



creating a better life  
for children and young  
people in care

# CREATE Submission on the Review of the *Care and Protection of Children Act* 2007

Submitted to the Department of Children and Families,  
Northern Territory Government

*“Not being able to speak my language... I don’t understand when my family are talking.”*

*“I feel disconnected from my people and my Country. I feel a lot of shame and hurt.”*

*“Culture is important, because without it I wouldn’t be me. My culture is important but I wish I had  
the chance to understand it more growing up in care.”*

*“I had to be the one to speak up, I had to explode to make them see what I really wanted, they didn’t  
believe in me.”*

*Children and young people, CREATE Foundation, 2024*

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## About CREATE Foundation

The CREATE Foundation is the national consumer peak body representing the voices and rights of children and young people with an out-of-home care (OOHC) experience. We represent the voices of over 45,000 children and young people currently in care, and many more with an out-of-home care experience who have transitioned from care, up to the age of 25 (AIWH, 2024).

We are a systems advocate and we are independent from both government and non-government service providers. Our vision is that all children and young people with a care experience reach their full potential. Our mission is to create a better life for children and young people in care.

To do this we:

**CONNECT** children and young people to each other, CREATE and their community, to

**EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard, to

**CHANGE** the systems that impact children and young people, in consultation with them, through advocacy to improve policies, practices and services and increase community awareness.

We achieve our mission by delivering community-based connection, empowerment and advocacy programs for children and young people with a care experience and advocating alongside them to influence system, policy and practice changes to improve their experiences and outcomes.

For more information, see:

- CREATE's [Strategic Plan 2024-27](#), which outlines our strategic directions and goals.
- CREATE's [Menu of Programs](#), which outlines the range of programs, events and activities that CREATE runs.
- CREATE's [Menu of Consultations](#), which outlines our engagement, consultation and research offerings.

## Introduction

CREATE Foundation welcomes the review of the Northern Territory's *Care and Protection of Children Act 2007* (CAPCA) by the Department of Children and Families and looks forward to working with the Department to ensure the review is inclusive and comprehensive, and that amendments enhance child rights, participatory practice, and commitments under national frameworks including Safe and Supported and Closing the Gap.

The Department of Children and Families has requested feedback from CREATE and other sector and government stakeholders to provide advice on the scope of the review, to comment on existing proposed amendments to the Act, and to identify potential amendments to the Act to strengthen the safety and wellbeing of children and young people in the NT.

As the national consumer peak body, CREATE's response primarily focuses on how the review and any proposed amendments will advance children and young people's rights and participation in both individual and systemic decision-making.



## Review Process

CREATE believes that a holistic and comprehensive approach to the review of the CAPCA is needed, that involves staged, collaborative and meaningful participatory processes, and governance to engage children, young people, carers, ACCOs, peaks, oversight bodies and non-government service providers as partners in designing the legislative changes.

### Participation of children and young people in the review

Children and young people are the people most impacted by this legislation, which underpins the decision-making that determines their living arrangements and the trajectories of their lives. As such, the review should incorporate the lived experiences of children and young people as a guiding source of evidence of how legislation impacts their daily circumstances and the course of their lives. Without deep consideration of their lived experience, legislative changes risk creating adverse unintended consequences for children. In addition to providing a critical and unique source of evidence, young people with a care experience should also be engaged as active design partners in co-developing legislative amendments that ensure that CAPCA is fit for purpose in a contemporary Territory context.

As such, with additional resourcing, CREATE can offer to support the Department to establish a Lived Experience Governance Group or Youth Advisory Panel to provide oversight and input to the legislative review and its implementation. CREATE NT is also well-positioned to lead other consultation activities, including Design Sprints<sup>1</sup> to facilitate safe and meaningful input by young people into critical elements of the review.

### Further consultation

In addition to consultation with children and young people, the CREATE Foundation urges the NT Government to ensure that the views of key sector and community partners in the NT are also taken into full consideration. This would include seeking advice relating to specific areas of the legislative review. Stakeholders well positioned to provide further advice on the proposed scope and method of the review of the CAPCA include: the NT Office of the Children's Commissioner, the Northern Australia Aboriginal Justice Agency, the Northern Australia Aboriginal Family Legal Service, Aboriginal Peak Organisations Northern Territory, the NT Council for Social Services and SNAICC. This list is not exhaustive and CREATE would encourage the Department to consult as widely as possible with partners in the child and youth, and community-controlled sectors.

A sector steering committee could also be established to support deep sector engagement through the review process, with the potential for representation from the Youth Justice sector, the NT Police and the Courts. Participatory mechanisms to monitor and evaluate any future progress towards legislative reforms and their relative impact should be explored, as well as opportunities to engage all stakeholders in co-design processes throughout the review.

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<sup>1</sup> Please see CREATE's [Menu of Programs](#) and [Menu of Consultations](#)



## Priorities for the Review

CREATE urges the NT Government to centre the review around the following priorities and principles.

### Child rights

Australia is a signatory to the United Nations Convention on the Rights of the Child (UNCRC). As such, all Australian Governments have obligations under this international human rights instrument and all legislation should comply with the intent of the UNCRC and related commitments. In this context, the review of the CAPCA should ensure these rights and principles are upheld through any amendments to the Act:

- Best Interest are the primary consideration for child protection decision-making.
- Children's right to safety, development and connection.
- Children's right to participate in matters that affect them.
- Additional rights of First Nations children and young people to connect with culture and community.
- Legislation is not discriminatory (UNC 1989).

As such, the review of CAPCA should be expressly designed to enhance (and not undermine) children's rights, with additional obligations to uphold the rights of Aboriginal children to culture, community, language, and kin.

Additionally, child removal should be a last resort and this should be clearly reflected in the CAPCA. Currently Section 121 mentions the requirement for the 'least intrusive means to safeguard wellbeing' in decisions related to protection orders, which is not adequately compelling. Removal should only be considered (and as a last resort), when extensive family preservation and early intervention efforts to keep a child safety with their family have been fully exhausted.

### Child participation

Child protection legislation should ensure that children's active and meaningful participation in decisions affecting them is prioritised. This extends to both decisions about their individual care arrangements and to decisions about the policies, practices, systems and laws that impact them. Currently, detail in relation to how children should participate in decision-making is captured in Section 11 of the CAPCA. However, this could be considerably strengthened.

The Royal Commission into the Protection and Detention of Children in the Northern Territory recommended that children and young people are meaningfully involved in the development of laws and policies that relate to them (2017). These recommendations (2.01 and 2.02) were accepted in principle by the NT Government and a subsequent commitment was included in the 10 Year Generational Strategy Action Plan (see Action 3). The legislative review should advance this commitment.



## Active efforts

CREATE is supportive of the incorporation of requirements for active efforts in the CAPCA, similar to inclusions in child protection legislation across a range of other states, such as QLD and NSW (with ACT and SA to follow), and similar requirements are included in Victorian child protection legislation. Inclusion of active efforts in the CAPCA should complement and support explicit commitments to the Aboriginal and Torres Strait Islander Child Placement Principle. Active efforts should be purposeful (with respect to cultural authority), thorough (promoting in-depth understanding of a child's needs and circumstances), and timely (in the best interests of children) (QFCC 2022).

## Aboriginal and Torres Strait Islander Child Placement Principle

Aboriginal and Torres Strait Islander children remain over-represented and in 2023, were 12.4 times more likely than non-Aboriginal children and young people to be in OOHC, or on Third-Party Parental Responsibility Order (TPRRO), in the NT (an increase from 12.2 in 2019) (SNAICC 2024). Of concern, national projections in SNAICC's [Family Matters Report](#) show population growth leading to a 38% increase in the number of Aboriginal and Torres Strait Islander children in OOHC over the ten years to 2034, a rate of growth 7.6 times higher than for non-indigenous children (2024).

Reducing the over-representation of children in care is a national priority and a requirement under Target 12 of [Closing the Gap](#). Reducing over-representation requires urgent investment in the Aboriginal community-controlled sector to support self-determined approaches to keeping kids safe, well and connected to culture and community. Aboriginal and Torres Strait Islander communities are the experts when it comes to achieving outcomes for community and for their children and young people. And evidence demonstrates that the community-controlled sector is best placed to address the needs of First Nations children and their families, through community-based and culturally safe service responses.

Reducing over-representation also requires Aboriginal-led decision making. In the current CAPCA, Section 12 outlines principles related to the care and protection of Aboriginal children and young people. While this was a positive first step, these principles don't go far enough in advancing Aboriginal self-determination and the steps needed to reduce over-representation, based on evidence for what works in relation to Aboriginal children.

The Child Placement Principle provides a clear framework and placement hierarchy to guide decision making in the best interests of Aboriginal children, and in alignment with their cultural rights. CREATE supports calls by SNAICC and the Aboriginal community-controlled sector for the CAPCA to explicitly include all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle. This would be in keeping with equivalent child safety legislation in other jurisdictions (e.g. QLD, VIC, NSW and ACT).

Adherence in practice to the Aboriginal and Torres Strait Islander Child Placement Principle would be strongly supported by a dedicated Aboriginal Children's Commissioner with a full mandate, resourcing and access to information, data and care settings to enable genuine oversight of all systems impacting Aboriginal and Torres Strait Islander children and young people.

CREATE also urges the NT Government to take steps towards enshrining and implementing a model of Delegated Authority, underpinned by legislative reform and supported by adequate resourcing, as a step in Government genuinely handing over decision making power and resources to Aboriginal communities for enable better outcomes for Aboriginal and Torres Strait Islander children.



## Aboriginal Family-Led Decision Making

As part of the review of CAPCA, the Department should also specifically embed Aboriginal Family-Led Decision Making (AFLDM), noting that conferencing is currently referred to at Section 49. AFLDM is acknowledged by Aboriginal peaks and community-controlled organisations as a best-practice approach to decision-making in culturally safe ways that recognise cultural authority, with strong evidence that it leads to better outcomes for First Nations children and young people (SNAICC 2017).

## Other considerations

Other considerations include how the CAPCA can be strengthened to:

- Enable and monitor progress towards the full implementation of the National OOHC Standards in the NT (currently being refreshed).
- Enable and monitor progress towards the full implementation of all five elements of the ATSI Child Placement Principle.
- Enhance practice in line with the National Principles for Child Safe Organisations.
- Reflect evidence for what works and best practice in the context of care and child protection systems.
- Promote prevention and early intervention across all sectors coming into contact with children and families, and in partnership with the Aboriginal community-control sector.
- Ensure the rights of children with disabilities remain in clear focus.

In considering the parameters of the review, CREATE encourages a strong focus on how the review can address the ongoing concerns of children and young people with a care experience in the NT. Children and young people in the NT often share with CREATE their concerns about connection to family, kin, community and culture; safety and stability while in care; and transition planning and supports (when leaving care). Provisions related to these considerations should be included in the review.

## Existing proposed amendments

In relation to the Special and Exceptional Circumstances amendments previously proposed, CREATE does not support amendments that would enable the court discretion to not uphold Section 12 of the CAPCA. This would represent a major step backwards for the Northern Territory. The current principles in Section 12 of CAPCA are the culmination of leadership, advocacy, collaboration and progress over many years. A child's enjoyment of culture and community is not separate from their safety and wellbeing, but a key feature of it. In this context, provisions that undermine Section 12 by allowing court discretion (where they believe these principles are at odds with safety and wellbeing) are too broadly conceived to ensure children's cultural rights would be upheld. Additionally, this exception would specifically limit Aboriginal children's rights and is therefore likely to be discriminatory. It would also not be in keeping with reform directions nationally and internationally.



## Summary of Recommendations

CREATE Foundation welcomes a review of the CAPCA and the invitation to provide early advice on the scope of the review.

### CREATE Foundation recommends:

- That this review is undertaken in consultation with children and young people in care, and that it deeply consider the insights of children and young people lived experiences. This will strengthen the Act's effectiveness in providing for the safety, care and wellbeing of children.
- Engage CREATE to support child and youth participation in the legislative review process through one or more of the following models: a Lived Experience Governance Group, Youth Advisory Panel and/or Design Sprints with young people (see our [Menu of Programs](#) and our [Menu of Consultations](#) for more information).
- The Department to consult widely with child and youth stakeholders and the community-controlled sector throughout the review. This could include establishing a sector steering committee to support deep sector engagement in the review process.
- That the review should ensure amendments advance, enable and promote reforms, policies and practices aligned with:
  - the principle of the Best Interests of the child,
  - the Convention on the Rights of the Child,
  - the Aboriginal and Torres Strait Islander Child Placement Principle,
  - the National Out-of-Home Care Standards,
  - the Closing the Gap Agreement, and
  - the Safe and Supported national reform program.
- That the amendments strongly enhance commitments in relation to child rights, in line with Australia's international obligations.
- Child removal should be clearly reflected in the Act as a last resort, once all family preservation and early intervention measures to keep children with their families have been exhausted.
- That any amendments strengthen child participation in relation to their own care and in relation to policies, practices and systems that affect them.
- That Active Efforts are incorporated as a key guiding principle of the CAPCA, in ways that strengthen and complement the Aboriginal and Torres Strait Islander Child Placement Principle.
- That the Aboriginal and Torres Strait Islander Child Placement Principle is expressly incorporated into the Act (including all five of its elements).
- That Aboriginal-led oversight of adherence to the Child Placement Principle is supported and resourced by government, including through a dedicated Aboriginal Children's Commissioner with a strong mandate, resourcing and full access to information, data and care settings to enable genuine oversight of all systems impacting Aboriginal and Torres Strait Islander children and young people.
- That Aboriginal Family-Led Decision Making is embedded in the CAPCA.



- That the NT Government take steps towards enshrining and implementing a model of Delegated Authority, underpinned by legislative reform and supported by adequate resourcing.
- CREATE is opposed to current proposed amendments that enable the court discretion in not upholding Section 12 of the CAPCA.
- CREATE would strongly object to any amendments that undermine child rights, the principle of Best Interests of the child, Aboriginal self-determination, and the Aboriginal and Torres Strait Islander Child Placement Principle.

## Conclusion

Thank you for the opportunity to provide a submission in relation to the review of CAPCA. CREATE Foundation is committed to working with the Department to ensure the lived experiences of children and young people with a care experience inform and guide the review, and that children and young people with a care experience are able to safely and meaningfully contribute to the design and implementation of the review. We look forward to working with the NT Government to progress this important review. For more information in relation to this submission, please contact [advocacy@create.org.au](mailto:advocacy@create.org.au)

## References

Australian Institute of Health and Welfare (2024) Child protection Australia 2022–23, Supporting children. <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2022-23/contents/insights/supporting-children>

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SNAICC (2024) *Family Matters – Strong communities. Strong culture. Stronger children*. <https://www.snaicc.org.au/our-work/child-and-family-wellbeing/family-matters/>

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