Submission by the Children in Care Collective
Family is Culture legislative recommendations

Via email: FamilyisCulture@facs.nsw.gov.au

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The Children in Care Collective appreciates the opportunity to participate in the consultation on legislative proposals developed in response to recommendations in the *Family is Culture* (*FIC*) report. Overall, we support the proposals that seek to implement a number of important *FIC* recommendations. We also note that a number of Government departments have reviewed their practices based off the recommendations of the FIC review.

The Children in Care Collective was formed in 2016 by a group of out-of-home care service providers and leading experts in *working* with children with complex needs in out-of-home care.

The aim of the Collective is to share experience, discuss best practice informed by research, provide advocacy and learn from policy and practitioner experts in out-of-home care. The Collective seeks to address solutions to difficult systemic practice issues faced by the sector and to improve outcomes for children and young people with complex needs living in out-of-home care. The Collective's website is at http://childrenincarecollective.com.au/.

Members of the Collective are: Allambi Care; Anglicare NSW South, NSW West and ACT; Anglicare Sydney; CareSouth; Key Assets; Life Without Barriers; Mackillop Family Services; Marist180; Pathfinders; Settlement Services International; Uniting NSW/ACT; Australian Centre for Child Protection (ACCP) - University of South Australia; Institute of Child Protection Studies (ICPS) - Australian Catholic University; Research Centre for Children and Families (RCCF) – University of Sydney.

Our vision of success is that 'an effective and well-resourced service system supports children and young people with complex needs to grow up safely and well in out-of-home care, confident that their rights and wellbeing are protected and prioritised'. We believe the *FIC* report and its recommendations provide an important foundation for essential system reform.

Where we have specific comments on the legislative proposals, they are set out below.

Section one: Changes that can be made quickly subject to stakeholder feedback

Recommendation 48: Evidence of prior removals

The Children in Care Collective supports the repeal of section 106A(1)(a). As noted in *FIC*, it was proposed as a technical, evidentiary provision but its impact on families is well documented in the report, particularly the presumption of risk to the current child and their removal without comprehensive risk assessment.

We agree with *FIC* that the section is unnecessary for the safety of a newborn baby since the Court may still hear evidence about the prior removal of siblings who have not been restored, where this is deemed necessary and appropriate. Focusing on any actual risk to the current child rather than automatically including the family's history would lessen the possibility of discrimination against Aboriginal families, particularly if Recommendation 26 is implemented.

Recommendation 65: Children at criminal proceedings

The Children in Care Collective completely supports this recommendation. We agree with the *FIC* report that a representative of DCJ or a non-government out-of-home care agency should always attend court to support a child where the Secretary has parental control. Whenever possible, this person should have a relationship with the child, which would be a factor in the implementation of the change.

Recommendation 71: Aboriginal Child Placement Principles
The Children in Care Collective supports the amendment of the Care Act to explicitly incorporate the five elements of SNAICC's ATSICPP as these elements together support the aim of keeping children connected to their families, communities, cultures and country, and ensure the participation of Aboriginal and Torres Strait Islander people in decisions about their children's care and protection.

The ACCP have, in practice, been reduced to a hierarchy of placement options and should be subsumed as one element of the ATSICPP. Legislating for, and fully implementing, the five elements of ATSICPP – including in Children's Court processes- will provide a solid foundation for working with Aboriginal children and families.

Work will need to be done by DCJ, both in its work with Aboriginal people and in its upskilling of its Aboriginal workforce, and also with Aboriginal communities to enable and ensure active engagement and leadership (with resources).

Recommendation 76: Identifying Aboriginality
The Children in Care Collective supports the *FIC* recommendations in this section and time should be taken by DCJ where there is uncertainty about a child's Aboriginality. Any move to deidentify a child should not be rushed, as clearly indicated by the case examples in the *FIC* report. This works requires a sensitive and considered approach.

The discussion paper asks what caseworkers should consider when determining Aboriginality. The Children in Care Collective believes that the determination of Aboriginality should be made by family and community, the role of a caseworker should be more around gathering information and engaging with family and community.

Recommendation 112: Supporting restoration
The Children in Care Collective agrees that the Children's Court should be allowed a more active role in ensuring restoration as a preferred placement.

It is clear that restoration is not occurring at adequate rates in New South Wales and that the application of the Care Act is contributing to low restoration rates. The emphasis should shift to DCJ establishing, and providing evidence about, what is preventing restoration to more fully inform the Court's processes.

The good faith implementation of the ATSICPP should enable Aboriginal families and communities to participate in casework decisions and support the restoration of Aboriginal children. We also agree with the *FIC* proposal that, if restoration is not recommended, the Children's Court be empowered to query why and to enquire about the specific actions the DCJ could take to support restoration becoming a realistic possibility.

Recommendation 113: Placement with kin or community
The Children in Care Collective fully supports the recommendation that the Children's Court expressly consider the placement of an Aboriginal child with family and kin if it is determined that there is no realistic possibility of restoration to parents.

To enable this consideration, evidence would need to be placed before the Court of extensive family finding, family meetings and family decision making. The Court would need to ensure there has been substantial participation by family in any decision that led to a child being placed outside of the family network.

Recommendation 113 has clear links to Recommendation 71. The increased participation and voice of Aboriginal families, young people and communities in Children's Court processes is essential. Work will be necessary to ensure this increased participation is culturally safe and affordable.

Section two: Changes that may require further time and consideration

Recommendation 8: Self-determination

The Children in Care Collective supports *FIC*'s call for an agreed understanding of self-determination to be developed. The *FIC* report notes that 'weak form' self-determination, as is currently the case in New South Wales, is unlikely to have any meaningful effect. To explore its meaning in a child protection context is very important, especially as ACCOs become more involved in the child protection system. We endorse the guidance provided by the *FIC* report in terms of what is meant by self-determination and suggest that this descriptive definitional work, and determining how it will be given effect, is best done by Aboriginal stakeholders in the child protection sector in New South Wales as recommended by in the report.

Recommendation 25: Early intervention services

The Children in Care Collective agrees that support services should be mandatory before a care application is made, as already indicated in our response to Recommendations 26 and 54.

An alternative non-legislative measure would be that where there is a risk of a child being removed, families should be offered a peer family advocate. Family advocates are people with lived experience of child protection processes who offer help, support and advocacy to families currently going through similar processes. Family Group conferences need to be convened within an appropriate timeframe and participants supported to engage fully. Essentially, evidence needs to be presented to the Court that the family has been offered meaningful prevention services.

The requirement for support services to be offered and provided is a mandate on government and service providers, not on families. If a ROSH report is not made but the family is regarded by DCJ as at risk of removal then the mandate to offer and provide services would apply. There will be a need to integrate these services with advocacy services as described in other recommendations.

We submit that the best approach to providing support would be for New South Wales to adopt a public health approach to child safety. This approach is predicated on identifying risk factors and then implementing strategies across the entire community to address those risk factors. The aim of this approach is to alter the risk profile of the whole population and protect all children by ensuring safe and supportive environments: 'a rising tide lifts all boats'.

While prevention is focused primarily through whole of population strategies and universally available and accessed services (eg education and health), it is supported by links to secondary services where greater intensity of support is needed. The aim is in part to lower the stigma of seeking help, to target behaviour rather than socio-demographic characteristics and to recognise that families can change for the better. (See, for example, Lonne, B., Scott, D., Higgins, D., & Herrenkohl, T. (Eds.) (2019). *Re-visioning public health approaches for protecting children*. Child Maltreatment 9: Contemporary Issues in Research and Policy Series. Springer https://doi.org/10.1007/978-3-030-05858-6)

Recommendation 28: Notification service

The Children in Care Collective supports this proposal in principle and expects AbSec would be best placed to undertake this role, with the provision of adequate resources.

The success of the family advocacy service will rely on its successful conceptualization, resourcing and implementation. The provision of effective independent advocacy services with all families interacting with the child protection system has enormous potential to address many of the concerns raised by *FIC* and in multiple inquiries into the child protection system in New South Wales.

Recommendation 94: Reviewing carer authorisation decisions

The recommendation that the NSW Civil and Administrative Tribunal (NCAT) be given jurisdiction to review a decision not to authorise a carer is tentatively supported with further consultation. We note that carer authorisation decisions include much subjective consideration of a range of issues and are therefore open to abuse. Applications to the Supreme Court for review are inconceivable for most people and the Ombudsman has no power to enforce its recommendations. The NCAT is generally considered a low-cost

and less formal mechanism for review and the implementation of this recommendation would simply extend its current jurisdiction in relation to carers.

Recommendation 117: Period for restoration
The Children in Care Collective agrees with the *FIC* recommendation that section 79(10) of the Children and Young Persons (Care and Protection) Act 1998 be amended to ensure that it is linked to service provision that would support Aboriginal parents to have their children restored to their care.

Section three: Areas where existing policy settings may already be sufficient

Recommendation 64: Known risks of harm of removal
The Children in Care Collective supports this amendment and agrees with *FIC* that the current legislation does not facilitate the Court considering the grave risks of an out-of-home care experience for an Aboriginal child.

In fact, we would support this recommendation applying to all Australian children in the care system, many of whom also come from families with trauma histories and who may face separation from extended family, from siblings and from culture and community. The poor outcomes for most children and young people who grow up in care are well documented.

Should you have any queries arising from this submission, please direct them to me at Rob.Ryan@lwb.org.au .

Rob Ryan
Chair
Children in Care Collective
15 May 2022

On behalf of the Children in Care Collective:

Allambi Care; Anglicare NSW South | NSW West | ACT; Anglicare Sydney; CareSouth; Key Assets; Life Without Barriers; Mackillop Family Services; Marist180; Settlement Services International; Uniting NSW/ACT; Australian Centre for Child Protection (ACCP) - University of South Australia Institute of Child Protection Studies (ICPS) - Australian Catholic University; Research Centre for Children and Families (RCCF) – University of Sydney