Australian Government

National Commission for Aboriginal and Torres Strait Islander Children and Young People

Submission

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

About the National Commission

The National Commission for Aboriginal and Torres Strait Islander Children and Young People is an independent statutory body established under the *National Commission for Aboriginal and Torres Strait Islander Children and Young People Act 2026* (Cth).

The National Commission promotes and advances the rights of Aboriginal and Torres Strait Islander children and young people, including by scrutinising legislation and policy to ensure alignment with cultural rights, and self-determination.

The work of the National Commission is grounded in national and international human rights frameworks, including the *United Nations Convention on the Rights of the Child* and the *United Nations Declaration on the Rights of Indigenous Peoples*. A core focus is ensuring that systems affecting Aboriginal and Torres Strait Islander children uphold cultural rights, strengthen connection to family, community and Country, and are designed and delivered in partnership with Aboriginal community-controlled organisations.

Executive Summary

The National Commission raises serious concerns about the Care and Protection of Children Amendment (Every Child Matters) Bill 2026 and its implications for Aboriginal children, families and communities in the Northern Territory.

In line with the Legislative Scrutiny Committee's mandate, this submission focuses on the Bill's impact on rights, safeguards, and systemic equity. This is prioritised through the following topics:

- The Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP)
- The restructuring of the best interests framework, including the elevation of safety and the downgrading of culture and family connection
- The introduction of strict reunification timeframes and their impact on pathways to permanent care
- The establishment of Family Responsibility Agreements and Orders as enforceable compliance mechanisms.

Collectively, these reforms shift the system from a holistic, culturally informed model of child protection to a hierarchical and compliance-driven framework. The changes reduce the legislative weight given to cultural connection, expand departmental discretion and prioritise administrative permanency over relational and community-based approaches to child safety and wellbeing.

In a context of significant over-representation of Aboriginal children in out-of-home care, these changes are likely to increase removals and accelerate pathways to permanent care, separating children from family, culture and community. The National Commission considers that the Bill raises substantial concerns regarding the protection of rights, adequacy of safeguards and consistency with national reform frameworks, including *Safe and Supported: The National Framework for Protecting Australia's Children 2021-2031* and the *National Agreement on Closing the Gap*. Without amendment, the Bill will reinforce the structural drivers of over-representation and long-term harm in the child protection system in the Northern Territory.

Recommendations

Recommendation 1: The *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026* not be passed.

Recommendation 2: The Northern Territory Government undertake genuine consultation with Aboriginal community-controlled organisations on any future legislative reform.

Recommendation 3: Any future reform retain the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) as a binding legislative requirement, applied to the standard of active efforts.

Recommendation 4: The current threshold for removal — that a child *may be removed* only where there is an *unacceptable risk of harm* — be retained.

Recommendation 5: Reunification timeframes not be reduced in the absence of clear evidence that the Department of Children and Families has the capacity to safely reunify children within shorter timeframes.

Recommendation 6: Family Responsibility Agreements and Family Responsibility Orders not be introduced.

Policy Context: Safe and Supported Framework and Closing the Gap

The National Commission recommends that the proposed amendments be considered within the broader context of *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031* and the *National Agreement on Closing the Gap*. Together these amendments establish the national direction for child protection reform.

These frameworks prioritise prevention and early intervention, strengthening families and communities by ensuring children are safe and connected to family, culture and community. Central to both is a commitment to Aboriginal self-determination, including investment in culturally safe services delivered by Aboriginal community-controlled organisations and full implementation of the ATSICPP across all five elements to the standard of active efforts.

Closing the Gap Target 12 aims to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent by 2031. Achieving this requires systemic reform that strengthens cultural connection as a protective factor and supports Aboriginal leadership in decision-making.

In this context, amendments that reduce the prominence of cultural connection, increase discretion to depart from the ATSICPP, or narrow holistic decision-making frameworks risk being inconsistent with these national commitments. Where decisions rely heavily on discretion without corresponding safeguards, there is an increased risk that cultural considerations will not be consistently or appropriately applied.

Placement Principle and Best Interest Factors

In 2022–23, Aboriginal and Torres Strait Islander children accounted for 81.5% of all new out-of-home care admissions in the Northern Territory.[1] This underscores the extent to which child protection settings already negatively impact Aboriginal children and families.

The ATSICPP is a nationally recognised framework, guiding decision-making for Aboriginal children. It requires children to remain connected to family, community, culture and Country, and is underpinned by five interrelated elements: prevention, partnership, participation, placement and connection.[2] Together, these elements reflect a well-established understanding that cultural identity and community connection are not separate from safety but are central to a child's wellbeing and long-term outcomes.[3]

Under the current Act, the ATSICPP operates as a mandatory placement hierarchy, requiring priority placement with kin, then community, then other Aboriginal carers. Non-Indigenous placements are only as a last resort with an expectation that children are placed in close proximity to their family and community.[4] The Bill shifts the ATSICPP from a binding legislative requirement to a subordinate, optional consideration. It places Aboriginal-specific provisions beneath general placement provisions and subjects them to a prioritised best interests test.[5]

Contrary to the purpose of the ATSICPP, the Bill also lowers the threshold for removal, making it easier for the Northern Territory Department of Children and Families (DCF) to remove children from their families. Currently, the act states that a child 'may be removed' only in situations where there is 'unacceptable risk of harm'.[6] The

proposed change states that a child 'must be removed' based on a broader test of 'significant or likely risk of harm', expanding the circumstances in which removal 'must' occur.[7] In practice, this is likely to result in more children being removed in situations where appropriate, culturally informed support could instead reduce risk and keep families safely together. This is particularly concerning given the well-documented harms associated with removal, including trauma and an increased likelihood of future interaction with the justice system.

These changes reduce clarity and consistency in decision-making, weaken expectations that culturally appropriate placements will be prioritised, and increase departures from kinship and community placements. They reposition cultural connection as an optional consideration, rather than an essential component of a child's safety and wellbeing. As SNAICC's work demonstrates, the ATSICPP operates as an integrated framework encompassing prevention, partnership, participation, placement and connection.[8] Weakening any one element undermines the effectiveness of the whole. SNAICC's national review highlights that effective implementation depends on both strong legislative direction and sustained investment in Aboriginal community-controlled organisations. Both are critical to delivering culturally safe supports and enabling genuine partnership.[9]

In the Northern Territory, where implementation challenges already exist, maintaining clear and enforceable legislative standards is essential to ensuring consistency and accountability. The proposed changes risk shifting the system away from a strengths-based approach that recognises culture as protective toward one in which cultural considerations carry less weight in practice, reinforcing existing systemic gaps rather than addressing them.

While the current Act does not explicitly rank safety above other factors, the paramountcy principle already ensures that safety and wellbeing are central, alongside other protective elements such as culture and relationships.[10] Introducing a hierarchy of matters for consideration is unnecessary and shifts the framework away from a holistic model by treating safety as separate from, rather than inherently connected to, cultural identity and relational stability. This narrowing of the concept of safety risks poorer decision-making outcomes, particularly for Aboriginal children.

Consistent with SNAICC's analysis, removal from family and community can itself cause harm, with long-term cultural, emotional and developmental consequences. A best interests framework that does not consistently require consideration of these factors risks overlooking these impacts, particularly in a jurisdiction where Aboriginal children remain significantly over-represented in out-of-home care and experience poorer outcomes across multiple indicators.[11]

Reunification and Permanence

The reunification and permanence provisions of the Bill limit timeframes for reunification and establish an expedited escalation pathway to permanent removal that will harm Aboriginal children and their families.

The proposed amendments reduce the maximum duration of a short-term parental responsibility direction from 2 years to 1 year and introduce a limit of 2 short-term parental responsibility directions in relation to a child, which are again subject to the consideration of long-term stability.

The most recent available data shows that, as at 30 June 2024, 73.7% of Aboriginal and Torres Strait Islander children in out-of-home care in the Northern Territory had been continuously in care for 2 years or more, with 54.8% having been in care for 5 years or more.[12] Meaning that under the proposed framework, most Aboriginal and Torres Strait Islander children currently in out-of-home care in the Northern Territory would already exceed the effective timeframe for reunification. They would likely be permanently removed from their families and communities.

This is a significant and deeply concerning outcome, particularly in the absence of evidence that the Northern Territory child protection system has the capacity to safely reunify children within shorter timeframes. Recent public reporting and stakeholder commentary has also pointed to workforce and resourcing pressures within the Northern Territory child protection system, which further contextualise these concerns.[13]

In the most recent available data (as at 30 June 2024), 87.2% of First Nations children on care and protection orders in the Northern Territory were on finalised guardianship or custody orders.[14] The Bill effectively

restructures the legal framework to align with an existing system orientation toward permanent removal, while reducing the ability to challenge such outcomes.

This Bill will result in considerations regarding stability and permanency prevailing over the ATSICPP. This is a serious concern. Evidence demonstrates that even when the ATSICPP is legislated, systemic racism continues to override decisions in the child protection system. Nationally, in 2023–24, despite all Australian jurisdictions having legislated to prioritise placement with kin, only 47% of First Nations children entering out-of-home care were placed with relatives or kin.[15] In the Northern Territory (at 30 June 2024), this figure was significantly lower at only 17.5% of First Nations children placed with relatives or kin.[16] This disparity highlights that, particularly in the Northern Territory, embedding the ATSICPP and cultural considerations at the centre of legislation is critical to preventing the ongoing perpetuation of harm to Aboriginal and Torres Strait Islander children.

Stability is undeniably important for all children and stability through cultural connection is a critical protective factor for First Nations children and capable of buffering the effects of systemic disadvantage.[17] This must be recognised as a strength of Aboriginal communities. Research is conclusive that protecting and strengthening the cultural identities of First Nations children must be a key priority for child welfare services.[18] This aligns with the 'Connection' element of the ATSICPP, which explicitly requires that decisions relating to permanency of care do not cause harm by severing the potential for future cultural connections for Aboriginal and Torres Strait Islander children.[19] Imposing a 2-year timeframe will limit the court's ability to make decisions, consistent with the ATSICPP and Australia's international obligations under the United Nations Convention on the Rights of the Child and the Declaration on the Rights of Indigenous Peoples. Both recognise the critical importance of cultural connection.

The Bill provides for a 6-month period of 'proactive' efforts towards reunification immediately following a child's removal, intended as an initial phase of intensified support.[20] This sits within a broader 2-year effective cap on reunification, after which pathways to permanent care are accelerated. However, the Bill does not require that services provided during this initial 'proactive' phase be culturally appropriate, accessible, or delivered through Aboriginal community-controlled organisations, nor does it ensure responsiveness to structural drivers of removal such as housing insecurity and poverty. Similarly, the requirement that the court assess whether reunification efforts were 'sufficient and appropriate' is not defined in a way that reflects the needs and circumstances of Aboriginal children.[21]

A lack of appropriate services and supports is itself one of the key drivers of removals. The Senate Community Affairs References Committee's 2015 *Inquiry into Out-of-Home Care* reported that the most significant drivers for children entering out-of-home care were socio-economic factors linked to disadvantage.[22] This is particularly evident in the extremely high proportion of First Nations children removed for 'neglect', which is closely linked to the prevalence of social disadvantage in First Nations communities.

The Committee reported that addressing 'neglect' means addressing a broad range of complex social factors such as poverty, housing, and a lack of support services for vulnerable families. This includes a lack of First Nations-specific supports and supports for families with disability, who are particularly susceptible to removal. Critically, the Committee noted that addressing these social determinants is beyond the capacity of child protection authorities alone. Unless these socio-economic drivers are addressed with the significant transformation of social policy and supports across the Territory that would allow child protection authorities to make necessary efforts at reunification, under the Bill, many children will be removed due to policy failures. They would then be permanently removed due to those same failures, which neither their families nor the child protection system ever had the power to change.

Family Responsibility Agreements and Orders

Family Responsibility Agreements (FRA) and Family Responsibility Orders (FRO) introduce a framework that allows the CEO and the Court to increase parental involvement and accountability.[23] In practice, this framework compels compliance with CEO-directed requirements and creates a clear pathway to escalation, including the removal of a child.

The CEO may require a parent to enter into a Family Responsibility Agreement where there are concerns about a child and the CEO considers the family's circumstances have contributed or could be improved. Through

these agreements, the CEO can direct parents to engage with counselling, rehabilitation, residential programs, or parenting courses.

If a parent refuses to enter the agreement or does not comply with its requirements, the CEO can apply to the Court for a Family Responsibility Order.[24] These orders can impose behavioural requirements, income management, banned drinker orders, or housing directions, placing families under coercive controls that many will be unable to meet without adequate and accessible supports.

If a parent does not comply with an order and the CEO believes it is in the best interest of a child's wellbeing, the CEO must apply for a protection order, which the Court can also direct the CEO to do.[25] This creates a direct escalation pathway from non-compliance to removal, without adequately accounting for circumstances where non-compliance reflects factors often substantially outside a family's control such as poverty, housing instability, or lack of access to services. In practice, this framework risks more children being removed from their families and experiencing further harm due to unmet needs; whilst prioritising intervention over support or prevention.

The introduction of this framework has the potential to create significant and long-term consequences for children, particularly where non-compliance results in removal and placement in out-of-home care. For Aboriginal and Torres Strait Islander children, who are already overrepresented in the out-of-home care system, the risk of harm caused by removal is elevated under the proposed amendments to the ATSICPP, which disrupts a child's connection to kin, community, culture or Country.

The proposed amendments also enable Police officers to make referrals to the CEO for an FRA or FRO after a finding by a Court that a child cannot be held criminally responsible for an offence.[26] The Bill's explanatory statement openly describes the purpose of this provision as intended to 'capture' a cohort of children and families who cannot be engaged under the *Youth Justice Act 2005* and do not reach the threshold to compel statutory child protection intervention. This provision repurposes a protective legal finding into a trigger for coercive intervention, extending state control into circumstances where neither criminal nor child protection thresholds are otherwise met. This is neither early intervention nor support, it circumvents the established limits of both the child protection and youth justice systems.[27]

The Bill also expands the CEO's power to make inquiries based on broad and undefined wellbeing concerns, even where no statutory threshold has been met.[28] This creates a risk of increased surveillance and discretionary intervention, with the potential to entrench systemic bias and draw more Aboriginal families into the system without clear safeguards.

The National Commission is concerned that the framework does not address the structural drivers of child protection involvement, including poverty, housing insecurity and limited access to services. Instead, it places responsibility on parents to comply with requirements that may not be achievable in the absence of appropriate and accessible supports. Without genuine support and culturally appropriate, accessible services, this provision will only increase the risk of preventable interaction with these systems.

Through the Bill's amendments, the CEO must ensure the facilities or services required under the agreement are 'reasonably available', which places sole responsibility with the CEO to define those parameters.[29] There is no acknowledgment of the added complexities or barriers faced by Aboriginal and Torres Strait Islander people when it comes to accessing culturally appropriate services, or clauses to safeguard family's access to appropriate services.

Some of the compliance orders outlined under the FRO provision, mirror historic policies characterised by control, coercion and removal, and consequently will replicate long-standing failures to protect Aboriginal children in the Northern Territory. Forced compliance with behavioural standards, income management and banned drinker orders are particularly reflective of punitive policies implemented under the Northern Territory Emergency Response. These policies enabled targeted control over Aboriginal communities with no evidence to support how they improved safety and wellbeing or addressed the overrepresentation of Aboriginal and Torres Strait Islander people in the justice and out-of-home care systems.

Further, the Bill's provisions on service of notices present significant risks for parents experiencing homelessness or housing instability. They may not receive notice of an FRO and may unknowingly be placed in breach.[30]

The National Commission is concerned that the inclusion of Family Responsibility Agreements and Orders does not take a preventative approach, strengthen protective factors for children or address the underlying conditions contributing to vulnerability. Rather, that the framework risks increased system involvement and escalation into the child protection system.

Conclusion

The provisions in this Bill replicate structural features that, over several decades, have been repeatedly identified as mechanisms by which Aboriginal children become permanently separated from culture, community, and country.

Major inquiries, including *Bringing them Home* (1997); *Growing them Strong, Together* (2010); and the *Royal Commission into the Protection and Detention of Children in the Northern Territory (*2017), have, over decades, consistently documented the ongoing over-representation of Aboriginal children in child protection systems. They identified structural drivers that replicate the outcomes and devastating harms of Stolen Generations-era policies.[31]

Recommendations have long centred around self-determination, culturally appropriate service delivery, and addressing structural determinants. By failing to implement these recommendations this Bill replicates structures oriented towards removal and, consequently, it will replicate long-standing failures to protect the safety and wellbeing of Aboriginal children in the Northern Territory.

The Productivity Commission's 2024 review of the National Agreement on Closing the Gap found that governments largely maintained 'business as usual' approaches that require First Peoples to fit into mainstream systems, rather than transforming systems in line with the Priority Reforms.[32] The report identified a lack of power sharing and the failure of governments to acknowledge that First Peoples know what is best for their communities as persistent barriers to progress.

In this context, the Bill's subordination of the ATSICPP, restrictions on reunification, expanded departmental discretion, and introduction of compliance-based mechanisms raise significant concerns. Collectively, these changes risk reinforcing, rather than addressing, the systemic factors contributing to Aboriginal over-representation in out-of-home care.

The National Commission considers that the Bill lowers the threshold for removal and weakens accountability for agencies to provide early, proactive, and meaningful support to families. This increases the risk of responses that may be experienced as punitive rather than supportive. The Commission is also concerned that the Bill diminishes the role of culturally informed, relational, and community-led approaches that are critical to supporting child wellbeing and maintaining connections to family, culture, and community.

The National Commission recommends:

Recommendation 1: The *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026* not be passed.

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[1] Australian Institute of Health and Welfare (2024a) *Child Protection Australia 2022–23*. Canberra: AIHW. Available at: https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2022-23
[2] Secretariat of National Aboriginal and Islander Child Care (SNAICC) (2017) *Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle*. Melbourne: SNAICC. Available at: https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding_applying_ATSICCP.pdf
[3] Ibid
[4] *Care and Protection of Children Act 2007* (NT) ss 10-12.
[5] *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026* (NT) s 7.
[6] *Care and Protection of Children Act 2007* (NT) s 8(3).
[7] *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026* (NT) s 12A(3).
[8] Secretariat of National Aboriginal and Islander Child Care (SNAICC) (2025) *Reviewing Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle (NT)*. Melbourne: SNAICC. Available at: https://www.snaicc.org.au/wp-content/uploads/2026/02/Reviewing-Implementation-of-the-Child-Placement-Principle-NT-2025.pdf
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[17] Yaqoot, F., et al. (2022). 'Cultural Identity and Social and Emotional Wellbeing in Aboriginal and Torres Strait Islander Children', Chapter 4, in Baxter, J., et al. *(Eds)*, *Family Dynamics over the Life Course*, Life Course Research and Social Policies, Vol 15, https://link.springer.com/book/10.1007/978-3-031-12224-8
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[23] *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026* (NT) s 65A.
[24] Ibid, s 102E.
[25] Ibid, s 102L.
[26] Ibid, s 65E.
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