



## STATEMENT OF CONSISTENCY

### **Bill 23: *An Act to Amend the Children's Law Act***

### **Sponsoring Minister: R.J. Simpson**

#### **Explanatory Note**

Subsection 6(1) of the *United Nations Declaration on the Rights of Indigenous Peoples Implementation Act*, SNWT 2023, c. 36 ("*UNDRIP Implementation Act*") requires the Government of the Northwest Territories ("GNWT"), in collaboration and cooperation with Indigenous peoples, to take all reasonable measures to ensure the laws of the Northwest Territories ("NWT") are consistent with the Declaration set out in the Schedule of the *UNDRIP Implementation Act*.

Subsection 8(1) of the *UNDRIP Implementation Act* requires the Attorney General to prepare a Statement of Consistency on behalf of the sponsoring Minister of a bill, indicating whether or not the bill is consistent with the Declaration and the rights recognized and affirmed under section 35 of the *Constitution Act, 1982*. The sponsoring Minister must table the Statement of Consistency before the second reading of the bill in the Legislative Assembly.

A Statement of Consistency is not required if an exception under subsection 8(3) of the *UNDRIP Implementation Act* applies.

A Statement of Consistency provides legal information to the Legislative Assembly about the bill's potential impacts on rights of Indigenous peoples set out in the Declaration and the potential impacts on rights recognized and affirmed under section 35 of the *Constitution Act, 1982*. It is not intended to be a comprehensive overview of all conceivable inconsistencies with Indigenous and Aboriginal rights. A bill may see several amendments between second reading and its ultimate passage through the Legislative Assembly. Additional considerations relevant to the consistency of a bill with the Declaration and the rights recognized and affirmed under section 35 of the *Constitution Act, 1982* may arise through that process. A Statement of Consistency will not reflect an analysis of those changes.



## Background

This Bill amends the *Children's Law Act*. The proposed amendments would

- introduce terminology that emphasizes parenting and promotes the best interests of the child that is consistent with the *Divorce Act* (Canada) and other similar legislation in the provinces and territories; and
- describe new duties for parties to a proceeding, legal advisors and the courts;
- adjust provisions that hinder the making of rules of court concerning family law matters under the *Judicature Act*, including a consequential amendment to the *Child and Family Services Act*;
- clarify provisions in respect of the Recalculation Service; and
- make non-substantive changes that will improve the clarity and readability and implement gender-neutral pronouns and terms throughout the Act.

## Impacts on Rights under the Declaration and Section 35 Aboriginal and Treaty Rights

This Bill may impact rights under the Declaration, such as the right to self-determination and self-government, rights respecting lands, territories or resources, or environmental, economic, health, cultural, religious, language or other rights, but it does not impact Aboriginal and treaty rights recognized and affirmed under section 35 of the *Constitution Act, 1982*.

The net effect of the Bill is to bring the *Children's Law Act* into conformity with the *Divorce Act* (Canada) but also with *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c. 24. There are provisions in the Bill that are similar to provisions in the legislation of other jurisdictions (including the *Children's Law Reform Act*, RSO 1990, c.C12).

At proposed section 26 of the amended Act, a child's Indigenous upbringing and heritage are to be considered as factors in determining the best interests of the child by the court. This is consistent with Article 21.2 of the Declaration - ensuring the continuing improvement of economic and social conditions with particular attention to youth and children.

Nothing in this Bill affects the making of Indigenous laws made under *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c. 24 or under any modern treaties.

## UNDRIP Statement of Consistency

The Attorney General has examined the Bill for any inconsistencies pursuant to the obligation under subsection 8(1) of the *UNDRIP Implementation Act*. This review involved consideration of the context in which the Bill was created, as well as the text of the Bill.



In reviewing the Bill, the Attorney General is of the opinion that the Bill is consistent with the Declaration and section 35 of the *Constitution Act, 1982*.