability is not created simply by making an order.

The Royal Commission into the Protection and Detention of Children in the Northern Territory examined the experiences of children in out-of-home care and found repeated examples where children who spent years subject to child protection orders had experienced profound instability, disconnection and harm whilst in the care system. There were examples of children in long-term care cycling through more than 20 placements. In our experience, little has changed in the 10 years since those findings were handed down.

It was not the lack of legal permanency that caused these outcomes; rather, it was a lack of belonging, connection and appropriate support. That evidence is directly relevant to this Bill. It demonstrates that legal permanency and actual stability are not the same thing. A child may spend years subject to long-term orders, yet still experience repeated placement breakdowns, disconnection from family and culture and ongoing harm. The challenge is not simply how long a child remains in care; the challenge is whether the system can provide the relationships and sense of belonging needed to create genuine stability.

The royal commission heard evidence that frequent changes in case workers affected children's ability to form trusted relationships with the systems responsible for their care. In examining child protection practice more broadly, the commission identified workforce instability, staff shortages and turnover as ongoing challenges affecting the continuity of care and decision-making.

Children who experience multiple case workers often lost important relationships, repeated their stories to new case workers and experienced disruptions to planning, family connection and support arrangements. The commission recognised that stability requires not only stable placements but also stable enduring relationships with the adults responsible for supporting the child.

In our experience, in the 10 years since not much has changed. In 2024 Justice Armitage heard that the department continued to operate at a nearly 40% vacancy rate. In 2026 Minister Cahill acknowledged that the department remains under pressure.

This Bill tries to solve complex systemic problems through legislative change alone. It expands statutory intervention, limits judicial discretion and creates new pathways into child protection systems, but it does not address the underlying issues that continue to place children at risk: workforce shortages; housing shortages; inadequate therapeutic supports; insufficient support for kinship carers; and a lack of coordinated early intervention services.

The court process can and should be the key mechanism to providing independent oversight, accountability and independence to the child protection system. Through court proceedings, hard questions can and should be asked about whether the proper reunification efforts have occurred, whether adequate services and supports have been provided and whether contact has been meaningfully facilitated, whether cultural planning has occurred and whether decisions are genuinely in the best interests of each individual child.

If the government was serious about improving child protection systems, it would implement clear powers and functions for the court to hold the department to the standard set in the legislation. Instead, this Bill imposes an active efforts framework without real accountability mechanisms like those which exist in other jurisdictions, and it creates principles which expressly do not create legal rights.

Instead of increasing oversight, the Bill reduces the court's discretion. It imposes rigid decision-making structures which limit the court's scope to make the most appropriate decisions. Critically, the Bill restricts the ability of a child's matter to come back before the court after the first two years. Currently, coming back before the court on a semi-regular basis is the only regular external check and measure that a child's safety and wellbeing are being appropriately supported by a system under pressure.

The Bill also creates prescribed timeframes for reunification on long-term orders, yet the evidence demonstrates that reunification can fail for reasons that have little to do with parental capacity: a parent cannot attend a service that does not exist; a family cannot progress a reunification plan that has not been developed; a parent cannot maintain regular contact where visits are cancelled, transport is unavailable and accommodation cannot be secured. A family cannot overcome workforce shortages, housing shortages or service gaps through determination alone.

In these circumstances, judicial discretion and clear accountability mechanisms through the court serve an important protective function. It allows the court to distinguish between cases where reunification has not occurred because a parent has failed to address protection concerns and cases where reunification has been undermined by serve gaps, departmental decision-making, workforce pressures or broader structural disadvantage. Most importantly, it allows the court to consider the best interests of each individual child.

Our concern is that the Bill expands the powers of the government whilst reducing the opportunities for independent scrutiny at precisely the time when there is significant evidence that the underlying system continues to experience serious operational challenges.

Our concern is not only that the Bill fails to address the underlying drivers of harm; we are also concerned that aspects of the Bill may create new risks. Child protection decisions are the most complex decisions made by the governments and courts. We are concerned that the Bill introduces real uncertainty into the legislation, uncertainty that would be avoidable through a proper process of careful legislative development. New concepts such as proactive efforts and events of concern and the interaction between various intervention pathways are introduced without clear guidance as to how they are intended to operate in practice.

Ambiguity in child protection legislation is not just a technical drafting issue. It has real-world consequences. It can lead to inconsistent decision-making, increased litigation, delays in achieving permanency for a child, uncertainty for families and additional pressure on our already stretched frontline services and courts.

We are seriously concerned that this Bill, if passed in its current form, will lead to unintended consequences which could be adverse to the best interests of the child. Even if the provisions in this Bill were operationally sound, it would still require significant investment, workforce capacity and cross-agency coordination to achieve its stated objectives. Notably, even the Northern Territory Police Association acknowledges that the success of these reforms depends on adequate child protection resources, family support services, diversionary programs, youth services, rehabilitation services and integrated coordination, and we agree.

The observation goes to the heart of this inquiry, because the scaffolding required to make this Bill work does not appear to exist. It is not established in the Bill, not clearly funded in the budget and not evident in any particularly articulated whole-of-government implementation framework.

Madam CHAIR: Ms Mills, I am just checking, have you got much left?

Ms MILLS: I have this much.

Madam CHAIR: Excellent.

Ms MILLS: You always put the lawyers in the room—we will talk for a long time.

Meaningful child protection reform cannot be achieved through legislation alone. It requires coordinated reforms across government and non-government agencies, housing, health, disability, education, family supports, therapeutic services, workforce development and community-controlled services. Without those foundations, there is a real risk that the Bill creates an appearance of reform without addressing the underlying causes of child harm.

The lessons from decades of child protection reform is not that we need more powers; it is that children are safest when decisions are made carefully, individually and with access to the supports required to make those decisions successful in practice. We all agree there are serious concerns, and we all agree that children deserve better. Our concern is that this Bill largely changes the legal response to child harm without addressing the conditions that create harm in the first place.

We can take questions today, but we are also mindful that while we have the lawyers in the room it might be of benefit to the committee for me to spend five minutes explaining how the safety architecture exists in the current Act, and for Andy to talk you through some of the drafting problems and why we think the Bill is operationally confusing.

Madam CHAIR: I will just do a quick check with the members.

Mr YOUNG: That is all right.

Ms MILLS: Thank you.

Under the current Act, the Bill contains a comprehensive safety architecture, and the detail is in the word 'protection'. A close reading of the *Care and Protection of Children Act* demonstrates that child safety is not confined to a single provision or decision-making stage; rather, safety is embedded through the statutory scheme and operates as a central organising principle of the Act.

This begins in the objects of the Act. Section 4 identifies the protection of children from harm and exploitation as the primary objective of the legislation, and at the same time the Act recognises the role of family in promoting children's wellbeing and assisting children to reach their full potential. The legislation therefore adopts a dual approach in which child safety is pursued through protective intervention and early intervention and support for families.

The structure of the Act reinforces this approach. Section 5 describes the legislative framework built around the reporting of harm, investigations of concern, intervention where necessary and court oversight in decision-making. Child safety is not treated as a consideration arising only at the point of removal; rather, the Act establishes a continuum of protective measures designed to identify, assess and respond to risk.

The paramountcy principle in section 10 provides the clearest expression of parliament's intention. Section 10(1) provides that the best interests of the children are the paramount consideration in every decision under the Act. Section 10(2) then sets out the other matters that must be considered when determining a child's best interests. Significantly, the first matter identified by parliament is the need to protect the child from harm and exploitation, and this is further reiterated in section 90. The Act therefore places safety at the forefront of every exercise of statutory power.

At the same time, section 10 demonstrates that the Act adopts a broad and holistic understanding of safety. While protection from harm is paramount, decision-makers must also consider parental capacity, family relationships, opportunities for reunification, stable and nurturing relationships, developmental needs of the child and the child's cultural identity. For Aboriginal children, the Act expressly requires consideration of the right to maintain connection to family, culture, language and country. The legislative scheme therefore recognises that safety encompasses more than immediate physical protection, which is paramount, but also incorporates broader factors that contribute to a child's long-term wellbeing.

The broad concept of safety is reinforced by the definitions of 'wellbeing', 'harm' and 'exploitation'. Section 14 describes wellbeing to include a child's physical, psychological and emotional wellbeing.

Section 15 adopts an expansive definition of 'harm' extended beyond physical injury to include emotional abuse, psychological abuse, neglect, sexual abuse, exposure to violence and exposure to domestic and family violence.

Section 16 separately recognises exploitation as a distinct form of harm. Importantly, that does not limit intervention into circumstances where harm has already occurred. Under section 20, a child may be found to be in need of care and protection where the child has suffered harm or exploitation, but also where a child is likely to suffer harm or exploitation, and the statutory threshold is therefore preventive in nature and authorises intervention before serious harm occurs.

The preventive approach is carried through Chapter 2, Part 2.1 of the Act. Part 2.1 establishes a comprehensive framework of reporting, inquiry, investigation and intervention powers designed to identify and respond to the concerns regarding child safety at the earliest possible stage. The Act imposes mandatory reporting obligations regarding concerns of harm or exploitation to be brought to the attention of the authorities, and once information is received, the CEO may make inquiries and undertake investigations where concerns arise regarding a child's wellbeing.

Importantly, the threshold for investigation is itself precautionary. The CEO may investigate where there is reasonable ground for believing that a child might be in need of care and protection. The legislation does not require proof that a child is in need of protection before investigative powers become available. Parliament has deliberately adopted a low threshold that permits concerns to be assessed before risk crystallises into harm.

The preventive nature of the Act is most clearly illustrated in sections 50 and 51. Section 50 establishes the threshold for provisional protection, and the provision permits protective actions where there are reasonable grounds for believing that a child might be in need of protection. The use of the word ‘might’ is significant. It demonstrates a legislative intent that protective intervention may occur at a point where concerns exist regarding a child’s safety even though those concerns have not be conclusively established.

Once the threshold is met, section 51 empowers the CEO to take a child into provisional protection where the CEO considers it is necessary to safeguard the child’s wellbeing. The power may be exercised before any application is made to the court and before any judicial determination regarding the child’s circumstances has occurred.

When sections 50 and 51 are read together, they establish a mechanism for immediate executive function where there are reasonable concerns regarding the child’s safety. The Act does not require authorities to wait until harm has occurred, nor does it require authorities to wait for court proceedings before protective actions can be taken. Instead, parliament has created a precautionary framework that prioritises the safety of children while allowing investigations and court processes to occur thereafter.

The legislative architecture of Part 2.1 therefore reflects clear policy choice. Mandatory reporting, investigation powers, information-gathering powers, provisional protection powers and subsequent court processes operate together as a continuum designed to identify risk early and intervene before serious harm occurs.

Finally, the Aboriginal child placement principle does not displace the primary objective of the Act to protect children. The law is clear that the safety, protection and best interests are the paramount priorities and cannot be displaced by culture. What the Aboriginal child placement principle does is establish that once a child’s safety is assured, the child’s right to experience their culture is not displaced or their identity severed unnecessarily.

Mr Roberts will explain some of the issues with the current Bill.

Mr ROBERTS: Yes. Just focusing on some drafting and complexity we see, I think it is important to acknowledge that this is just a complex piece of legislation that has been subjected to very little scrutiny. We have had very short timeframes to consider this and prepare for today, so I cannot give you a comprehensive analysis; we are just not in a position to do that. There are still potential risks with this, but …

Mrs ZIO: Can I just interrupt. We only have four minutes left to ask questions. I am wondering whether or not we can table …

Madam CHAIR: I will just maybe check in with the members.

Mr YOUNG: I am happy to go into our break.

Madam CHAIR: We will. Justine, did you want to ask a question?

J DAVIS: I am happy for the witnesses to continue.

Madam CHAIR: I am just checking with each one. Thank you.

Mr ROBERTS: As I was saying, there are some issues we have identified and things we are concerned about that we think will lead to problems in practice in the implementation of this. That is relevant, because what that looks like in practice will be a lot more contested litigation, a lot more appeals, a lot more confusion as to the operation of the Act.

Bear in mind that aspects of this that apply to the department—these principles apply to the department before the matter reaches the court—so the department will be left in this complicated position in the initial implementation where they will not know how to apply the Act and it will not have been considered by a court. The process of that, working through it, will take years. I think it is really important to remember that is largely avoidable, but also likely to lead to a lot of delay, a lot of expense and will ultimately affect the children at the centre of the litigation where this Act already contemplates that these matters kicking through the courts is not good for kids and should be resolved as quickly as possible.

To point to a couple of examples that we think are illustrative of some of the concerns, the guiding principles in the Bill do a lot of work, and a lot of the focus is on shifting those principles, but one of the changes to the Bill is also to make those principles expressly non-binding. Section 7(4) says that these do not create, or confer on any person, any right or entitlement enforceable at law. This goes to the accountability point: how do you implement a set of guiding principles that are meant to determine how this legislation operates and how decision-makers are meant to operate in exercising functions of this Act when the provisions are not legally enforceable? I do not understand what that means. It will take time to determine what that means.

Another example—I think I have alluded to this, so I will be brief. Section 128 amendments are a restriction on judicial discretion as to the making of long-term orders after two short-term orders, which can lead to a position where you have a conflict between the paramount best-interests principle in the guiding principles, but also an express provision in section 90 of the Act that means the court has to apply the best-interests principle of paramount concern, and a provision that then curtails the discretion of the judge to actually do that. Again, it will be very difficult to reconcile how you apply the paramount consideration of the best interests of the children with a requirement, in some cases, to make an order that the court considers is not in the child's best interests.

Ms MILLS: Operationally, to that we would say that this is the express experience of Victoria, which has just repealed that section. Where the best interests of the child directly conflicted with the length of orders or the amount of orders that the court can make, what resulted was matters sitting in litigation for years. There was a longitudinal study that found that where the courts could not make the orders that were best for children, matters just stayed in litigation and stagnated whilst people had to find the alternate solution.

Mr ROBERTS: We would anticipate a similar outcome here with the drafting of this Bill. I will just give one more example, because I think it goes to avoidable issues. There is not a legal standard or threshold for making a family responsibility order. There is a threshold that the department has to be satisfied to make an application, but there is no guidance for the court as to what circumstances they make it, what they try to achieve with that and how they try to achieve it. Again, the only guidance you might be able to draw upon is the guiding principles, which are expressly non-binding.

Ms MILLS: The further one I would point to is section 143A, which is the mandatory legal representation of children in proceedings where a long-term protection order is sought. On its face, this appears to strengthen the best interests of the child, but under the existing Act a separate representative acts on the child's best interests if the child is under 10, but on a child's instructions if the child is over 10 or has sufficient maturity—but if section 128 narrows the ability of the court to make the orders that are in the best interests of the child, the practical function of the child representative in matters considering long-term parental responsibility is unclear. Again, we could only see that it would need to be that matters sit in litigation for years because the court is unable to make the orders that the separate representative is proposing is best for the child.

Madam CHAIR: We can probably take one question.

J DAVIS: Basically, it is a follow-up from what you have outlined here. Obviously, there is a lot of complexity in this Bill. It has been really helpful in terms of you outlining some of the legal considerations. What do you think needs to happen now if the intent is to continue on with this Bill? Based on what you have said, what do we need to do to address all these issues that you have outlined? What would you recommend to us as a committee? Does that question make sense?

Madam CHAIR: In summary.

Mr ROBERTS: Yes, it does. I mean, more time needs to be given to getting this right. I think there is no good reason, for the reasons we have outlined about the fact that the core focus here seems to be this misconceived idea that safety is not a part of the Bill. If we are to continue down this path, there needs to be proper time and scrutiny, and work done with the sector, with the people with the expertise who are practising in this space, to avoid these problems. It is not that it is not avoidable; it is just that we have not been given the time to give it the consideration it needs.

Ms MILLS: In addition to that, I would say that we have been given the roadmap several times in the Northern Territory and dozens of times as a nation. The Little Children are Sacred report in 2007 recommended a generational strategy to child harm in the Northern Territory. It said that this is not a quick solution; it cannot happen in one sitting of government. They recommended 15 years. The Royal Commission into the Protection and Detention of Children recommended taking a public health approach to child protection reform, and again, that report went on the shelf after two years. We have not had the generational strategy where all the players come together. We have read the submissions from some of the departments that support this Bill, including the Police department, which appears exhausted.

We understand that there needs to be a coming together of the entire sector, without silos, to talk about genuine solutions and to look at the maps we have already been given and talk about genuine implementation. This government already has a vehicle for that. This government could change the terms of reference and membership of the tripartite forum. It could include the Commonwealth Government through that forum and we could come together and talk about genuine solutions.

Madam CHAIR: Thank you, Ms Mills and Mr Roberts, for coming before the committee today.

Ms MILLS: Thank you.

The committee suspended.