Secretary, Legislative Scrutiny Committee
Northern Territory Parliament
Via Email: LA.Committees@nt.gov.au

22 May 2026

Dear Members

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

1. The Northern Territory Legal Assistance Forum (**NTLAF**) is the peak body of legal assistance services across the NT. The NTLAF represents the Central Australian Aboriginal Family Legal Unit, the Central Australian Women's Legal Service, the Darwin Community Legal Service, the Katherine Women's Information and Legal Service, Legal Aid NT, the North Australian Aboriginal Family Legal Service, the North Australian Aboriginal Justice Agency and the Top End Women's Legal Service. The NTLAF includes members who represent parents and other family members in proceedings under the *Care and Protection of Children Act 2007* (NT) (**Care Act**), including providing duty services and ongoing representation in child protection proceedings across the NT.

2. The NTLAF welcomes the opportunity to make this submission to the Legislative Scrutiny Committee (**Scrutiny Committee**) in relation to the Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026 (**Bill**).

3. The NTLAF says that the Assembly should not pass the Bill for the reasons explained below. The child protection system in the NT is in dire need of reform. While the Care Act is not perfect, this Bill makes the legislation worse, not better, and does nothing to address the problems in the practice, implementation and resourcing of the Department of Children and Families (**DCF**) which are the primary barrier to better outcomes for children.

4. We suggest that the Bill is appropriate for a public hearing and we request that representatives from the NTLAF be invited to appear before the Scrutiny Committee.

Summary of this submission

5. In summary, the NTLAF submits:

   a. The Bill lowers the threshold for removing children from family, increasing the likelihood of children entering care earlier and for broader reasons. Whilst DCF must have the power to remove children in appropriate circumstances, removal must be a last resort because of the adverse impacts of removal and out of home care for the long-term safety and wellbeing of children.

   b. The safety of children is already the primary concern of the Care Act. The amendments limit judicial discretion and the ability to make complex, case-by-case decisions that achieve the best outcomes for children.

   c. The Bill substantially weakens protection for Aboriginal children, including the Aboriginal Child Placement Principle (**ACPP**), reducing protections for connection to family, culture, kinship and Country. This risks causing serious harm to Aboriginal children.

   d. The proposed "proactive efforts" framework is materially weaker than established "active efforts" models in other jurisdictions and lacks meaningful accountability mechanisms.

   e. The Bill introduces a framework of rigid timelines for reunification and fast-tracks long term orders in a way which may not be consistent with the best interests of children in many cases and limits judicial discretion. The Victorian experience demonstrates that similar permanency reforms led to harmful unintended consequences, particularly for Aboriginal families, and have now been repealed.

   f. Family Responsibility Agreements and Orders create coercive statutory intervention pathways with inadequate safeguards for participation, procedural fairness and access to legal advice.

   g. The Bill expands Territory intervention into ordinary family life through broad concepts such as "events of concern", wellbeing concerns, school non-attendance and anti-social behaviour. The Bill risks using child protection mechanisms as a substitute for responses better addressed through health, disability, education, housing and youth support systems.

   h. The Bill creates substantial new demands on an already overstretched child protection workforce, courts and legal assistance sector without corresponding investment.

   i. The evidence does not support increased removal and out-of-home care as improving long-term outcomes for children. Only 16.7% of Aboriginal children are placed with family, reflecting broader failures in securing appropriate family-based and kinship placements.

   j. The reforms have not been supported by adequate consultation, implementation planning or evidence-based service investment.

Threshold for removal

6. The effect of the Bill is to lower the threshold for removing a child, and deprioritising reunification with family. Currently, s. 8(3) of the Act provides that "[a] child may be removed from the child's family only if there is an unacceptable risk of harm to the child". Under the proposed new s. 12A(3), "[a] child must be removed from the child's family if there is a significant and likely risk of harm to the child". The effect of the proposed amendment is to reduce the threshold for removal from "unacceptable risk" to "significant and likely risk".

7. As is appropriate, the safety of children is the primary concern of the Care Act. This is framed in terms of protecting children from "harm and exploitation", which is a primary consideration in assessing the best interests of the child.[1] The current threshold for statutory intervention is the Court's determination of whether the child is "in need of protection".[2] A child will be in need of protection if:[3]

    - The child has suffered or is likely to suffer harm or exploitation due to an act or omission of a parent;
    - The child is abandoned and no family member of the child is willing or able to care for the child;
    - The parents of the child are dead or unwilling or unable to care for the child and no other family member is able to care; or
    - The child is not under the control of any person and is engaged in conduct that causes or is likely to cause harm to the child or other persons.

8. While safety is the central concern of the legislation, it is also appropriate that the Act should set a high bar for the removal of children from their family. This is because:

    - The process of removal is often deeply traumatic for children. It will often involve police intervention, disrupted attachments and insecure or inconsistent placements. The process of removing a child will often involve significant and likely harm.[4]
    - There is well established evidence that out of home care itself can pose a risk to the safety of children.[5]
    - Removal can be a fundamental barrier to engaging with and supporting families. Removal is also traumatic for parents and can lead to a seismic breakdown of the relationship between DCF and a family.[6]

9. Child protection decisions are complex. They often involve weighing competing risks with incomplete information and unpredictable outcomes. Whilst there will absolutely be

[1] Care Act s. 4, 10(2)(a)

[2] Care Act ss. 51(1)(a)(i); 105(1)(a)(i); 129(a)(i).

[3] Care Act s. 20.

[4] Shanta Trivedi, 'The Harm of Child Removal' (2019) 43(2) *New York University Review of Law & Social Change* 523.

[5] Amir Sariaslan, Antti Kaariala and Joonas Pitkänen, 'Long-term Health and Social Outcomes in Children and Adolescents Placed in Out-of-Home Care' (2022) 176(1) *JAMA Pediatrics*; Saskia Euser, Lenneke Alink, Anne Tharner, Marinus van IJzendoorn and Marian Bakermans-Kranenburg, 'The Prevalence of Child Sexual Abuse in Out-of-Home Care: A Comparison Between Abuse in Residential and in Foster Care' (2013) 37(12) *Child Maltreatment* 1.

[6] Vivek Sankaran, Christopher Church and Monique Mitchell, 'A Cure Worse than the Disease? The Impact of Removal on Children and Their Families' (2019) 102(4) Marquette Law Review 1161.

circumstances where removal is appropriate, it should be treated as a last resort because of the adverse impact of removal and out of home care for the long-term safety and wellbeing of the child. While DCF and the Court must retain appropriate powers to urgently remove a child to keep children safe (which they currently have), it is essential that removal remains a last resort.

Best Interests Principles

10. The Bill makes significant changes to the way in which the Department and the Court considers a child's best interests in a way which reduces the focus on long term harm, and deprioritises reunification and connection to family and culture.

11. The "best interest of the child" remains the "paramount concern" in decision making in relation to the child.[7] Determining what is in the child's best interest remains an evaluative determination which considers a range of factors. However, the Bill specifies a mandatory list of matters which must be considered in a specific order of priority.

12. The Bill prioritises considerations of immediate safety and stability over factors which go to the long-term safety, security and wellbeing of children. Under the Bill, the first consideration would be "the need to ensure the safety of the child" followed by "the need to protect the child from harm and exploitation".[8] Whilst the existing list of criteria did not use the specific word "safety", in our view that was clearly addressed by the focus given to protecting the child from harm and exploitation and the existing thresholds for statutory intervention. We do not understand what the additional criteria adds to the assessment – safety is already a primary focus of the legislation.

13. The addition of the phrase "the need to ensure the safety of the child" is poor legislative drafting which will create legal ambiguity. Principles of statutory interpretation mean that each phrase of legislation is presumed to have specific meaning.[9] The inclusion of a provision about safety means that the following phrase 'harm and exploitation' must now carry a separate meaning that is not about safety. This will impact existing case-law about the meaning of harm and exploitation and gives rise to the question of what does harm and exploitation mean if it does not mean safety.

14. The next factors focus on stability for the child, being:

    - The child's need for stable and nurturing relationships;
    - The need for permanency in the child's living arrangements;
    - The likely effect on the child of any changes in the child's circumstances.

15. Whilst these provisions could arguably tend against removal, we think that the lower threshold for removal and the increased focus on immediate safety will mean that they will not have this effect and will more likely operate to make reunification harder. These are also, in our view, duplicative and operate in a manner which risks placing a disproportionate weight on placement stability in a way which will be detrimental to children in certain cases.

[7] Bill s. 8(1); cf. Care Act s. 10.

[8] Bill s. 8(2)(a)–(b).

[9] See *Commonwealth v Baume* (1905) 2 CLR 405; *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355.

16. The next factors then focus on the Child's views and needs, being:

    - The wishes and views of the child, having regard to the maturity and understanding of the child; and
    - The child's physical, emotional, intellectual, spiritual, developmental and educational needs.

17. These provisions demonstrate the problem with having a rigid prioritisation of best interest considerations. In some cases, the views and wishes should be given a lot of weight. Take the example of a 17-year-old child who is absconding from placement. That child's views may be central to assessing best interests as they would significantly inform the kind of placement arrangement which will be effective in promoting safety. Conversely, the views and wishes of a very young child who has limited capacity to express their views may appropriately be given limited weight.

18. The next factors then focus on connection to the child's family, being:

    - The capacity and willingness of the child's parents or other family members to care of the child; and
    - The nature of the child's relationship with the child's family and other persons who are significant in the child's life.

19. Placing these factors at the bottom of the list means that it deprioritises family placement and connection, which are extremely important for the long-term safety, security and wellbeing of children, especially Aboriginal children.

20. The final consideration is "other special characteristics of the child" which is a catch all, but which may be extremely relevant to the best interest consideration depending on what those special characteristics are.

21. The Bill then provides a list of optional considerations, which only "may" be relevant to assessing the best interests of the child. Those considerations are:

    - The need to strengthen, preserve and promote positive relationships between the child and the child's parents, family members and other persons who are significant in the child's life.
    - In circumstances where the child has been removed from the care of the child's family, all possibilities related to reunifying the child with the child's parents.
    - The child's right to enjoy the culture and traditions of the child's family and community including the need to maintain ongoing contact with the child's family.

22. The amendments subordinate considerations which promote connection to family, culture and Country and reunification with family. There is no clear rationale for when these factors will or will not be relevant, and no clarity as to what priority is to be given to these factors in making the overall assessment of what is in the child's best interest.

23. It is deeply concerning that in all decisions in which the child's best interest are a paramount concern, considerations which promote connection to family and reunification where practicable are actively subordinated in that assessment. Once again, these considerations

should be central to a proper assessment of what is best for a child, especially when considered across a longer timeframe.

24. Notably, the Bill:

- Removes any consideration of the child's age, maturity, gender, sexuality and cultural, ethnic and religious backgrounds.
- Removes reference to Aboriginality in relation to the child's right to enjoy their culture and traditions.

25. Overall, we are concerned that an overly structured approach to assessing best interests will force the decision-maker to make decisions which may not actually reflect the child's best interest assessed objectively. The Bill confines decision-maker discretion in a way which could lead to adverse outcomes or unintended consequences to the detriment of children. The current approach of the legislation to providing a range of factors for the Court or other decision-maker to weight and assess in reaching an overall conclusion is the preferred approach. The purpose of having an independent judiciary and adversarial system to ventilate all relevant issues is to ensure that complex decisions are made on a case-by-case basis to achieve the best outcome. This Bill significantly curtails and constrains good case-by-case decision making.

Specific principles for Aboriginal Children

26. The Bill substantially weakens provisions specifically in relation to Aboriginal children. Most importantly, the Bill repeals the currently legislated version of the Aboriginal and Torres Strait Islander Child Placement Principle (**ACPP**) and replaces it with a universal child placement principle.[10] This removes the priority to place Aboriginal children with Aboriginal people in community or another Aboriginal person. This also removes the requirement that any non-Aboriginal carer is sensitive to the child's needs and capable of supporting the child to develop and maintain a connection with the child's family, community, culture, traditions, language and country.

27. The new placement principle also provides new considerations in relation to "significant decisions",[11] including:

- The decision must ensure the child will have stable living arrangements which meet the child's needs;
- The decision must ensure the legal arrangements for the child's care provide the child with "a sense of permanency and long-term stability";
- As far as practicable, the child will be cared for by an appropriate family member;
- To ensure that the child will have ongoing positive, trusting and nurturing relationships with persons of significance to the child, including their family.

28. Whilst these changes continue to provide some prioritisation to connection to and placement with family, the overall scheme of the Act is to reduce the focus on these factors which are critically important for Aboriginal children. The focus on stability of living arrangements and legal

[10] Care Act s. 12(3); Bill s. 12B.

[11] Bill s. 6.

arrangements again places disproportionate weight on stability in a manner which may be materially inconsistent with a child's best interest. It is unclear what is intended by the need for the "legal arrangements" for the child's care providing the child with "a sense of permanence and long-term stability". We presume this is intended to provide further priority to long-term orders notwithstanding that the formal legal arrangements in place will generally have very limited impact on the child and may have very limited impact on their wellbeing. To the extent that it is relevant, it is already considered as part of the best interest criteria.

29. Further changes to the provisions which specifically apply to Aboriginal children include:

- Instead of family members having a "right" to participate in judicial and administrative decision-making opportunities, they only "should be given an opportunity" to participate under the Bill.[12]
- Only Aboriginal people that are "of significance to the child" will be given the opportunity to participate, which discourages the involvement of family and kin where a child has been disconnected from their culture.[13] This definition is also relied upon for involvement in care planning.
- Aboriginal Community Controlled Organisations are excluded from participating in decision-making under the Bill.[14]
- The Bill removes the requirement for decisions involving Aboriginal children to be healing focused and trauma informed.[15]
- The Bill removes the right for an Aboriginal child to be brought up within the child's own family and community and on the child's own country.[16]
- The Bill removes the right for an Aboriginal child to be supported to develop and maintain a connection with the child's family, community, culture, traditions, language and country, particularly when the child is placed with person who is not from the child's community or kinship group. [17]

30. The ACPP was born out of a community movement during the 1970s, to address the devastating effects of the forced removal of Aboriginal children from their families and communities including the Stolen Generation.[18] The ACPP was recognised as a guiding principle in the 1980s and was first adopted in legislation in the Northern Territory in 1983.[19] The NT led the way, and the ACPP has progressively been adopted across Australia.[20] The ACPP comprises five interrelated principles which must be applied together: Prevention, Partnership, Placement,

[12] Care Act s. 12(2)(a); Bill s. 12C(2)(a).
[13] Care Act s. 12(2)(b); Bill s. 12C(2)(b).
[14] Care Act s. 12(2)(b)(iii), 72A(1)(iv), 74(4)(a)(v); cf 12C(2).
[15] Care Act s. 12(2A).
[16] Care Act s. 12(2B).
[17] Care Act s. 12(2C).
[18] Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report*, Vol. 3A, p. 273. SNAICC, Aboriginal and Torres Strait Islander Child Placement Principles.
[19] SNAICC, Aboriginal and Torres Strait Islander Child Placement Principles.; *Community Welfare Act 1983* (NT) s. 69.
[20] SNAICC, Aboriginal and Torres Strait Islander Child Placement Principles.

Participation and Connection.[21] While the focus of discussion on the ACPP is often the placement element, all five elements are important.

31. The ACPP in its currently legislated form is clearly no barrier to the removal of Aboriginal children and the placing of children with non-Aboriginal carers. Only 16.7% of Aboriginal children in care were placed with Aboriginal family/kin, whereas 62.2% were placed with non-Aboriginal carers and a further 7.5% in residential care.[22] The NT is the worst performing jurisdiction in the country for placing children in accordance with the ACPP. It is unfathomable in that context that the Government would move to water down statutory duties specifically designed to promote the needs of Aboriginal children and protect them from long term harm.

32. The Royal Commission into the Protection and Detention of Children in the Northern Territory said that the principle "should guide and inform all child protection decision-making processes for Aboriginal children. It is underpinned by the recognition that removal of the child must only happen as a last resort and that an Aboriginal child should, as far as practicable, be placed in close proximity to the child's family and community."[23] This Bill undermines all five elements of the ACPP and substantially repeals the principle which has existed in the NT since 1983. In our view, it will lead to more Aboriginal children in care who could safely remain with family with proper supports, fewer Aboriginal children reunified with their family when reunification is a realistic possibility, and fewer Aboriginal people living with family or with Aboriginal people, and therefore fewer connected to their culture, community and Country. This is deeply harmful for Aboriginal children. Removal of the principles also conflicts with recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse for state and territory governments to "fully implement the Aboriginal and Torres Strait Islander Child Placement Principle".[24]

33. Any suggestion that the amendments which remove or weaken provisions specifically in relation to Aboriginal children is designed to bring the Northern Territory in line with the *United Nations Convention on the Rights of the Child* is unsustainable. It is correct that Article 2 of the *Convention* says that State Parties must ensure that rights under the Convention are conferred without discrimination of any kind. However, the Committee on the Rights of the Child has published a General Comment to assist the interpretation of the *Convention* in relation to Indigenous children. The Committee has said:[25]

> [24] … the non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may furthermore require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes.
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> [25] The Committee … notes that indigenous children are among those children who require positive measures in order to eliminate conditions that cause discrimination and to ensure their

[21] SNAICC, Aboriginal and Torres Strait Islander Child Placement Principles.

[22] Family Matters Report 2025, p. 62.

[23] Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report*, Vol. 3A, p. 273.

[24] Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report*, Vol. 12, p. 29.

[25] Committee on the Rights of the Child, *General Comment No 11 (2009): Indigenous children and their rights under the Convention*, GRC/C/GC/11 (Citations Omitted)

> enjoyment of the rights of the Convention on equal level with other children. In particular, State parties are urged to consider the application of special measures in order to ensure that indigenous children have access to culturally appropriate services in the areas of health, nutrition, education, recreation and sports, social services, housing, sanitation and juvenile justice. …
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> [31] When State authorities including legislative bodies seek to assess the best interests of an indigenous child, they should consider the cultural rights of the indigenous child and his or her need to exercise such rights collectively with members of their group. As regards legislation, policies and programmes that affect indigenous children in general, the indigenous community should be consulted and given an opportunity to participate in the process on how the best interests of indigenous children in general can be decided in a culturally sensitive way. Such consultations should, to the extent possible, include meaningful participation of indigenous children.

34. The Bill clearly moves the NT away from compliance with the Convention and does not have sufficient regard to the human rights of Aboriginal children.

(Pro)active efforts

35. The Bill includes a new principle which requires the CEO to make "proactive efforts" to address risks to the child with the aim of preventing removal, and to reunify the child with the child's parents or family member within two years after the removal.

36. In the first 6 months, proactive efforts must be aimed at addressing the grounds on which the child was removed with the aim of reunifying the child, or if the CEO is not satisfied that reunification with the child's parents is in their best interest, placing the child with family.

37. The principle provides that proactive efforts may include:

- Providing, facilitating or assists with access to supports and other resources;
- Considering alternative ways to address the needs;
- Activities directed to finding and contacting the child's family or community;
- The use of family responsibility agreements or orders, or a mediation conference; and
- Any other activity or action "considered appropriate by the CEO".

38. We assume that this "proactive efforts" framework is intended to draw upon the "active efforts" framework as it is understood in national and international context.[26] It is unclear and confusing why the Bill adopts different language, and what is intended to be achieved by this. If the difference in language is intended to depart the NT from the established national and international jurisprudence on active efforts, it should be rejected. Such an approach will only create uncertainty and lead to protracted litigation and appeals to determine the proper application of the provision. We strongly recommend that the Bill adopt the language of "active efforts" rather than "proactive efforts" to align with this established principle.

[26] The Explanatory Memoranda describes the proactive efforts framework as "inspired by" active efforts, without any explanation as to why different language has been used.

39. Active efforts are regarded as the "gold standard" for how services should be provided to a child and their family when going through the child protection system.[27] In 2018, the federal Community Services Ministers identified it as a national priority to "implement active efforts in jurisdictions to ensure compliance with all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle".[28] In the Northern Territory, the Coroner, in her findings in the *Inquest into the death of Baby G,*[29] has also recommended that the Attorney-General consider a reform of the Care Act to include the principle of active efforts similarly to the NSW provisions.[30]

40. The active efforts concept is drawn from the *Indian Child Welfare Act* (**ICWA**), which aims to ensure safety and connection for Indigenous children in the United States. Active efforts are defined as "affirmative, active, thorough and timely efforts intended primarily to maintain or reunite an Indian child with his or her family".[31]

41. Importantly, active efforts are to be culturally competent and "should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe."[32]

42. Justice William Thorne, a retired judge on the State of Utah Court of Appeals and in the Third District Court, said of active efforts:

> "[A]ctive efforts [is] not a measure of 'services,' but instead a different attitude or approach to 'helping' a parent or family succeed. Not judging, but healing. Not compliance focused, but oriented to assisting the parent and family. Not creating a parenting plan, but instead walking and working beside the parent and family. Active efforts is about doing things differently, not just more or increased amounts of the same things we have already been doing. It is about investing in the success of the family. It is about connecting them to healing. It is about walking beside them and lending them our strength when they need it. It is what we would do if they were our families. It is what we would do if their lives really 'mattered.' All families matter…and we should act like it"

43. Significantly, active efforts have been defined by US Courts as implying a "heightened responsibility compared to passive efforts"[33] and requiring more effort than a "reasonable efforts" standard does. For example, in one US case, the Court found that a caseworker had only made reasonable efforts by referring a parent for services as the referral needed to be followed through with supportive casework.[34]

44. Similarly, in another US case, the Court found that a reasonable efforts standard might entail merely drawing up a plan and requiring the parent to use "his or her own resources to bring it

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[27] Queensland Aboriginal and Torres Strait Islander Community Controlled Child Protection Peak, *Active Efforts in Practice* (Guide, Second Edition March 2023) 4.

[28] Ministers for the Department of Social Services, Community Services Ministers' Meeting Communiqué (2018) < https://formerministers.dss.gov.au/17966/community-services-ministers-meeting-communique-2/>.

[29] [2024] NTLC 16.

[30] *Inquest into the death of Baby G* [2024] NTLC 16 [136].

[31] *Indian Child Welfare Act 1978* (USA), Bureau of Indian Affairs Regulations 25 C.F.R. § 23.2.

[32] *Indian Child Welfare Act 1978* (USA), Bureau of Indian Affairs Regulations 25 C.F.R. § 23.2.

[33] In re A.N., 2005 MT19, ¶ 23, 325 Mont. 379, 384, 106 P.3d 556, 560.

[34] *In re Nicole B.*, 175 Md. App. 450 (at p. 472) (2007).

to fruition" while an active efforts standard, on the other hand, included "tak[ing] the [parent] through the steps of the plan rather than requiring the plan to be performed on its own".[35]

Active efforts have recently been legislated in both NSW and Queensland. In New South Wales, the Secretary must act in accordance with the principle of active efforts in exercising any function under the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (**NSW Care Act**). Active efforts must be made to prevent the child or young person from entering out-of-home care.[36] Where the child or young person has already been removed from their family's care, active efforts must be made to restore them to their parents, or to place them with family, kin or community.[37] Active efforts may include access to comprehensive assessments, inviting representatives of the child's family to participate in decision-making, searching for extended family, having culturally appropriate family preservation strategies, keeping siblings together and having regular visits with custodians.[38]

45. Queensland's "active efforts" framework is particularly tailored to Aboriginal and Torres Strait Islander children. When making a significant decision about an Aboriginal or Torres Strait Islander child, a relevant authority must make active efforts to apply the Aboriginal and Torres Strait Islander child placement principle in relation to the child and in consultation with the child and the child's family, arrange for an independent Aboriginal or Torres Strait Islander entity for the child to facilitate the participation of the child and the child's family in the decision-making process.[39]

46. In both jurisdictions, active efforts mean purposeful, thorough and timely efforts to apply the principle.[40] In our view, the proposed framework under the Bill does not meet this threshold and is a substantial departure from this well-established framework. Rather than focusing on the nature of the support provided by the Department, the proactive efforts framework also imposes rigid and unhelpful timeframes for reunification.[41] It creates an unhelpful dichotomy in the first six months following removal which allows the Department to focus exclusively on family placement without addressing any attention to reunification entirely at their own discretion.[42]

47. The proactive efforts framework is materially weaker than the active efforts framework in other jurisdictions. It does not bring the NT in line with these jurisdictions, as suggested by the Minister.[43] The Bill contains none of the provisions equivalent to NSW about the way in which the Department is to provide active efforts, including that they are timely, practicable, culturally appropriate and conducted in partnership with children, families, kin and community.[44] The Bill does not impose the same standard as the Queensland legislation that active efforts be "purposeful, thorough and timely".[45] When the non-exhaustive list of activities which may

[35] *A.M. v. State* (In re A.R.F.), 2021 UT App. 31, 484 P.3d 1185 (Utah Ct. App. 2021).
[36] *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 9A(2)(a).
[37] *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 9A(2)(b).
[38] Queensland Aboriginal and Torres Strait Islander Community Controlled Child Protection Peak, *Active Efforts in Practice* (Guide, Second Edition March 2023) 4.
[39] *Child Protection Act 1999* (Qld) s 5F(2).
[40] *Child Protection Act 1999* (Qld) s 5F(6); *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 9A(3).
[41] See Explanatory Memorandum at cl. 6.
[42] Bill s. 12D(3).
[43] Hansard, NT Parliament, 13 May 2026, p. 17.
[44] NSW Care Act s. 9A(3).
[45] Qld Care Act s. 5F(6).

constitute active efforts are clearly based on the NSW provision, it is inexplicable that the Bill would not direct attention to temporary placement arrangements under s. 46 of the Care Act as an alternative to a protection order, when the NSW Care Act refers to temporary care arrangements. The reference to mediation conferences in the new s 12D(4)(d)(iii) is disingenuous when mediation conferences are not properly funded and do not functionally operate under the current legislation. The sector has long been calling for greater use of alternative dispute resolution and genuine family-led decision-making.

48. The active efforts framework is about accountability. It is positive that the Department is required to document and evidence the steps they have taken to meet the "proactive efforts" requirements. When applying for a protection order, the Department must now set out what proactive efforts were taken, why they did not prevent the application, what alternatives to a protection order were considered and why they were not suitable, and whether a parent tried to engage with family support services.[46] Whether the efforts made were sufficient and appropriate in the circumstances will also become a factor the Court "must consider" in making a decision in relation to a protection order. However, the Bill fails to provide an adequate and appropriate accountability mechanisms to ensure compliance. The only avenue available is to make a family responsibility order in lieu of a protection order if the Department has not met the standard and a family responsibility order is considered "appropriate". We expect that there will be limited circumstances where this alternative will be practically available, because a failure to take active efforts will often mean a child remains in need of protection and therefore that a protection order may be appropriate. The regime of the Bill is such that the Court could find that the Department had manifestly failed to meet the proactive efforts framework but nonetheless be bound to make a long-term protection order if there have already been two short term orders made.

49. In order to achieve its purpose, an active efforts framework must require the Department to satisfy the Court that appropriate steps have been taken, and provide appropriate mechanisms for the Court to direct the Department to rectify any issues identified. For example, in NSW the Children's Court may adjourn proceedings if the Court is not satisfied with the evidence adduced in relation to active efforts.[47] Anything short of this merely pays lip service to addressing deficiencies in providing appropriate support to families like those that were identified in the *Inquest into the Death of Baby G.*

50. While it is positive that the Government is considering an active efforts framework, the provision as drafted manifestly fails to meet the proper standard of active efforts, primarily serves an ulterior purpose of imposing rigid and impracticable timeframes for reunification, and offers no genuine accountability if the Department fails to meet the standard (which it commonly does now) notwithstanding existing policy requirements to apply an active efforts framework.[48] This amendment does not fulfil the Coroner's recommendation in the *Inquest into the Death of Baby G.*

[46] Bill s. 122(1)(b).
[47] NSW Care Act s. 63(4).
[48] See the Family and Parent Support Policy p. 4.

Long term orders

51. The proposed amendments operate together to substantially reshape the way the Court approaches permanency, reunification and long-term removal in child protection proceedings. New section 8(2)(c) and (d) elevate "stable and nurturing relationships" and "permanency in the child's living arrangements" as priority considerations in determining a child's best interests. Those principles are then reflected procedurally through the amendments to protection order proceedings. Section 123 reduces the maximum duration of short-term parental responsibility directions from two years to one year, thereby shortening the period in which families may work toward reunification before further applications are required. Section 128 then significantly narrows the Court's ability to make repeated short-term orders by providing that only two short-term parental responsibility directions may ever be made, and only where the Court is satisfied there is a "high probability" of reunification and that the child's long-term stability and security will not be adversely affected. Section 130 reinforces this framework by requiring the Court to consider whether the proactive reunification efforts under s12D were "sufficient and appropriate", embedding the statutory expectation that reunification efforts occur within a compressed timeframe. At the same time, sections 125 and 137D expand party status to carers where a child has been placed with them for more than eight months.

52. Read together, these provisions create a legislative structure that prioritises early permanency and placement stability and may practically reduce the time available for families to address issues such as housing instability, disability, family violence, poverty or access to services before long-term removal pathways are pursued. The combined effect is likely to shift the balance of proceedings away from reunificaiton and toward permanency outcomes at an earlier stage in a child's involvement with the system. Importantly, these provisions limit the discretion of the Judicial Officer to consider the circumstances and best interests of individual children.

53. Victoria's experience is particularly relevant to the Committee because it demonstrates that legislative models prioritising permanency through rigid timeframes and constrained judicial discretion can produce unintended and harmful outcomes for children and families. The Victorian "permanency amendments", introduced through the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014 and rolled out from 2016, were based on a similar policy rationale to the current NT Bill: namely that children required earlier legal certainty and that reunification efforts should occur within compressed statutory timeframes. Victoria replaced the concept of "stability" with "permanency", introduced strict reunification timelines, and limited the Court's ability to extend reunification orders beyond prescribed periods. However, subsequent reviews and inquiries found these reforms had created rigidity and inflexibility that disadvantaged vulnerable families, particularly Aboriginal families experiencing poverty, family violence, disability, housing instability and intergenerational trauma.

54. Importantly, Victoria has now moved to repeal and unwind key aspects of that permanency framework through the Children, Youth and Families Amendment (Stability) Bill 2025, which passed the Victorian Parliament in March 2026. The Victorian Parliament expressly acknowledged that the use of the concept of "permanency" had created "a greater focus on final legal arrangements for care of a child and Permanent Care Orders specifically, rather than encompassing broader factors that support stability and security for children." The new

Victorian reforms restore "stability" as a holistic concept that includes not only legal stability, but also cultural, relational and physical stability. Critically, Victoria also removed strict reunification time limits and restored greater judicial flexibility so that courts may consider the circumstances of each individual child and family rather than operate within arbitrary statutory deadlines. The Victorian Parliament recognised that "the journey of reunification is unique to a family unit" and that some families "require further time to achieve reunification."

55. The evidence before Victorian inquiries was particularly concerning in relation to Aboriginal children. The Yoorrook Justice Commission heard that strict reunification timelines operated unfairly against Aboriginal families because of structural barriers including housing shortages, long waitlists for culturally safe services, family violence, incarceration-related trauma and poverty. Yoorrook found that "many First Peoples families cannot meet the reduced timeframes for reunification because of the complex and entrenched disadvantage they face", creating a heightened risk that Aboriginal children would be "permanently disconnected from their culture."[49] The Commission further warned that Western concepts of permanency focused too heavily on singular attachment and legal finality and did not adequately recognise the importance of kinship systems, culture and community connection for Aboriginal children.

56. These findings are highly relevant to the current NT Bill. The proposed amendments similarly prioritise permanency and long-term stability through shortened reunification pathways and restrictions on repeated short-term orders. However, the Victorian experience demonstrates the danger of legislative frameworks that narrow judicial discretion and elevate statutory timelines above the individual circumstances of children and families. Child protection decisions are among the most significant decisions the state can make. They require careful judicial consideration of the unique needs, risks, relationships, culture and lived experience of each individual child. While stability and safety are critically important, the evidence from Victoria demonstrates that rigid permanency frameworks can unintentionally prioritise administrative finality over the best interests of the particular child before the Court.

Family responsibility agreements and orders

Family responsibility agreements

57. Part 2.1A introduces Family Responsibility Agreements (FRAs) as a new mechanism allowing the CEO to enter into written agreements with parents or carers where there are concerns about a child's wellbeing, development or safety. The threshold for entering into an FRA is notably broad and does not require a finding that a child has suffered serious harm. Instead, the proposed FRA framework operates at an earlier intervention stage and may apply in circumstances involving "events of concern", school attendance issues, anti-social behaviour or broader concerns about family functioning and developmental outcomes. While the agreements are framed as voluntary, they exist within the context of a coercive statutory system where families may reasonably perceive that refusal to participate could increase the likelihood of further child protection involvement. The agreements may include requirements relating not only to child safety, but also broader behavioural, educational and service engagement expectations. This

[49] Yoorrook Justice Commission. (2023). Yoorook with Purpose Interim Report. Yoorrook-Justice-Commission-Interim-Report.pdf (yoorrookjusticecommission.org.au).

creates a significant expansion of statutory oversight into the ordinary lives of vulnerable families, particularly those experiencing poverty, disability, family violence, housing instability or limited access to services.

58. The Committee should also carefully consider the participation framework within Part 2.1A. While the Bill contemplates family involvement in agreement-making, there appear to be limited safeguards to ensure families have access to independent advocacy, legal advice, disability support, culturally safe processes or genuine capacity to negotiate the terms of agreements on an equal footing with the Department. There is a risk that families may formally "agree" to extensive intervention measures in circumstances where the practical imbalance of power means participation is not fully free or informed.

59. While there are similar provisions contained in other Australian statutes, the coercive powers contained in the amendments regarding FRAs and FROs are not mirrored in any other jurisdiction.

- Under the NSW Care Act, the Department of Communities and Justice (**DCJ**) and parents can enter into voluntary parent responsibility contracts. Such contracts can only be entered into if DCJ forms the opinion, on reasonable grounds, that the child or young person is in need of care and protection. The threshold for the Court to be satisfied a child is in need of care and protection is set out in s 71 of the NSW Act. Importantly, the Court cannot conclude that the basic needs of a child or young person are likely not met only because of a parent's disability or poverty.

- The contract can be registered with the Court but creates no statutory obligation or legally enforceable agreement. Critically, before entering into a contract, DCJ must give the parents reasonable opportunity to seek independent legal advice. No equivalent provision is provided for in the NT Bill.

- Under the *Children and Young People Act* 2008 (ACT) (**ACT Care Act**), Child, Youth Protection Services (**CYPS**) and parents can enter into a family group conference agreement or a Voluntary Care Agreement. Similarly to the NSW Act, parents must be provided reasonable opportunity to receive independent legal advice about the meaning and effect of the agreement and must sign a statement indicating this has occurred before the agreement is finalised.

- A family group conference agreement, once registered with the Court, has effect as if it were an order of the Court and may be enforced accordingly. However, the discussion at a family group conference remains confidential and cannot be used in court proceedings if these arise at a later date. The terms of an agreement are not defined, allowing for broad actions and obligations to be agreed to by both CYPS and parents. Agreements can also be varied and amended through further conferences to ensure the agreement remains fluid and flexible. These conferences also include individuals who may hold an interest in the child such as a school representative, health or wellbeing practitioner, counsellor, or other support service for the child, however the agreement can only be made between a person who holds parental responsibility for the child and CYPS. Unlike the provisions for FRAs in the NT Bill, the child's views and wishes must be heard before an agreement can be reached, if the child is over the age of 15 years they must also agree

to the terms, and the agreement is mediated by way of conference using an independent and impartial mediator.

- Voluntary Care Agreements under the ACT Act can only be made once all other alternative dispute resolution options and supports have been considered and exhausted. These agreements allow for the sharing of parental responsibility and/or daily care and control to ensure appropriate support is provided to a child. The refusal to agree to a Voluntary Care Agreement is not used against a parent when considering whether an order is to be made. Any party to the agreement can also terminate the agreement at any time. These same provisions are not contained in the NT Bill.

Family Responsibility Orders

60. The Committee should also carefully consider the participation and procedural fairness safeguards within the Family Responsibility Order framework. While FROs create significant obligations on parents and carers, several provisions appear capable of allowing orders to be made and enforced in circumstances where families have had limited practical participation in the process. Sections 102C(c) and (d) permit the Court to proceed where a parent or carer does not appear, including where reasonable attempts have been made to locate or serve them. Sections 102G(3) and (4) further allow the Court to hear and determine applications in the absence of the parent or carer in certain circumstances. Section 102H enables orders to continue operating notwithstanding non-attendance. Importantly, s102K(2) appears to create the possibility that a person may be found to have breached a Family Responsibility Order even where they were not personally served with the order itself. Read together, these provisions create a significant procedural fairness concern. Family Responsibility Orders may impose substantial obligations and create pathways for escalating statutory intervention, yet the Bill appears to permit circumstances where orders are made in the absence of families and breach proceedings may follow despite uncertainty about whether the person was ever personally aware of the order. In a jurisdiction such as the Northern Territory — where service delivery challenges, remoteness, mobility between communities and inconsistent communication infrastructure are well known — the Committee should carefully consider whether the Bill places sufficient responsibility on the Territory to ensure genuine notice, meaningful participation and actual understanding of court orders before punitive consequences may follow.

Section 65E

61. Section 65E creates a direct pathway from police contact into the child protection system where a child is too young, or otherwise unable, to be held criminally responsible. If a court finds that a child cannot be held criminally responsible for an offence, or if that child is later involved in police interactions or exhibits criminal or anti-social behaviour, police may notify the CEO. The stated purpose of that notification is to allow consideration of a Family Responsibility Agreement or Family Responsibility Order. The practical concern is that, where the criminal justice system cannot lawfully punish a child, the Bill creates an alternative pathway for Territory intervention through care and protection mechanisms. In effect, where the law says a child is too young or not criminally responsible, the response may shift from criminalisation of the child to statutory intervention into the family. The Committee should carefully consider whether this risks using

child protection powers as a substitute for criminal justice powers, rather than responding to childhood behaviour through schools, health, disability, youth support and community-based services.

Statutory intervention into family life

62. A core principle in democratic societies is that families should generally be able to raise their children without unnecessary government interference, unless there are serious concerns about a child's safety. Child protection laws give the Territory some of the strongest powers it can exercise over people's private lives, including the power to investigate families and remove children. Because of this, these powers have traditionally been limited to situations where intervention is necessary to protect a child from serious harm. International human rights frameworks also recognise the importance of protecting family life and privacy from unnecessary Government intrusion. Articles 17 and 23 of the *International Covenant on Civil and Political Rights* protect individuals from arbitrary interference with family and privacy and recognise the family as the "natural and fundamental group unit of society". The Committee should carefully consider whether the combined effect of the proposed amendments — including the expansion of "events of concern", wellbeing-based intervention, broadened inquiry powers under s. 32, investigation thresholds under s. 35 and expanded family responsibility mechanisms under s. 65D(6) — moves the child protection system beyond its traditional role of protecting children from serious harm and instead creates broader powers for government involvement in the ordinary lives of all families and in particular those experiencing poverty, disability, family breakdown, housing stress or other social disadvantage. It is difficult to understand what purpose an FRO would serve without meaningful engagement from family in its terms and function other than providing a pathway for escalating statutory intervention.

63. Read together, sections 4, 6, 8, 9, 32, 35, 65D(6) and 65E substantially expand the reach of the child protection system into ordinary private family life and significantly broaden the circumstances in which the Territory may intervene in the raising of children. The amendments move the legislation away from a framework focused primarily on protecting children from serious harm and toward a much broader social regulation model concerned with "wellbeing", behaviour, family functioning and long-term developmental outcomes. This represents a profound shift in the relationship between families and the Territory and warrants scrutiny by the Committee.

64. Section 4 reframes the objects of the Act to emphasise not only a child's wellbeing and safety, but also their long-term stability and security. Section 6 also introduces the concept of a "significant decision involving a child", defined as a decision likely to have a significant impact on the child's life. These amendments should be read together with the broader concepts introduced elsewhere in the Bill, including "events of concern", school non-attendance, anti-social behaviour and concerns relating to a child's wellbeing. Importantly, the Bill also maintains powers for the CEO to make inquiries and investigate where a child may be in need of protection. Taken together, these provisions broaden the matters that may become relevant to statutory decision-making and increase the circumstances in which child protection systems may become involved in the lives of families.

65. Sections 8 and 9 then reshape the best interests framework by elevating concepts of permanency, stability and long-term developmental outcomes as central considerations in decision-making. While these concepts are important, they also create a framework where Territory intervention may increasingly occur because families are viewed as unable to provide an "optimal" developmental environment, rather than because of immediate or serious safety concerns. The Bill therefore risks shifting child protection systems further into the regulation of parenting, family functioning and socio-economic disadvantage.

66. Sections 32 and 35 materially expand the practical reach of the child protection system when read together with the broader definitional changes introduced throughout the Bill. Section 32 empowers the CEO to make inquiries where concerns arise regarding a child's wellbeing or circumstances that may indicate the child is in need of protection. The inquiry power then allows the Department to compel information from family, childcare services, health practitioners, and other services. Section 35 then establishes the threshold for investigation where the CEO believes on reasonable grounds that a child may be in need of protection. Read together with the expanded concepts introduced elsewhere in the Bill — including "events of concern", broader wellbeing considerations, school non-attendance and family circumstances contributing to poor outcomes — these provisions increase the circumstances in which the Department may undertake formal inquiries into family life. The practical effect is that matters historically addressed through health, disability, education, housing or family support systems may increasingly become subject to statutory child protection scrutiny.

67. This concern is amplified by section 65D(6), which enables Family Responsibility Agreements to include requirements directed not only to child safety but broader behavioural and lifestyle matters. These agreements may address school attendance, engagement with services, behavioural expectations, housing-related issues and compliance with support programs. Although framed as voluntary, these agreements exist within a coercive statutory environment where families are aware that non-engagement may escalate child protection involvement. The practical effect is that child protection powers may increasingly be used to supervise and direct the ordinary functioning of families experiencing separation, poverty, disability, family violence, overcrowded housing, mental health challenges, cost of living pressures or social disadvantage.

68. The Committee should carefully consider the cumulative effect of these provisions. Read individually, each amendment may appear modest. However, read together they create a legislative architecture that significantly expands the Territory's authority to scrutinise, assess and intervene in family life at a much earlier stage and in response to much broader concerns than serious harm alone. This is particularly concerning in the Northern Territory context, where many families already experience entrenched structural disadvantage, limited access to housing and services, and disproportionate surveillance through statutory systems.

69. Importantly, the Bill does not appear to contain corresponding safeguards to ensure that intervention remains proportionate, necessary and genuinely focused on serious risk to children. Nor does it substantially increase the availability of the housing, therapeutic, disability, alcohol and other drug, family violence and early intervention services families may require to address the concerns identified by the system. There is therefore a real risk that the expanded statutory reach created by these provisions will result in greater intervention into the lives of

vulnerable families without addressing the underlying structural drivers placing families under pressure.

Case Study 1: Child with emerging complex disability and school disengagement

70. A family in regional Northern Territory are caring for their child who is in the early stages of assessment for autism spectrum disorder and ADHD. The child has significant sensory regulation difficulties, experiences anxiety in crowded environments and has recently begun refusing to attend school. The family has been on waiting lists for paediatric assessment and behavioural supports for more than 12 months. The mother is attempting to maintain attendance through partial days and flexible arrangements with the school, however the child's behaviour is escalating and the school is making repeated notifications about non-attendance, emotional dysregulation and behavioural incidents.

71. Under the proposed amendments, these circumstances may fall within the broadened concepts of:

- "events of concern";
- concerns about a child's "wellbeing";
- school non-attendance;
- family circumstances contributing to poor developmental outcomes.

72. Importantly, the Department may investigate where a child merely "might" be in need of protection. Read together with the broad information-sharing and family responsibility provisions, the legislation risks reframing disability, unmet therapeutic need and school disengagement as child protection concerns rather than health and disability support issues. Furthermore, for a family who is already stretched in providing care for a child with high-needs, engagement with Child Protection workers is likely to substantially increase anxiety and stress, which will decrease the overall wellbeing of the family and child.

73. This creates a real risk of overreach into ordinary family life. The child's behaviours may reflect unmet disability support needs, lengthy service waitlists and systemic failures in inclusive education rather than parental neglect or abuse. However, once the threshold for intervention is lowered and mandatory statutory responses are triggered, the family may become subject to escalating child protection involvement despite actively seeking support. The Committee should consider whether the Bill contains sufficient safeguards to ensure children with emerging or non-visible disabilities are not unnecessarily drawn into child protection systems because of service gaps, poverty or educational exclusion.

Case Study 2: High-conflict separation and statutory escalation

74. A separated family is involved in highly conflictual parenting proceedings. The parents make repeated complaints against one another to police, schools and support services. The children are distressed by the ongoing conflict and one child has begun displaying behavioural issues at school. Notifications are made raising concerns about emotional wellbeing, exposure to parental conflict, school attendance and "anti-social behaviour".

75. Under the current legislative framework, many matters arising from parental separation and conflict may be screened out where there is insufficient evidence of serious harm and where issues are more appropriately managed through the family law system, therapeutic intervention or family support services. However, under the proposed Bill, the expanded concepts of "events of concern" and wellbeing concerns, may create a mandatory statutory requirement that the Department formally investigate rather than screen out these matters.

76. This significantly expands the reach of child protection systems into private civil family disputes. In circumstances of high-conflict separation, allegations are frequently contested, emotionally charged and may involve strategic or retaliatory reporting. The Bill risks creating circumstances where ordinary — though distressing — family breakdown becomes subject to escalating statutory child protection intervention even where there is no clear evidence of abuse or neglect.

77. The consequences for families may be profound. Parents may become subject to Family Responsibility Agreements, mandatory engagement with services and ongoing Departmental oversight while simultaneously involved in Family Court proceedings. Children may experience additional interviews, investigations and system involvement during already traumatic family separation. The Committee should carefully consider whether the breadth of the proposed provisions appropriately distinguishes between serious child protection concerns and broader social, relational or family law issues that may be better addressed through therapeutic, legal and community-based responses rather than statutory intervention

Case study 3: 10-year-old child shoplifting

78. A 10-year-old child from an ordinary Territory family is caught shoplifting snacks from a supermarket with older children. Because of the child's age, the criminal law cannot hold the child responsible in the same way it could an older person. The appropriate response may be a family led, school-based, youth support, family support or community-led response that helps the child understand what happened and addresses any underlying issues.

79. Under s. 65E, however, police may notify the CEO because the child has been involved in behaviour that would otherwise be treated as offending or anti-social behaviour. That notification may then trigger consideration of a Family Responsibility Agreement or Family Responsibility Order. The family may therefore find themselves drawn into the child protection system, not because there is evidence that the child is unsafe at home, but because the child engaged in behaviour the criminal law cannot punish. The family may understandably find it offensive to be forced into a Family Responsibility Agreement with the Department, when there is no suggestion of parental neglect or harm towards the child. The parents may respond to early Departmental intervention in a negative way, which in turn triggers a more aggressive response and intervention from the Department. This series of interactions may drag a family into the child protection system, when there was never a concern about the safety of the child to begin with.

80. For ordinary Territory parents, this is a significant concern. It means that if a young child acts out, and the criminal justice system cannot be used because the child is too young or not criminally responsible, the care and protection system may become the alternative mechanism

for state intervention. The Committee should carefully consider whether this is an appropriate use of child protection powers, or whether it risks expanding child protection into a back-door response to childhood behaviour that should be addressed through family, therapeutic, educational and community-based supports.

Resourcing the implementation of FRAs, FROs and proactive efforts

81. The FRA, FRO and "proactive efforts" legislative provisions proposed in this Bill will create additional demand on both DCF staff and the wider service system. DCF staff will be required to undertake more assessments, casework, referrals, monitoring, documentation and court-related work. Families will be required to comply with agreements, orders and expectations directed at complex issues such as school attendance, unsafe home environments, mental health concerns, family violence, disability, housing instability and lack of adult supervision.

82. There are already significant service gaps in the kinds of supports families would need in order to comply with FRAs and FROs.[50] The proposed "proactive efforts" provisions require DCF staff to do more than refer families to services. This is particularly important because, as outlined above, active efforts require more than passive referral-making; they require practical, sustained and culturally safe work with families. To make active efforts meaningful, DCF and the broader sector must be resourced with sufficient workforce capacity, cultural capability, casework time and supervision to work alongside families, coordinate supports, follow up referrals, document the steps taken, and address barriers to engagement. Without this investment, "proactive efforts" risks becoming a paper obligation rather than practical safeguards for children and families. The Bill is not matched by the workforce investment required within DCF, or the service investment required across the community sector, to make these obligations achievable in practice. The 2026–27 NT Government Budget does not clearly provide dedicated implementation funding for the additional workforce and service capacity these changes will require.[51]

83. The Circuit Breaker program, the clearest existing program connected to FRAs, remains funded at $8.3 million in both 2025–26 and 2026–27.[52] The Budget papers evidence an increase in demand for the Circuit Breaker program, and that demand has occurred before the proposed legislative changes commence.[53] If the Bill expands the number of families captured by FRAs and FROs, demand on the Circuit Breaker program can reasonably be expected to increase further. Despite this, the Budget does not increase funding for the program.[54]

84. While the NT Government Budget allocates $10 million per annum in 2025–26 and 2026–27, and $20 million over two years to strengthen statutory out-of-home care, this funding responds to pressure once children have already entered care.[55] It does not address the service gaps that cause families to escalate into that system. Out-of-home-care is one of the most expensive parts of the child protection system, and evidence supports shifting investment toward early

[50] SNAICC National Voice for our Children, *Family Matters Report 2025: Strong, Loved and Full of Potential* (Report, 2025) 34–5.

[51] Northern Territory Government, *2026–27 Budget Paper No 3: Agency Budget Statements* (Budget Paper, 2026) 239–41.

[52] Ibid 240.

[53] Northern Territory Government, *Budget 2026–27: Budget and Regional Overview* (Budget Paper, 2026) 13.

[54] Northern Territory Government, *2026–27 Budget Paper No 3: Agency Budget Statements* (Budget Paper, 2026) 240.

[55] Ibid 239-240.

intervention to prevent escalation into care.[56] The NT Government's 2026-27 Budget reflects the broader funding problem identified nationally in SNAICC's Family Matters Report 2025: only 15.6% of recurrent child protection expenditure was spent on family support services, including intensive family support services, with the overwhelming majority directed to statutory child protection and out-of-home care.[57]

85. This misalignment is present in this Bill. FRAs, FROs and "proactive efforts" rely on families being able to access practical support to address the issues that bring them into contact with DCF.[58] If investment remains concentrated at the statutory and out-of-home-care end of the system, the Bill risks creating a more expensive statutory pathway without building the support system needed to keep children safely with family where possible, prevent long-term harm, reduce demand over time, and avoid greater long-term costs to the NT Government and Territory taxpayers.

86. NTLAF submits that the Bill could not commence without a clear and funded implementation plan that aligns funding with the stated purpose of the reforms. That plan should identify the expected increase in demand arising from FRAs, FROs and "proactive efforts"; map the services families will need to comply with agreements and orders; identify current service gaps by region; and commit additional funding to the front-end services needed to prevent escalation. Without that investment, the proposed changes will not achieve early intervention, family preservation or reunification. They will expand statutory intervention in a service system that is already unable to meet need.

Resourcing Court and Legal Services

87. The NTLAF is deeply concerned by the further pressure this Bill will place on an already overstretched Court system and legal services who are already inadequately funded to meet demand. We have already seen increases in child protection listings across the NT, with listings currently at their highest point since 2019-2020.[59] In our view, this Bill will lead to a significant increase in litigation and place significant demands on Court time, because:

- It introduces an entirely new court process for FROs, with a relatively low bar for seeking statutory intervention.
- The lower threshold for removal and focus on immediate safety is likely to lead to an increase in child removals, with flow on effects for the Courts and legal services.
- The focus on limited short-term orders and reprioritisation of reunification incentivises contested litigation, because the stakes are higher for parents. It is likely that more matters will proceed to hearing.

[56] Social Ventures Australia, *The Economic Case for Early Intervention in the Child Protection and Out-of-Home Care System in Victoria* (Research Paper, Berry Street, 2019) 6, 16–17; SNAICC National Voice for our Children, *Family Matters Report 2025: Strong, Loved and Full of Potential* (Report, 2025) 34–5.

[57] SNAICC National Voice for our Children, *Family Matters Report 2025: Strong, Loved and Full of Potential* (Report, 2025) 34–5.

[58] Australian Institute of Health and Welfare, Child Protection Australia 2023–24: Insights (Web Report, 27 March 2026) 'Supporting children'

[59] NT Local Court Statistics, April 2026, p. 38.

- The requirement that children are represented on long term order applications may mean child representatives may need to list matters for hearing where a long-term order does not meet the best interests or instructions of the child.
- Carers also constitute an additional party to proceedings. There is currently very little capacity within the sector to assist additional parties, presuming they are eligible for free legal assistance. If not, there is a likelihood of unrepresented parties which will increase pressure on the Courts.
- The involvement of carers in proceedings will likely lead to more contested matters as carers often hold a different view to parents.

88. We note that a longitudinal study of the effect of the Victorian provisions which imposed rigid timeframes for reunification found that there was a significant increase in litigation and impact in Court resourcing. Unforeseen outcomes identified included delayed resolutions of matters and a more litigious court culture with longer and more contested proceedings delaying final outcomes.[60] This was identified to be a "failure of implementation resulting from a lack of engagement with legal stakeholders whose support was essential to succusses".[61]

89. We also anticipate that significant uncertainty in the legislation will lead to contests in the Local Court and costly and time-consuming appeals to the Supreme Court. We do not understand that the 2026/27 Budget included any additional resourcing for legal services and the Courts to meet the demands this Bill will impose on the justice system. With a justice system at breaking point, there is no capacity to absorb this additional work without more funding.

90. The introduction of the FRA and FRO regime must also be supported by appropriate legal support services. A FRA may be an entry-point for escalating statutory intervention, especially if that initial agreement is not appropriately tailored and the effect of the agreement and consequences of non-compliance properly explained. This will require independent legal advice and support from culturally appropriate legal services. Again, we anticipate significant additional demand for our existing, limited services and call for appropriate funding for early legal intervention services should this Bill pass.

91. We note generally that the Bill promotes the appointment of child representatives in more circumstances. Whilst we generally welcome the appointment of child representatives, the Bill does nothing to address the fact that child representatives are currently appointed from the same panel of private lawyers who represent the Department. It is essential that children's representatives are truly independent, and can demonstrate appropriate skills, qualifications, experience and cultural competency in order to properly fulfill this essential role.

Impacts on Children

The evidence doesn't support improved outcomes for children place in out-of-home care

92. The available evidence does not support the proposition that increased child removal and out-of-home care improve long-term outcomes for children. Rather, the Northern Territory research

[60] Wise, Cashmore, Parolini and Katz, *Certainty for Children, Fairness for Families? Synthesised Research Findings for the Permanency Amendments Longitudinal Study* at 5, 46-47.

[61] Wise, Cashmore, Parolini and Katz, *Certainty for Children, Fairness for Families? Synthesised Research Findings for the Permanency Amendments Longitudinal Study* at 5.

consistently demonstrates that higher levels of child protection involvement are associated with increasing risk of poorer health, justice and wellbeing outcomes across the life course.

93. The evidence does not establish that removal itself causes *all* later adverse outcomes, as many children entering care have already experienced significant trauma, violence, neglect and structural disadvantage. However, the research does demonstrate that out-of-home care has not been shown to reverse these trajectories and, in many cases, children with the highest levels of statutory involvement experience the poorest long-term outcomes. Population-level NT data has identified a clear "gradient of risk"[62] associated with increasing child protection involvement, with children placed in out-of-home care experiencing the highest rates of later youth offending. For example, Aboriginal boys with no child protection contact had a cumulative risk of youth offending of 3.2% by age 16, compared to 33.7% for boys who had experienced out-of-home care. Aboriginal girls with no child protection contact had a risk of 0.6%, compared to 13.2% for girls who had experienced out-of-home care[63]. Research has also shown that children who experienced both out-of-home care and youth detention had 20 times higher prevalence of mental health-related hospitalisation than peers with no system involvement, while out-of-home care was independently associated with increased incidence of psychiatric hospitalisation.[64] Aboriginal children with substantiated maltreatment in both early and middle childhood were found to have nine times the risk of self-harm hospitalisation in adolescence. The evidence further demonstrates that child protection involvement itself should be treated as an opportunity for therapeutic and preventative intervention, irrespective of whether children are ultimately removed.

94. Importantly, the small number of international studies attempting to isolate the causal effect of removal have not demonstrated improved long-term outcomes for children who are removed. One significant United States study examining children on the "margins of removal" found that similarly situated children who remained with their families experienced lower rates of offending, unemployment and teenage pregnancy than comparable children who were removed into care.[65] While caution must be exercised in directly applying international findings to the Northern Territory context, particularly for Aboriginal children and families, the available evidence does not support lowering thresholds for removal and instead highlights the importance of genuine commitment to the Aboriginal Child Placement Principles particularly culturally-led prevention and therapeutic family strengthening responses.

The Child Protection Department under pressure may risk missing genuinely at need kids

95. In a 2024 Coronial Inquest, Judge Armitage heard evidence that "39.8% of DCF's child protection positions across the Territory are vacant."[66] This evidence raises significant concerns about the operational capacity of the Department to safely implement the substantial expansion of statutory responsibilities proposed by the Bill. The Committee should carefully consider the

[62] He, Guthridge & Leckning, "Protection and Justice" (2019), p. 5 (Section 2.2, Chapter overview box)]

[63] He, Guthridge & Leckning, "Protection and Justice" (2019), p. 5 (Section 2.2, Chapter overview box)]

[64] Leckning et al., "Mental health-related hospitalisations," *CYSR* (2023), p. 5

[65] Doyle, Joseph, J Jr. 2007. "Child Protection and Child Outcomes: Measuring the Effects of Foster Care." *American Economic Review* 97 (5): 1583–1610

[66] Inquests into the deaths of Miss Yunupiŋu, Ngeygo Ragurrk, Kumarn Rubuntja and Kumanjayi Haywood [2024] NTLC 14

practical effect of broadening inquiry and intervention thresholds to include "events of concern", wellbeing concerns, anti-social behaviour and school non-attendance at a time when the child protection workforce is already under considerable strain.

96. The recent standing down of three child protection workers has likely created further instability within a workforce already operating under enormous pressure. While accountability within child protection systems is important, there is a risk that individual frontline workers are being blamed for broader systemic failures that have developed over many years, including chronic understaffing, high vacancy rates, workforce turnover and inadequate resourcing. Public scapegoating of individual workers in an already traumatised and overstretched system may have significant consequences for staff morale, retention and workforce confidence across the Department.

97. At the same time, the Bill creates additional obligations on the Department to undertake proactive efforts, investigate, monitor, negotiate Family Responsibility Agreements, supervise Family Responsibility Orders and undertake expanded court processes. Without significant workforce investment, there is a real risk that scarce statutory resources will be diverted toward lower-level behavioural and wellbeing concerns, reducing the Department's capacity to respond effectively to children experiencing serious abuse, neglect and violence. The Committee should carefully consider whether expanding the scope of statutory intervention in the context of chronic workforce shortages may unintentionally increase the risk that children genuinely in need of urgent protection fall through the gaps of an overburdened system.

Nature of Consultation

98. We note that the Committee has only allowed one week for stakeholders to provide submissions on this Bill. This follows an inadequate consultation process on the development of the Bill. The nature of the consultation to date has been:

- In January 2025, members of the NTLAF were provided with drafting instructions to the Office of Parliamentary Council for proposed amendments to the Care Act and were given three business days to respond. The amendments did not progress at this time.
- In April 2025, stakeholders were invited make submissions on the review scope and proposed terms of reference for a review of the Care Act being undertaken by DCF.

99. Members of the NTLAF provided detailed submissions on the terms of reference. Those submissions identified detailed and practical proposal to improve the legislation. These recommendations were grounded in organisations' practice experience on the ground. However, we did not receive any update on the final terms of reference of the review or have any input into the conduct of the review. The Bill does not appear to have engaged with or address most of the issues identified by stakeholders as actual problems and shortcomings of the existing legislation.

100. This is complicated legislation which will have far reaching consequences for the children, parents, families, carers, DCF, support services, Courts and legal services. There has not been a proper process to carefully consider the impacts of this Bill from a technical legal perspective, including how the amendments will operate and how the amendments will interact with existing provisions of the Act.

101. From our initial review, we see considerable risk that there are significant aspects of the Bill which are legally uncertain and will likely require significant litigation to determine its proper operation, including Supreme Court appeals. This will be both costly and time consuming, likely leading to delay in the determination of individual matters.

102. We are concerned that aspects of the Bill are unworkable as currently drafted and may be inconsistent with existing provisions of the Act. Again, we anticipate protracted litigation to resolve these issues. The Bill may not operate as intended.

103. These issues would be avoidable if there was a proper process of legislative development which allows sufficient time for stakeholders and legal experts with practice area experience to fully consider these issues, with a view to resolving the concerns and passing workable legislation. That has not occurred in the development of this legislation, and the Committee should be very concerned about the practical operation of the legislation if passed.

Conclusion

104. The existing legislation is not without flaws. However, sweeping amendment to the legislation is not the highest priority for reform. If the Government was serious about addressing poor outcomes in the child protection system, it would focus on addressing the practical barriers to achieving better outcomes for children and young people in the NT. This includes recruitment and retention of highly skilled caseworkers; the provision of ongoing and specialised training and development for caseworkers; expediting carer assessments so more children in care can be placed with family; properly resourcing Aboriginal family led decision-making and mediation programs; and further investing in early intervention support programs with the aim of working with families and obviating the need for court proceedings. These are the kinds of reforms that address the everyday challenges of the system and that will deliver real change for the community.

105. If the NT Government is serious about improving outcomes, the NTLAF stands ready to work with the Government, child protection sector, Aboriginal community-controlled organisations and Aboriginal leaders.

Yours sincerely

[redacted]

Cindy Torrens
Chief Executive Officer
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On behalf of the Legal Assistance Forum

This submission has been endorsed by:

1. Central Australian Aboriginal Family Legal Unit;

2. Central Australian Women's Legal Service;
3. Darwin Community Legal Service;
4. Katherine Women's Information and Legal Service;
5. Legal Aid NT;
6. North Australian Aboriginal Family Legal Service;
7. North Australian Aboriginal Justice Agency; and
8. Top End Women's Legal Service.