

# **REVIEW OF CARE AND PROTECTION OF CHILDREN ACT 2007 (NT)**

May 2025

# Contents

Acknowledgement ..... 3

About SNAICC ..... 3

List of recommendations ..... 4

Introduction ..... 5

Scope of the review..... 5

Amendments already proposed to the CaPCA..... 8

Suggested amendments to CaPCA..... 8

References ..... 20

## **Acknowledgement**

SNAICC shows respect by acknowledging the Traditional Custodians of Country throughout Australia and their continuing connections to land, waters and communities. SNAICC head office is located on the lands of the Wurundjeri People of the Kulin Nation, and SNAICC operates nationally. SNAICC acknowledges Traditional Owners of all lands and waters across this continent, and pays respects to Elders past and present. We acknowledge and respect their continued connection to Country, care for community and practice of culture for generations uncounted.

## **About SNAICC**

SNAICC is the national non-government peak body for Aboriginal and Torres Strait Islander children. We work for the fulfilment of the rights of our children, to ensure their safety, development, and well-being.

SNAICC has an active membership of Aboriginal and Torres Strait Islander community-based child care agencies, Multi-functional Aboriginal Children's Services, crèches, long day care child care services, pre-schools, early childhood education services, early childhood support organisations, family support services, foster care agencies, family reunification services, family group homes, services for young people at risk, community groups and voluntary associations, government agencies and individual supporters.

Since 1981, SNAICC has been a passionate national voice representing the interests of Aboriginal and Torres Strait Islander children and families. SNAICC champions the principles of community control and self-determination as the means for sustained improvements for children and families, which has been at the heart of SNAICC's work — whether on child protection and wellbeing or early childhood education and development. Our work comprises policy, advocacy, and sector development. We also work with non-Indigenous services alongside Australian, State and Territory Governments to improve how agencies design and deliver supports and services for Aboriginal and Torres Strait Islander children and families.

As the national peak body for Aboriginal and Torres Strait Islander children, SNAICC consults with and is informed by its member organisations and Aboriginal and Torres Strait Islander leaders to ensure the experiences, needs and aspirations of our leaders, our sector and ultimately, our children and families are the foundation for our submissions and recommendations.

## List of recommendations

1. The scope of the CaPCA review should include the extent to which the legislation is aligned with evidence-based strategies to address the crisis of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care
2. The CaPCA review should consider whether the legislation is sufficient to uphold the Aboriginal and Torres Strait Islander Child Placement Principle
3. The CaPCA review should assess the extent to which the legislation is upholding child's rights, including the specific cultural rights of Aboriginal and Torres Strait Islander children
4. SNAICC reiterates its opposition to previously proposed Special and Exceptional Circumstances amendments to Section 12, which would give the court discretion to not uphold Section 12 if it deemed that upholding it would adversely impact the safety and wellbeing of children and/or adults within a family or community.
5. Section 12 should be strengthened with explicit reference to the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle.
6. The concept of 'major role' of the Aboriginal community could be made more explicit in Section 12(1)
7. Section 12(3) could be strengthened to ensure priority placement is with Aboriginal family or kin
8. Incorporation of active efforts into the CaPCA needs to occur alongside a greater recognition of the Child Placement Principle. Active efforts should be defined as thorough, purposeful and timely efforts, with clear requirements for record keeping of efforts made which can then be submitted to the court.
9. A requirement for mandatory mediation conferences if requested by families should be included in Section 49. The CaPCA should be strengthened to ensure conferencing methods align with the Aboriginal Family-Led Decision Making (AFLDM) model
10. A definition of 'recognised entities' be included in the CaPCA, which would encompass ACCOs that could participate in child protection matters and be heard in proceedings relating to children
11. The CaPCA should include mechanisms to support meaningful involvement of children and young people in the development of laws and policies about them
12. Section 72A be strengthened to ensure ACCO or community involvement in care planning is mandatory, instead of at the Department's discretion
13. Section 70(5) be strengthened to require ongoing active efforts to support cultural identity for Aboriginal children, instead of 'reasonable actions'
14. Section 130(3) should be strengthened to ensure courts have a role in overseeing care plan content
15. Section 70(3) be strengthened to ensure leaving care plans include actions to ensure Aboriginal children leave care with a strong sense of identity, belonging and community connection
16. Section 8A be strengthened with a broad requirement for public authorities to address systemic racism
17. A dedicated NT Commissioner for Aboriginal Children and Young People be established, and Children's Commissioners are given full, unrestricted access to all care and detention environments (*noting outside of CaPCA review scope*)

## Introduction

SNAICC welcomes the opportunity to make a submission to the Northern Territory Department of Children and Families (DCF), regarding:

- the scope for the Review of the *Care and Protection of Children Act 2007* (NT) (the CaPCA)
- amendments already proposed to the CaPCA
- suggested amendments to the CaPCA which would be of value to the safety and wellbeing of Aboriginal and Torres Strait Islander children and young people in the NT.

SNAICC also acknowledges DCF is undertaking a comprehensive review of the CaPCA, following SNAICC and other stakeholders raising concerns in January 2025 regarding a lack of transparency and adequate consultation on potential reforms to Section 12 of the CaPCA.

Collaboration with the Aboriginal Community Controlled Sector by the NT Government must always uphold principles of shared decision-making, as committed by all governments under the National Agreement on Closing the Gap. This NT government request for sector feedback on the scope of the review represents an initial step in collaboration. It is the strong expectation from SNAICC and other stakeholders that the NT government will engage in intensive and meaningful collaboration about proposed changes to the CaPCA.

## Scope of the review

SNAICC suggests that the Department's review of CaPCA be guided by the following considerations:

- whether the operation of the CaPCA is aligned with evidence-based strategies to reduce the over-representation of Aboriginal and Torres Strait children in contact with the child protection system in the NT
- the extent to which the CaPCA in its current form upholds the Aboriginal and Torres Strait Islander Child Placement Principle
- whether the CaPCA upholds fundamental child and human rights principles.

## Addressing over-representation

The scope of the review should include the extent to which the CaPCA is aligned with evidence-based strategies to address the crisis of over-representation.

The over-representation of Aboriginal and Torres Strait Islander children in out-of-home care is an urgent issue. In 2024, Aboriginal and Torres Strait Islander children made up 88.5% of the 847 children living in out-of-home care in the Northern Territory (NT) (SCRGSP 2025, Table 16A.2 and 16A.3)<sup>1</sup>. This means these children are 11.2 times more likely to be in out-of-home care (OOHC) than their non-Indigenous peers.

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<sup>1</sup> Includes 'other supported placements' as per definition in the Report on Government Services

An audit by the NT Office of the Children's Commissioner found that in 2021-2022, every single child in detention in the NT under the age of 14 years had had prior contact with the child protection system (OCC 2024). This highlights that child protection systems are not working to prevent children and young people's involvement in the criminal justice system and instead are harmfully criminogenic, and in many instances, out-of-home care settings result in more punitive and criminalising responses to children's behaviour (Davis 2019).

Prevention starts with addressing the underlying social determinants and service gaps that result in the over-representation of Aboriginal and Torres Strait Islander children in OOHHC. These include socio-economic disadvantage and poverty, intergenerational trauma, institutional racism and discrimination, housing instability and inadequate access to culturally appropriate education and health services (SNAICC 2024).

Prevention efforts need to be grounded in increased investment in the Aboriginal Community Controlled sector and increased participation and authority of Aboriginal and Torres Strait Islander families and communities in child protection policy and practice. The *10-Year Generational Strategy for Children and Families in the Northern Territory* outlines actions that align to these priorities.

### **Upholding the Child Placement Principle**

DCF's review of CaPCA should also consider whether this legislation is sufficient to uphold the Aboriginal and Torres Strait Islander Child Placement Principle (The Child Placement Principle). The Child Placement Principle is a self-determined, culturally sensitive framework for protecting the rights of Aboriginal and Torres Strait Islander children in contact with child safety systems, including OOHHC. It emphasises the importance of Aboriginal and Torres Strait Islander children and young people in and out of care maintaining connections to family, community, culture, and country. At its heart, the Child Placement Principle is founded on the paramount importance of upholding the safety and wellbeing of the child and recognises that the unnecessary removal of a child from their home is itself a cause of harm.

Guiding our submission are the five interrelated elements that underpin the Child Placement Principle, which are:

1. **Prevention**: Protecting Aboriginal and Torres Strait Islander children's rights to grow up in family, community and culture by redressing causes of child protection intervention.
2. **Partnership**: Ensuring the participation of Aboriginal and Torres Strait Islander community representatives in service design, delivery and individual case decisions.
3. **Participation**: Ensuring the participation of children, parents and family members in decisions regarding the safety, belonging and wellbeing of their children.
4. **Placement**: Placing Aboriginal and Torres Strait Islander children in out-of-home care to ensure the highest possible level of connection to family, community, culture and Country.



5. Connection: Maintaining and supporting connections to family, community, culture and Country for Aboriginal and Torres Strait Islander children in out-of-home care.

For Aboriginal and Torres Strait Islander children in care, ensuring their connection to family, culture, community and Country is critical to their safety and wellbeing. In 2024, only 16.7% of Aboriginal and Torres Strait Islander children in the NT were placed with Aboriginal relatives/kin, **the lowest rate in Australia**, compared to the national average of 32.1%. The majority of placements (62.2%) for Aboriginal and Torres Strait Islander children were with non-Indigenous, non-relative carers (SCRGSP 2025, Table 16A.23). This alarming situation shows there is significant work needed to ensure placements align with the placement hierarchy of the Child Placement Principle. This hierarchy first and foremost asks decision-makers to first consider safe and stable placements with Aboriginal and Torres Strait Islander relatives, kin or carers (SNAICC 2019) prior to considering any other kind of placement.

### Child and human rights principles

Human rights instruments provide a robust foundation for the care and protection of all children. The DCF review should assess the extent to which the CaPCA is upholding child's rights, including the specific cultural rights of Aboriginal and Torres Strait Islander children, and how the legislation is reflecting Australia's international human rights obligations. Specific human rights instruments that need to be considered include:

- Universal Declaration of Human Rights (UDHR): This sets out fundamental human rights to be universally protected, forming the foundation for many other international declarations and conventions (UN 1948).
- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP): This universal framework establishes minimum standards for the survival, dignity and wellbeing of Indigenous peoples. In particular, Article 3 and 4 establishes a right to self-determination, while Articles 21 and 22 place particular responsibilities on states to uphold the rights and needs of Indigenous children and young people (UNC 2007).
- The United Nations Convention on the Rights of the Child (UNCRC): This universal instrument establishes the specific rights of children, including general principles of non-discrimination, that their best-interests should be a primary consideration, right to safety and development, and respect for the views of children in matters that affect them. The UNCRC further emphasises in particular the right of Indigenous children to enjoy their culture, profess and practise their religion and to use their own language, *in community* with others of their cultural group (UNC 1989). UNCRC also recognises the right of children and young people to participate in decision-making about them – in the context of child protection systems, this includes the right to contribute to decision-making about placement and case planning in out-of-home care.
- General Comment No.11 (2009) relating to Indigenous children from the Committee on the Rights of the Child: This document provides further guidance to states on protecting the rights of Indigenous children. Of significant importance are the comments regarding

the best interests and views of the child, and how to protect the individual rights of the child while also upholding the collective right of Indigenous children as a group (UN 2009).

## **Amendments already proposed to the CaPCA**

### **Section 12 – Proposed exemptions**

SNAICC would like to reiterate its opposition to previously proposed Special and Exceptional Circumstances amendments, which would give the court discretion to not uphold Section 12 of the CaPCA Act if it deemed that upholding it would adversely impact the safety and wellbeing of children and/or adults within a family or community.

The principles set out in the current section 12 of the CaPCA are the result of decades of leadership from Aboriginal and Torres Strait Islander people in the Northern Territory and across Australia to ensure that children's connections to culture, family, community and Country are considered integral to their safety and wellbeing in child protection decisions. Their robust implementation has also been a recurring and constant recommendation of prior systemic inquiries and reviews.

The exemption proposed by section 12 does not exist elsewhere in Australia and should not be introduced in the Northern Territory. The prior proposal to amend section 12 provides no clarity on the definition of the broad terms of 'adverse impacts' and 'special or exceptional circumstances'. It would grant an overly broad discretion to the courts to prioritise any purportedly adverse impact to a child or adult over adverse impacts caused by separation of a child from family, community and culture. It also runs counter to key tenets of child rights and child protection legislation across Australia and internationally, that reflect that decision-making in child protection must be child-focused and prioritise the best-interests of the child.

Notably, the exception would apply only to the principles set out in Section 12 for Aboriginal and Torres Strait Islander children, and not other principles in Part 3 of the CaPCA that apply to all children. This proposed amendment is discriminatory in its design given it seeks to limit Aboriginal and Torres Strait Islander children's rights specifically.

## **Suggested amendments to CaPCA**

SNAICC calls for the following amendments to the CaPCA to enhance the safety and wellbeing of Aboriginal children and young people in the NT.

### **Section 12 – The five elements of the Child Placement Principle**

In the CaPCA Act, section 12 outlines principles that must be upheld in relation to Aboriginal children. These principles closely align to the five elements of the Child Placement Principle. However, it is recommended that the Act would benefit from making explicit reference to the five elements of this principle. This is already the case in Victoria, Queensland, NSW and ACT



legislation which specifically includes the five elements. Further recommendations in relation to how each element should be embedded in CaPCA are made below.

### **Section 12(1) – Partnership element**

Currently, section 12(1) states: “Kinship groups, Aboriginal community-controlled organisations and communities of Aboriginal people have a major role, through self-determination, in promoting the wellbeing of Aboriginal children”.

The concept of ‘major role’ could be made more explicit. For example, in Queensland’s *Child Protection Act 1999* (Qld), section 5c(2b) states that Aboriginal and Torres Strait Islander people have a right to participate in significant decisions under the Act about Aboriginal and Torres Strait Islander children, and a right to participate in decisions relating to the development and delivery of services. Similarly in the New South Wales’ *Children and Young Persons Act 1998* (NSW), section 12(a) spells out each of the five elements and defines the Partnership element as “recognising that Aboriginal and Torres Strait Islander community representatives should participate in the design and delivery of services for children and young persons and in individual decisions about children and young persons”.

Similar to the above, the CaPCA should be strengthened to mandate that Aboriginal and Torres Strait Islander people have a right to participate in child protection decision-making, policy development and service delivery.

### **Section 12(3) - Placement element and hierarchy**

Currently section 12(3) of the CaPCA outlines the out-of-home care placement hierarchy for an Aboriginal child is as follows:

- a) A member of the child’s family
- b) An Aboriginal person in the child’s community in accordance with local community practice
- c) Any other Aboriginal person;
- d) A person who:
  - i. Is not an Aboriginal person; but:
  - ii. In the CEO’s opinion, 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.

While the above section is broadly aligned to the Child Placement Principle, it could be strengthened by ensuring that the first priority placement is with Aboriginal family or kin. This is to distinguish that placement with Aboriginal family is prioritised over placement with non-Indigenous family. This may help address the very low numbers of Aboriginal and Torres Strait Islander children in care placed with Aboriginal and Torres Strait Islander kin in the NT (outlined above). For example, in Victoria’s *Children Youth and Families Act 2005*, section 13(2), it is stated:

“as a priority, wherever possible, the child must be placed within the Aboriginal extended family or relatives and where this is not possible other extended family or relatives”

A similar inclusion should be considered for the CaPCA.

## Section 12 – Prevention, Participation and Connection elements

SNAICC would like to provide overall guidance on how the remaining three elements (Prevention, Participation and Connection) should be embedded into legislation. This guidance is based on SNAICC’s expertise in conducting annual compliance reviews of the Child Placement Principle in each jurisdiction, which involve frequent consultation with our ACCO members delivering child and family services.

Below is overall guidance on how the CaPCA should embed each element. Under each requirement is specific analysis of the extent to which CaPCA achieves the requirement. Further advice on specific mechanisms that relate to each element, such as Aboriginal Family-Led Decision Making (AFLDM), is provided later in this submission.

### Legislative measures - Prevention

Requirement	CaPCA analysis
Requires automatic notifications and referrals to ACCO-led family and legal support services on notification to a child protection agency.	Under section 29 of the CaPCA there are currently no obligations upon authorities to do this when receiving a notification.
Restricts removal of children to only if there is an ‘unacceptable risk of harm’ or as a ‘last resort’ or similar.	<ul style="list-style-type: none"> <li>Section 121 of the CaPCA in regard to making protection orders includes language of ‘least intrusive means to safeguard wellbeing’, which could be strengthened to clearly say removal is a last resort to only occur after the possibility of a child remaining with family is explored</li> <li>Section 130 of the CaPCA outlines how the court must not make a protection order unless there is “no one else [aside from parents or family] who is better suited to be given the responsibility”. This could be strengthened by ensuring courts have to consider the harm of removal itself (see below).</li> </ul>
Includes a presumption for decision-making by courts that removal of a child from their family or community causes harm, to be	Section 129 of CaPCA does not have this presumption and only refers to the ‘least intrusive means’

factored in when determining the best interests of a child	
Requires child protection order applications to courts to outline the services provided to the child and family, so the court can assess if reasonable steps have been taken to enable a child to remain with family (as outlined above)	The CaPCA currently lacks specific provisions to this effect
Specifies minimum requirements for the provision of family preservation and reunification supports at early stages	The CaPCA currently lacks specific provisions to this effect
Recognises the role of ACCOs in providing family support services	Section 12(1) of CaPCA includes a general requirement for ACCOs to be involved in promoting the wellbeing of Aboriginal children, but this could be made more specific in relation to family support services, tied to an explicit reference to the Prevention element (see earlier recommendation)

### Legislative measures - Participation

<b>Requirement</b>	<b>CaPCA analysis</b>
Requires that views of a child, parents and family members be considered by decision-makers	<p>Section 11 of CaPCA outlines how children should participate in decision-making and section 12(2a)-(b) outlines how family have a right to participation.</p> <p>This right should extend to the right of the child to determine their own placement (“self-place”) where the placement is capable of upholding their safety and wellbeing.</p>
Requires AFLDM, family group conferencing, mediation or similar family participation as early as possible and for all significant decisions	See below specific discussion on AFLDM in the CaPCA
Requires the court to ensure proceedings are comprehensible to a child, parents and family members	Section 98 of CaPCA outlines generally how the court must ensure all parties understand the nature and purposes of proceedings. This requirement needs to be supported with specific processes and procedures that the Court must follow to ensure parties, especially children, can understand the proceedings and participate meaningfully

Recognises the right to legal representation for children and families in court proceedings, and the need for independent legal representation specifically for children in child protection matters	<ul style="list-style-type: none"> <li>Section 143A of CaPCA outlines how the Court may order the appointment of a legal practitioner to represent a child, and Section 143F outlines how young parents are entitled to legal representation.</li> <li>Section 143E outlines that legal practitioner standards can be prescribed in Regulation, and SNAICC is supportive of APO NT recommendations that these standards be developed with explicit reference to how practitioners can meet the cultural needs of Aboriginal children</li> </ul>
Limits judicial decision-making if children and/or parents are unrepresented	The CaPCA does not include this type of limit on decision-making by the Court, and Section 143A and 143F say children and parents <u>may</u> be represented, not must.

### Legislative measures – Connection

<b>Requirement</b>	<b>CaPCA analysis</b>
Recognises the rights of children as enshrined in the United Nations Convention on the Rights of the Child, specifically a child's right to contact with family and Indigenous children's rights to enjoy culture within their community	Section 12(2)(b)-(c) of CaPCA outlines related rights for Aboriginal children, but this section could be strengthened with more detailed reference to the Child Placement Principle, as highlighted above.
Allows contact with family to be court ordered	Family contact is largely covered by the Care Plan component of CaPCA. See detailed analysis of care plans below.
Prioritises family reunification without unreasonably restrictive time limits	The CaPCA does not outline specific timeframes for reunification, nor does the DCF Reunification Policy.
Specifies minimum requirements for the provision of family reunification supports	The CaPCA does not outline requirements for reunification support.
Provides courts with sufficient power to make reunification orders and are able to regularly review the implementation of these orders	The CaPCA does not include a specific reunification order, with reunification efforts being overseen by the DCF CEO.
Requires a cultural care plan for all children in out-of-home care that is implemented and regularly reviewed at least every six months.	Section 74 of CaPCA requires reviews every 6 months. Care Plans are further discussed below.

Provides courts with sufficient oversight powers to review cultural care plans	CaPCA does not give courts oversight powers of care plans, discussed further below.
Specifies safeguards in relation to permanency of care provisions that maintain connections to family, community, culture and country	Section 70(5) of CaPCA requires actions in a care plan to maintain an Aboriginal child's identity and connection, but there is insufficient oversight and participation of ACCOs in these processes.
Provides for delegation of case management, cultural care plan development, custody and guardianship functions and powers to ACCOs	CaPCA currently does not include provisions for delegation of powers to ACCOs, but it is an objective within the 10 Year Generational Strategy.

## Active Efforts

It is positive to see the NT Government considering how to incorporate active efforts requirements in relation to the Child Placement Principle in the CaPCA. However, it should be stated that incorporation of active efforts needs to occur alongside a greater recognition of the Child Placement Principle in the Act. Active efforts requirements can only be effective when founded on a strong legislative recognition of the Child Placement Principle.

## Background

Active efforts is a concept drawn from the Indian Child Welfare Act, which stipulates that child protection authorities in the United States must make affirmative, thorough and timely efforts to maintain or reunite Indigenous children with their family (NICWA 2018). The legislation requires that authorities must demonstrate to a court that active efforts have been made, before any foster care placement or termination of parental rights for an Indigenous child can proceed.

In Australia, the concept of active efforts has been explicitly implemented in child protection legislation in Queensland and NSW. Queensland's *Child Protection Act 1999* stipulates how relevant authorities when making significant decisions about Aboriginal and Torres Strait Islander children must make active efforts to apply the Child Placement Principle in a "purposeful, thorough and timely" way, and in partnership an independent Aboriginal and Torres Strait Islander entity. In NSW, the *Children and Young Persons (Care and Protection) Act 1998* outlines how active efforts must be made to prevent a child from entering out-of-home care, or in the case of a child who has been removed, active efforts to reunite them with family or place them with family, kin or community.<sup>2</sup> NSW legislation also requires that active efforts are timely, practicable, thorough and purposeful; address the factors of why a child is in need of care and protection; and are conducted in partnership with the family, kin and community of the child.<sup>3</sup>

<sup>2</sup>

<sup>3</sup>

Both the Australian Capital Territory (ACT) government and South Australian government have prepared Bills with amendments to child protection legislation, which if passed, would implement a requirement for active efforts that is modelled on NSW legislation. However, proposed changes in South Australia have included caveats that if active efforts aren't upheld, it would not affect validity of decisions under the Act, which undermine the active efforts principle and would not promote compliance.

Victoria's *Children, Youth and Families Act 2005* does include a requirement that an agency applying for a child protection order must provide a disposition report to the court which outlines the services provided to enable the child to remain in care with the parent, which is aligned to the concept of active efforts.

### Definition

Defining active efforts in the CaPCA is a priority. Based on established work from the Queensland Family and Child Commission and Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QFCC 2022), active efforts should be purposeful, thorough and timely. These concepts are defined as follows:

- **Purposeful:** Including cultural authority in decision making that leads to long term positive changes for a child and family (*cultural authority as defined by members of the child's Aboriginal and Torres Strait Islander family*)
- **Thorough:** Focused decisions based on understanding of child's needs that are continuously reassessed and redressed to work towards positive outcomes for the child and their family
- **Timely:** Urgently responding to needs and making decisions based on what is in the best interest of the child

### Record keeping

The CaPCA should also be amended to ensure that statutory child protection authorities must systematically record active efforts, which must also be produced to the relevant court (e.g. the Children's Court) to guide its decision making in the best interests of the child.

These records should have detailed information including:

- The issues the family is facing that the statutory child protection authority (the authority) considers a reason for child protection intervention
- A list of active efforts the authority intends on making to address the issues, and the reasoning for choosing these specific active efforts. This list should align with the five elements of the Child Placement Principle. If a decision is made to not pursue some active efforts as they are not considered practical or appropriate, the reasons for this must be clearly recorded.
- Dates, persons contacted and other details that demonstrate how the authority provided the active efforts.



- The outcomes for the child and family as a consequence of the active efforts. If active efforts are unsuccessful in adequately addressing the issues, the reasons why they were unsuccessful should be recorded.

Currently in CaPCA there are no requirements upon the court to request this type of evidence when considering a protection order application.

### Accountability through the courts

Courts must have adequate powers and resources to ensure that active efforts are thoroughly considered and inform decisions regarding child protection orders. The following general requirements that should be upheld include:

- Child protection matters should be considered by a specialist court or magistrate with sufficient experience in child and family matters.
- Child and family courts or hearing days that are specifically designed by Aboriginal and Torres Strait Islander people are made available (e.g. Marram-Ngala Ganbu (Koori Family Hearing Day) in Victoria).
- Guidance to legal practitioners, such as a Children's Court Bench Book, provide sufficient guidance on legislation and case law to enable them to effectively assess active efforts.

### **Aboriginal Family-Led Decision Making**

Section 49 of the CaPCA outlines how child protection authorities may arrange mediation conferences with parents of a child where there are concerns about the wellbeing of that child. The 2016 Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (the '2016 Royal Commission') recommended that this section be strengthened by stating a conference 'must' be held if requested by a parent, or individual or organisation representing a child. This recommendation was "supported in principle" by the NT Government but has not been implemented. A requirement for mandatory conferences if requested should be included in the CaPCA.

The CaPCA could also be strengthened to ensure that conferencing processes are led by Aboriginal and Torres Strait Islander families or community members, as seen in the Aboriginal Family-Led Decision Making (AFLDM) model. AFLDM is widely established across Australia, as a process that enables self-determination and shared decision-making between families and child protection authorities. Led by an independent Aboriginal and/or Torres Strait Islander convenor, AFLDM has shown effectiveness in delivering better outcomes for Aboriginal children and families, by redressing the power imbalance of child protection decision making and ensuring greater engagement of families in supporting safety and wellbeing of children (SNAICC & Winangali 2017).

Community stakeholders in the NT have raised concerns that the Signs of Safety Practice Framework – the NT Government's mechanism for facilitating family involvement in child

protection decision-making – does not align with the principle of self-determination that is at the heart of AFLDM (SNAICC 2025). Under this framework, DCF employs Aboriginal Practice Leaders and Aboriginal Community Workers to support child protection decision-making processes. The Office of the Children’s Commissioner Northern Territory notes that NT Government-employed Aboriginal Community Workers and Aboriginal Practice Leaders are valued and play critical roles in the child protection system, however it is unreasonable to expect families to perceive these staff to be independent, given they are employed by a statutory agency (OCC, 2024).

There are examples of community based innovation that the NT Government can look towards, such as the Gulkmaram ga Yätj Rakimala ga Dhä-manapan ga Latjuny Raki report (produced by the Aboriginal Resources and Development Service (ARDS) Aboriginal Corporation in East Arnhem Land), which highlights the transformative potential of AFLDM. ARDS has pioneered culturally safe, kinship-based approaches that prioritise Yolŋu systems of law (gurrutu) and decision-making, emphasizing the need for shared authority with government agencies (Dale et al, 2024).

### **Empowering ACCOs in decision-making**

Recommendation 34.06 of the 2016 Royal Commission recommended that a definition of ‘recognised entities’ be included in the CaPCA, which are entities that could participate in child protection matters and be heard in proceedings relating to children.

Similar mechanisms that enable ACCOs to participate in child protection decision making processes for Aboriginal and Torres Strait Islander children exist across other states and territories. Examples include Aboriginal Child Specialist Advice and Support Services (ACSASS) in Victoria, Aboriginal Representative Organisations (AROs) in WA, Care and Protection Organisations (CAPOs) in the ACT and Recognised Aboriginal and Torres Strait Organisations (RATSIO) in SA. These mechanisms differ in the extent of powers and involvement in decision making that is granted to ACCOs in child protection processes, but it is a priority for the NT to take the initial steps towards enabling self-determination for Aboriginal communities in child protection policy and practice.

Action 5 of the NT’s 10 Year Generational Strategy Action Plan outlines a commitment to develop an ACCO Sector Strengthening Plan, and Action 10 outlines a commitment to transferring authority of child protection powers in relation to Aboriginal and Torres Strait Islander children to ACCOs. Implementing these actions is a priority and should inform the review of the CaPCA Act.

### **Empowering youth voice**

Recommendations 2.01 and 2.02 of the 2016 Royal Commission recommended that mechanisms be established in child protection and youth detention legislation that enable meaningful involvement of children and young people in the development of laws and policies about them. These recommendations were supported by the NT Government and Action 3 of the 10 Year

Generational Strategy Action Plan outlines a commitment to develop these mechanisms in partnership with the community sector. Progressing these commitments as part of this review of the CaPCA is an urgent priority.

## **Care planning**

### Participating in care planning

Under section 72A of CaPCA, it is within the Department's discretion to determine whether inclusion of an ACCO or community member in decision-making about a child's Care Plan is "appropriate". This is inconsistent with the Priority Reforms of *National Agreement on Closing the Gap*, and the principle self-determination which recognizes that community must have a seat at the table in shared decision-making about an Aboriginal and/or Torres Strait Islander child's care. The Department must commit to genuine shared decision-making and collaboration with ACCOs to ensure Care Plans are appropriately designed to prioritise and safeguard cultural continuity. This approach guarantees that the diverse needs of Aboriginal and Torres Strait Islander children are accurately identified and addressed.

### Cultural planning

Currently CaPCA section 70(5) mandates that a Care Plan for an Aboriginal child must include "reasonable actions to (a) maintain and develop the child's Aboriginal identity; and (b) encourage the child's connection to the Aboriginal culture, tradition, language and country of the child." The phrase "reasonable actions" is ambiguous and does not align with the standard of active efforts discussed above. SNAICC suggests this language is strengthened so that those making Care Plans must ensure active efforts are made to support the child's ongoing development of their Aboriginal and/or Torres Strait Islander identity and foster a strong connection to their cultural heritage.

SNAICC advocates for all Care Plans made under Division 2 of CaPCA to incorporate extensive cultural supports, ensuring Aboriginal and Torres Strait Islander children and young people in care can remain connected to their heritage, community, and family. This must be carried out in collaboration with the child or young person's local ACCO, based on their original residence, alongside their family and any relevant cultural authorities as nominated by the child or their family.

### Oversight of care plans

Under section 130(3) of the CaPCA, the court cannot make a protection order unless a care plan is provided to the court. However, this simple requirement to check if a care plan exists is not sufficient and SNAICC recommends the court should have a role in overseeing the content of care plans. Otherwise, there is no accountability for child protection authorities to improve the content of care plans.

### Leaving care planning

Planning for the transition out of care and ensuring strong cultural connections is essential for Aboriginal and Torres Strait Islander children, helping them maintain their identity and support networks. Best practice emphasizes that leaving care plans must be culturally responsive, with clear strategies to uphold the cultural identity of Aboriginal and Torres Strait Islander young people while ensuring access to critical support services (SNAICC, 2019).

Section 70(3) of CaPCA provides that if the child is 15 years of age or over, the care plan must identify the needs of the child in preparing to leave care and transition to independence and “outline actions that must be taken to address those needs.” This section should be strengthened to mandate where a child leaving care is Aboriginal and/or Torres Strait Islander, their plan should include actions that ensure they leave care with a strong sense of identity, belonging, and community connection and can continue to strengthen this identity while transitioning towards independence.

### **Systemic racism and inequality**

Systemic racism and inequality remain deeply embedded within NT child protection and youth justice systems, disproportionately affecting Aboriginal and Torres Strait Islander children and families. Aboriginal and Torres Strait Islander children continue to be over-represented in out-of-home care and youth detention facilities, while families face persistent challenges in accessing culturally competent and responsive services (SNAICC, 2025). These inequities highlight the urgent need for structural reform and a commitment to self-determination.

CaPCA should mandate active measures to eliminate systemic racism within child protection systems, ensuring that Aboriginal and Torres Strait Islander families and children are not subjected to discriminatory policies and practices. Embedding accountability mechanisms will be crucial to achieving equitable outcomes for Aboriginal and Torres Strait Islander communities. SNAICC suggests that accountability for addressing systemic racism could be incorporated into section 8A:

Responsibility of public authorities:

*Suggested wording: In exercising powers or performing functions under this Act, public authorities have a responsibility to: ... (c) work to identify, address, and eliminate systemic and personal racism within government agencies.*

### **Independent, Aboriginal-led Oversight**

SNAICC advocates for implementation of independent oversight mechanisms to protect the rights and welfare of Aboriginal and Torres Strait Islander children in care and detention which is enshrined in the CaPCA. Given the persistent over-representation of Aboriginal and Torres Strait Islander children in out-of-home care and youth detention, robust accountability measures are critical. Without comprehensive oversight, the child protection and youth justice systems risk failing Aboriginal and Torres Strait Islander children, perpetuating cycles of trauma, cultural disconnection, and systemic inequity.

SNAICC notes that although outside the scope of a CaPCA review, the NT would greatly benefit from the establishment of an Aboriginal-specific Children's Commissioner, dedicated to advocating for the rights and well-being of Aboriginal and Torres Strait Islander children. Given the unique cultural, social, and systemic challenges faced by Aboriginal and Torres Strait Islander children, a dedicated commissioner would ensure that policies, programs, and protections are shaped with a deep understanding of their needs and lived experiences. Such a role would provide targeted oversight, drive culturally appropriate reforms, and amplify the voices of Aboriginal and Torres Strait Islander communities in decision-making processes. By creating this position, the NT would take a vital step toward addressing disparities, strengthening support systems, and ensuring that Aboriginal children receive the care, opportunities, and protections they deserve.

A related key priority is granting the Northern Territory Children's Commissioner full, unrestricted access to all care and detention environments—including residential care facilities, foster carers, and youth detention centres—as well as access to all relevant data held by the Department and associated institutions. Such reforms align with the Optional Protocol to the Convention Against Torture (OPCAT). These inspections must prioritise cultural safety, ensuring Aboriginal and Torres Strait Islander children's rights and wellbeing are central to oversight mechanisms.

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