Briefing Paper

FAMILY IS CULTURE RECOMMENDATIONS FOR IMMEDIATE LEGISLATIVE REFORM

May 2022

AbSec and the ALS (NSW/ACT) acknowledge the contribution of Jumbunna Institute for Indigenous Education and Research and the Public Interest Advocacy Centre (PIAC) in the development of this paper.

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Introduction

In 2019, the landmark Aboriginal-led Family is Culture (FIC) Review report laid out a roadmap for systemic and practice reform, including legislative reform of the NSW child protection system. This reform is urgently needed to honour the strengths of Aboriginal children, young people, families and communities, and address the over-representation of Aboriginal children and young people in out-of-home care.

AbSec - NSW Child, Family and Community Peak Aboriginal Corporation and the Aboriginal Legal Service (NSW/ACT), with the support of UTS Jumbunna and the Public Interest Advocacy Centre, have prepared this briefing paper[1] on the FIC recommendations that we believe should be immediately legislated in 2022. This paper is intended to provide an alternative, community perspective on legislative reforms, in contrast to the discussion paper released by the NSW Government Department of Communities and Justice (DCJ) in April 2022.

We have deep concerns about the framing of the issues and the framing of the consultation questions in the DCJ Discussion Paper. Despite the NSW Government's stated commitment to a partnership approach, AbSec and the ALS as peak Aboriginal community organisations were not appropriately engaged in the development of the DCJ Discussion Paper. We provided advice to the Minister earlier this year about which FIC recommendations should be progressed for immediate review, but this was not taken into account or acknowledged in the DCJ Discussion Paper.

Further, we do not believe the paper's analysis accurately reflects the issues or the findings of the FIC Review Report. In our view the DCJ Discussion Paper's analysis and questions are largely orientated towards building support for the Government's pre-determined reform agenda and questioning whether implementation should occur at all, rather than objectively seeking stakeholder views about how best to enact the recommendations.

We seek to redress this imbalance by presenting an alternative, community perspective in this briefing paper on the legislative reforms that we believe should be immediately legislated in 2022. We begin by outlining the need for legislative reform, our concerns about DCJ's Discussion Paper and our recommendations for immediate legislative reform. We strongly encourage you to read this briefing paper before you make a submission to the Government review or engage in consultations.

Background

The 2019 FIC Review was the largest, most comprehensive, independent, Aboriginal-led review into the overrepresentation of Aboriginal children and young people in out-of-home care (**OOHC**) in NSW.[2] The FIC Review calls for structural reform to the child protection system, built upon the twin foundations of self-determination and accountability. The report and its recommendations together provide a roadmap to a system that better supports Aboriginal children and their families and that will contribute to a long term reduction in the number of Aboriginal children coming into contact with the child protection system.

Professor Megan Davis and her team spent two years (from July 2017 to July 2019) holding consultations with Aboriginal communities and families, government agencies, lawyers, non-government organisations (NGO) workers and caseworkers in the child protection system

[1] We recognise the significant contribution of Dr Paul Gray from the Jumbunna Institute for Indigenous Education and Research, UTS, and Jonathan Hall Spence, Emma Bastable, Gail Brennan and Kate Sinclair from the Public Interest Advocacy Centre (PIAC) in the development of this Discussion Paper.
[2] A full copy of the FIC Review report is available at: https://www.familyisculture.nsw.gov.au/__data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf.

and out-of-home care sector. Her team reviewed the case files of all Aboriginal and Torres Strait Islander children and young people in out-of-home care between 1 July 2015 and 31 June 2016 (case files relating to 1,144 children and young people). The recommendations of the FIC Review are the culmination of an immense amount of work, informed by a broad and detailed consultation process.

The NSW Government first responded to the findings and recommendations of the FIC Review in July 2020. In that response, the Government deferred action on all legislative reform recommendations until 2024, some five years after the FIC Review report's release. This response said nothing about the large numbers of Aboriginal children who would continue to be removed from their families and communities and suffer harm, while waiting for these reforms to happen.

In recognition of the urgent need for legislative reform, the NSW Greens introduced a Bill into the NSW Parliament in late 2021, seeking to enact many of the legislative recommendations of the FIC Review. The Bill passed in the Legislative Council in February this year, and has been introduced to the Legislative Assembly for debate later this year.

The NSW Minister for Families, Communities and Disability Services announced during the debate on the Green's FIC Bill that the Government would bring forward implementation of *some* of the FIC legislative reform recommendations to 2022. The DCJ Discussion Paper is the first step in the Government's process of preparing a Bill to implement the FIC legislative reforms that they have prioritised.

Legislative reform is urgently needed

The safety and wellbeing of Aboriginal children and young people is at the centre of the legislative reforms proposed by the FIC Review. The FIC Review, like multiple reviews before it, noted deep seated and structural flaws in the child protection system. It found a broken system that lacks accountability and maintains a resonance with historical practices of child removal used against Aboriginal communities.

Despite the NSW Government's rhetoric about the changes it has made to reduce the overrepresentation of Aboriginal children and the efficacy of the current approach, the scope of these changes falls drastically short of the necessary structural change identified by the FIC Review.

This is reflected in the data, which shows that the rate of overrepresentation of Aboriginal children and young people in out-of-home care has continued to increase since the FIC Review report's release. Since 2017-18, there has been a 36 per cent increase in the numbers of Aboriginal children and young people entering care. Aboriginal children are now 12 times more likely than their non-Aboriginal counter-parts to enter out-of-home care. Consequently Aboriginal children and young people now comprise 43 per cent of the out-of-home care population, up from 39 percent in 2017-18.[3]

The recent NSW Office of the Children's Guardian Special Report on FIC concluded that, “Two years on from the review… over representation of Aboriginal children and young people in the child protection system remains a national crisis.”[4] It found a lack of progress in relation to important recommendations made by the FIC Review and that many of the issues reported in the FIC Review remain unresolved.[5]

The NSW Government's current child protection laws, policies and practices are not working to safeguard the rights and interests of our children. Every day reforms to the NSW child

[3] DCJ Statistics, available at: https://public.tableau.com/app/profile/dcj.statistics/viz/ASR2020-21summarydashboard_16481674309410/Coverpage
[4] NSW Office of the Children's Guardian (2022) *Special Report on Family Is Culture*, 15.
[5] Ibid, 16

protection system are delayed, an additional three Aboriginal children and young people are removed from their families under a legislative framework that is known to be inadequate – more than a thousand of our kids each year.[6]

Legislative reform is one step toward changing this so that the system better safeguards the wellbeing of Aboriginal children and young people and gives greater emphasis to early intervention support to keep families together. The suite of reforms will strengthen safeguards for Aboriginal children, and contribute to improvements in practice with Aboriginal children and families by requiring more rigorous processes, enhanced oversight and accountability, and greater engagement with Aboriginal families and communities.

Concerns about the DCJ Discussion Paper

We have considerable concern about the framing of the issues and the consultation questions in the DCJ Discussion Paper. We do not think the paper presents an accurate picture of how the system is working for Aboriginal children and families. We also do not think the paper's analysis wholly or accurately reflects the evidence and findings of the FIC Review.

Critical information has been omitted from the DCJ Discussion Paper and the discussion does not fully represent the reasoning or rationale of the FIC Review. There are numerous examples where the DCJ Discussion Paper has asked whether existing provisions are adequate, despite the FIC Review considering existing provisions, such as the principle of the 'least intrusive intervention', and finding that they are inadequate or not implemented in practice.

Some examples include the discussion of recommendations 26 (Active Efforts), 48 (Evidence of Prior Removals), 54 (Alternatives to Removal), 76 (Identifying Aboriginality), and 112 (Supporting Restoration), but others can be found throughout the paper.

The DCJ Discussion Paper also presents the recommendations as individual and discrete, without considering their interaction or interconnection and how they comprise a broader program of systemic reform. It also gives no consideration to the sequence for how they are implemented. This siloed approach to considering the recommendations is particularly problematic when considered against the FIC Review's central themes of self-determination and transparency and oversight and its emphasis on the importance of holistic reform.

We are also concerned about the specific discussion questions posed by the DCJ Discussion Paper. We have flagged with DCJ the different sets of questions in the paper, are confusing for stakeholders and will make comparative analysis of the responses difficult. Many of the questions posed under each individual recommendation discussion seek to re-litigate the findings of the FIC Review or appear to lead in a particular direction in preference of alternative actions – suggesting that the recommended legislative change is not supported or preferred.

Our perspective on legislative reform

In March this year, we provided advice to the Minister for Families, Communities and Disability Services on the FIC Review recommendations relating to legislative reform. We suggested a two stage review process based on the nature of the recommendations in question:

[6] Based on the numbers of Aboriginal children entering OOHC in 2020-21, see: DCJ Statistics, https://public.tableau.com/app/profile/dcj.statistics/viz/ASR2020-21summarydashboard_16481674309410/Coverpage.

- Stage 1 – An immediate review of FIC legislative recommendations that we view as relatively straightforward to implement, completed by the end of 2022.
- Stage 2 – A one year review process on the remaining FIC legislative recommendations, to be led by the Aboriginal peaks and completed by the end of 2023. These are recommendations that we view as more complex and that may require deeper or more extensive development for implementation.

Of the 25 legislative reforms recommended by FIC, our advice to the Minister was to immediately progress 15 recommendations in Stage 1. These included recommendations 15 (Public Interest Defence), 17 (Ombudsman's Jurisdiction re Complaints), 25 (Requirement to Provide Early Intervention Support), 26 (Active Efforts), 48 (Evidence of Prior Removals), 54 (Alternatives to Removal), 64 (Known Risks of Harm from Removal), 65 (Children in Criminal Proceedings), 71 (Aboriginal Child Placement Principles), 94 (Carer Authorisation), 112 (Supporting Restoration), 113 (Placement with Kin or Community), 117 (Period for Restoration), 121 (Adoption), and 123 (Rules of Evidence).

We have subsequently added recommendation 19 (OCG Parliamentary Committee Oversight) to our advice, as the DCJ Discussion Paper identifies that this recommendation can be legislated in the short-term. We discuss the evidence and rationale for immediately progressing these 16 recommendations in the sections below.

We are of the view that the remaining 9 FIC legislative reform recommendations require more extensive consultation and should be progressed by 2023 in Stage 2. These are recommendations 8 (Self-Determination), 9 (A New Child Protection Commission), 11 (For-Profit OOHC Providers), 12 (Publishing Final Judgments), 20 (Accrediting OOHC Agencies), 28 (Notification Service), 76 (Identifying Aboriginality), 102 (Public Reporting on Family Group Conferencing), and 122 (New Agency to Run Litigation).

Contrary to our recommendation for a two-stage review process, the DCJ Discussion Paper has instead grouped the 25 legislative reforms into three categories as follows:

1. Changes that can be made quickly subject to stakeholder feedback (11 recommendations);
2. Changes that may require further time and consideration (10 recommendations); and
3. Areas where existing settings may already be sufficient (4 recommendations).

As to the **first category**, all but one of the 11 recommendations proposed by DCJ for immediate implementation are aligned with our proposal. We disagree on recommendation 76, relating to (de)identification, as we believe this is a complex issue that requires deep engagement with Aboriginal communities and stakeholders through a longer consultation process and so should be in Stage 2.

As to the **second category**, we disagree with DCJ about 4 of the 10 recommendations in this category. We say these 4 recommendations should be immediately implemented in Stage 1, rather than deferred to Stage 2. These are recommendations 25 (Requirement to Provide Early Intervention Support), 94 (Carer Authorisation), 117 (Period for Restoration) and 123 (Rules of Evidence). We agree with DCJ that the remaining recommendations in this category require more extensive consultation and are not appropriate for immediate implementation. **We are also concerned that DCJ have proposed recommendations in this category for future review at an unspecified time. The Stage 2 recommendations should be implemented by the end of 2023 at the latest.**

As to the **third category,** we disagree with this category in its entirety. FIC examined existing policy and practice and found it to be inadequate to meet the needs of Aboriginal children and families. Recommendations 64 (Known Risks of Harm from Removal) and 121 (Adoption) should be considered for immediate implementation in Stage 1 and recommendations 11 (For-Profit OOHC Providers) and 20 (Accrediting OOHC Agencies) considered for implementation in Stage 2.

In the interests of keeping this discussion paper short, we have focussed our discussion on the recommendations that we believe should be immediately implemented.

Recommendations for immediate implementation

We recommend that the following 16 FIC recommendations are legislated by the end of 2022. We have grouped these under their respective themes from the FIC Review.

Theme: Public oversight and accountability

The FIC Review commends a suite of recommendations aimed at improving the public accountability and oversight of the child protection system. These include Recommendations 9 to 20. Just over half of these recommendations involve legislative change. We have identified three of these for immediate implementation: Recommendations 15, 17 and 19.

Recommendation 15: Public interest defence

The NSW Government should amend s 105(1AA) of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to include a public interest defence to an offence under s105(1AA).

The FIC Review identified that s 105(1AA), which criminalises the publication of information likely to identify a child or young person who is or has been in the care of the NSW Government, supresses a wide breadth of information in a manner that is 'undesirable' and 'unwarranted'. While rarely enforced by DCJ, the potential $20,000 fine (or $200,000 for a corporation such as a news outlet) or two years imprisonment has a significant chilling effect on important disclosures about the child protection system. This could include preventing publication of media reports that identify parents who allege that their children have been wrongfully removed and social media posts by children disclosing their OOHC status or by parents or authorised carers about their experiences with the child protection system.

While acknowledging children's right to privacy about their OOHC status and to not be subject to intrusive or sensationalist media reporting, the FIC Review identified that there may be occasions when there is an overriding competing public interest such as ensuring accountability of those involved in the child protection system. It noted the public interest in having the child protection system openly scrutinised, analysed and discussed.

The FIC Review found current exceptions to the provision inadequate to address legitimate public interest reasons to publish material. It also noted the DCJ Secretary can grant consent to publish material that may breach the provision, but this could give rise to a conflict of interest (perceived or real) where the material is critical of the Department. It is important to note that DCJ is the primary beneficiary of this prohibition, allowing it to avoid scrutiny of poor casework practice.

The FIC Review concluded that, "…a public interest defence would provide an adequate deterrent to sensationalist or unnecessary violations of a child's privacy, whilst maintaining a channel for transparency and accountability in relation to matters of legitimate public concern."[7] We agree with that assessment and consider a public interest defence to be an important accountability mechanism. The questions posed by the DCJ Discussion Paper, focussing on risks and 'other mechanisms' while eliding over the public interest justifications focused on promoting appropriate scrutiny of DCJ's conduct, suggest that they do not wish to meaningfully consider implementation of this recommendation. We think that would be a mistake.

[7] Davis M. (2019) *Family Is Culture Review*, Sydney, 135.

Recommendation 17 – Ombudsman's jurisdiction re: complaints

The NSW Government should amend the *Ombudsman Act 1974* (NSW) to enable the NSW Ombudsman to handle complaints in matters that are (or could be) before a court, in circumstances where doing so would not interfere with the administration of justice.

The FIC Review was concerned that the Ombudsman has a jurisdictional limitation that severely hampers the ability of the Ombudsman to oversee the child protection sector. Under the *Ombudsman Act 1974* (NSW), the Ombudsman cannot investigate complaints more than 12 months old or issues that have been considered by a court. Given that court proceedings are commenced in almost every case of a child removal, complaints about the pre-entry into care casework are effectively prevented, even though the casework may not have a bearing on the issues to be decided by the court.

The FIC Review identified many cases where complaints about casework could run parallel to court processes without interfering with the administration of justice. It recommended amending the *Ombudsman Act 1974* (NSW) to enable the NSW Ombudsman to handle complaints in matters before a court, where it would not interfere with the administration of justice, as an interim measure until the establishment of a new independent Child Protection Commission to provide greater systems oversight and accountability.

The NSW Ombudsman also supports this recommendation, as outlined in their recently tabled Special Report[8], prepared in response to the *Children and Young Persons (Care and Protection) Amendment (Family Is Culture) Bill 2022*, introduced initially by David Shoebridge.

We agree that this is an important accountability measure and consider that the way this is presented in the DCJ Discussion Paper is consistent with the findings of the FIC Review and supportive of the recommendations.

Recommendation 19 – OCG Parliamentary Committee oversight

The NSW Government should amend the *Advocate for Children and Young People Act 2014* or otherwise legislate to ensure that a parliamentary committee monitors and oversees the out-of-home care functions of the Office of the Children's Guardian.

The FIC Review identified concerns about the lack of transparency surrounding the Office of the Children's Guardian (**OCG**) activities and the effectiveness of its regulatory approach to the OOHC sector.

The FIC Review identified the need to 'watch the watcher' so children and young people in OOHC are in safe, stable and secure placements. It noted that while the OCG's other activities are subject to oversight by the NSW Parliament Joint Committee on Children and Young People, the OCG's out of home care activities are not subject to parliamentary oversight. This is in contrast to most independent statutory agencies.

It recommended that the OCG's OOHC functions be overseen by a parliamentary committee, to create a much needed line of public accountability. This recommendation is part of a suite of interim recommendations, prior to the recommended establishment of an independent Child Protection Commission.

We agree that this is an important accountability measure, and would be consistent with oversight mechanisms that exist in relation to OCG's other functions. The DCJ Discussion Paper seeks to link this recommendation with prohibiting accreditation of OOHC providers that do not fully meet the criteria under Recommendation 20 (Accrediting OOHC agencies), but this framing limits the focus of the intent in a way that is not consistent with the FIC Review. The oversight anticipated by this recommendation is much broader.

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[8] *The Ombudsman's jurisdiction to investigate when there are related court proceedings*, 4 May 2022, a report made under section 31 of the *Ombudsman Act 1974.*

Theme: Getting early intervention right

The FIC Review made a large number of recommendations to address the need to improve early intervention and prevention support to Aboriginal families including Recommendations 21 to 40. The vast majority of these recommendations involve funding, policy and/or practice change. Three recommendations involve legislative change and we have identified two for immediate implementation.

Recommendation 25 – Requirement to provide early intervention support

The NSW Government should amend the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to mandate the provision of support services to Aboriginal families to prevent the entry of Aboriginal children into out-of-home care.

The FIC Review observed that DCJ does not provide effective and consistent early intervention to families to prevent entry into care, despite existing policy and legislative commitments.

> "…*the Review has found that the core problem for early intervention lies primarily in the implementation of relevant law and policy in practice. While FACS' position is accordingly supportive of early intervention and prevention work on paper, in practice the situation appears considerably different*."[9]

The FIC Review included a number of case studies demonstrating DCJ's failure to provide early intervention support to Aboriginal children and families, along with data highlighting deficiencies in, and in many cases a complete absence of any, early intervention and prevention work and pre-entry into care casework.

> "*In many cases it was identified that no early intervention or prevention work had taken place despite families becoming known to the system early—often many years before the children entered care. Providing earlier and more targeted casework in response to early ROSH reports was often identified as a factor that may have improved the likelihood of the risk not escalating to the point where the children needed to enter care."*[10]

The recent Special Report on Family Is Culture by the OCG noted that stakeholders consistently identified that Aboriginal families are not provided with appropriate and timely early intervention services.[11]

The FIC Review identified early intervention as a crucial lever to decrease the numbers of children entering care in the first instance. It noted extensive research about the importance of early support to families to prevent entry into care and numerous government inquiries calling for a renewed emphasis on early support for Aboriginal children and families.

Despite this, the FIC Review observed that there is no legislative obligation on DCJ to provide early support to parents. DCJ and non-government agencies are only required under s 18(1) to use 'best endeavours' to comply with a request for support.

The DCJ Discussion Paper states that the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (the **Care Act**) already contains provisions that require DCJ to take 'prior alternative action' such as Alternative Dispute Resolution (**ADR**) before making a care application. However, the FIC Review clearly identified that existing legislative provisions such as these are not being implemented in practice and are inadequate to drive practice change. It also signalled the need for much earlier support in the continuum before removal is being considered as an option.

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[9] Davis M. (2019) *Family Is Culture Review*, Sydney, 146.
[10] Ibid, 156.
[11] NSW Office of the Children's Guardian (2022) *Special Report on Family Is Culture*, 16

The FIC Review concluded that legislative amendments that require the provision of services are one way to change practice so the child protection system prioritises support earlier in families' engagements with the system and ensures better outcomes for children and families. We are of the view that additional legislative obligations as recommended by the FIC Review are needed to ensure meaningful change to DCJ practice.

Recommendation 26 – Active Efforts

> The NSW Government should amend the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to require the Department of Communities and Justice to take active efforts to prevent Aboriginal children from entering into out-of-home care.

As outlined above at recommendation 25, the FIC Review found that DCJ routinely demonstrated non-compliance with its stated early intervention policy and legislative commitments. It found that opportunities for early intervention with the families of Aboriginal children were missed, as well as issues with the quality of early intervention and prevention casework practice.

In response to these issues the FIC Review cited the requirement in the United States' 'gold standard' Indian Child Welfare Act of 1978 for the State to take 'active efforts' to support a child before removing that child. 'Active efforts' are defined in the regulations as, 'affirmative, active, thorough and timely efforts intended primarily to maintain or reunite' a child with the child's family.'

The Indian Child Welfare Act and related regulations require that these 'active efforts' are tailored to the individual child and family's circumstances and are provided in a culturally appropriate way in partnership with the child's family and community.

The DCJ Discussion Paper notes existing legal requirements to prevent children from entering OOHC, including the permanent placement principles, ADR and the principle of the 'least intrusive intervention'. Yet it omits the FIC Review's considerable evidence and discussion about DCJ's failure to implement these existing provisions in practice.

Given the disproportionate numbers of Aboriginal children in OOHC, the FIC Review said that the onus must be on the state to prevent the removal of the child. As such, it recommended amending the Care Act to make clear that it is the responsibility of DCJ to ensure that active efforts are taken prior to removing Aboriginal children from their families.

We are of the view that additional legislative obligations as recommended by FIC Review are needed to ensure meaningful change to DCJ practice, and to ensure that when families come before the Children's Court, that there is appropriately weighted consideration by the Court of each step taken by DCJ to prevent removal of children. We also note that such a provision is consistent with the Aboriginal Case Management Policy. Finally, we also consider this an important accountability measure.

Theme: Prenatal reporting and newborn removal

The FIC Review made recommendations 41 to 48 in response to growing prenatal reports and rates of assumptions of newborns into care, along with significant concerns about deficient prenatal report casework, unethical newborn removal practices and gaps in policy. One of these recommendations requires legislative change and we have identified it for immediate implementation.

Recommendation 48 – Evidence of prior removals

> The NSW Government should repeal s 106A(1)(a) of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).

The FIC Review identified concerns about the significant proportion of removals of infants soon after birth and that the introduction of s 106A(1)(a) had detrimentally impacted prenatal and newborn casework practice. It found evidence that babies were increasingly assumed into care immediately after birth since the introduction of the provision, as the 'need for ongoing assessment and evidence building was no longer pressed as an issue'.[12]

The FIC Review acknowledged that the prior removal of children may be considered a risk factor, but this should not supersede DCJ's assessment of the situation of each individual child at the point in time of his or her birth. The Review further contended that the onus of proof regarding the need for the care and protection of the child should not be reversed. It pointed to the difficulties many Aboriginal parents face in obtaining legal advice and support, particularly given care and protection proceedings may commence very quickly after the child's birth.

The DCJ Discussion Paper states that DCJ is required to make an assessment and provide evidence to the Court of the current risks to the child who is the subject of the care proceedings. However, the FIC Review found evidence of poor practice in this area. In one reviewed case, DCJ determined it would not support a mother to keep her baby due to the removal of her previous three children, prior to the completion of any safety or risk assessment in respect of the baby.[13]

As such, the FIC Review considered that s 106A(1)(a) was not necessary to ensure the safety and wellbeing of children and should be repealed given its detrimental impact on casework for Aboriginal families. We agree with this position and strongly support the repeal of the provision.

Theme: Considering alternatives to removal

The FIC review made recommendations 49 to 55 in response to findings that DCJ often removes Aboriginal children without considering less intrusive options as required under the Care Act. One of these recommendations requires legislative change and we have identified it for immediate implementation.

Recommendation 54 – Alternatives to removal

The NSW Government should amend the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to require the Department of Communities and Justice to consider specific alternatives prior to removal. Such specific alternatives could include Parent Responsibility Contracts, Parent Capacity Orders, and Temporary Care Arrangements.

The FIC Review's case file analysis found that DCJ rarely considered less intrusive options for Aboriginal children who enter the OOHC system as required by the Care Act. Section 9(c) requires that 'the least intrusive action' must be taken to protect a child from harm. In more than a third of the qualitative sample less intrusive options were not considered prior to removal.[14]

In the small number of reviewed cases where DCJ did consider and use less intrusive options to removal, most parents addressed presenting issues which resulted in children remaining with family or returning to the care of their parents.

The FIC Review notes and commends that DCJ is legislatively required to consider using ADR processes when responding to every ROSH report, and to offer ADR processes to the family of a child who is at risk of significant harm before seeking any court orders in relation to the child.

[12] Davis M. (2019) *Family Is Culture Review*, Sydney, 203.
[13] Ibid, 203.
[14] Ibid, 205.

The recent OCG Special Report on FIC found that DCJ needs to consider a wider range of culturally appropriate ADR models, and that ADR should be used very early in the child protection continuum as a preventative tool.

The DCJ Discussion Paper contends that there is already a legislated requirement for the 'least intrusive intervention' and that removing any child from their family must be the very last resort. Yet it omits the finding of the FIC Review that "…less intrusive options are rarely being considered for Aboriginal children who enter the OOHC system."[15]

The FIC Review consequently recommended that similar provisions mandating the consideration of other alternatives to removal be introduced, including Parent Responsibility Contracts, Parent Capacity Orders, and Temporary Care Arrangements, given that DCJ is not using existing mechanisms.

> "*A statutory requirement to use alternatives to removal has the best chance of reorienting departmental practice towards family preservation. This is necessary given that the alternatives that currently exist are not being properly utilised.*"[16]

We are of the view that additional legislative obligations as recommended by the FIC Review are needed to ensure meaningful change to DCJ practice.

Theme: Recognising the harm of removal

The FIC review made recommendations 62 to 64 in response to findings about the life-long and intergenerational harm of removing Aboriginal children into OOHC. One of these recommendations requires legislative change and we have identified it for immediate implementation.

Recommendation 64 – Known risks of harm of removal

> The NSW Government amend the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to require judicial officers to consider the known risks of harm to an Aboriginal child of being removed from the child's parents or carer in child protection matters involving Aboriginal children.

The FIC Review raised significant concerns about the life-long and intergenerational negative effects that removal into OOHC can have on children and families, along with the way removals are executed by DCJ, and that this harm of removal may not be adequately taken into account by Children's Court Magistrates when adjudicating care and protection proceedings.

The FIC Review noted growing evidence that OOHC status is linked to poorer outcomes for children. This includes greater risk of care criminalisation, poor education outcomes, economic insecurity, homelessness, poor health and greater likelihood of substance abuse problems. It identified significant concerns about the abuse of Aboriginal children in care, with a greater proportion of Aboriginal children experiencing a substantiated incident of actual or risk of harm in OOHC. It also noted that children who are removed often suffer neglect across multiple agencies.

Stakeholders to the Review submitted that there is an apparent policy assumption that a life in care will provide better outcomes for children at risk than any alternative, but fails to recognise that the removal of Aboriginal children from their families often exposes them to danger and 'immense trauma' as opposed to 'protection'.

The FIC Review discussed the 2017 Legislative Council General Purpose Standing Committee No. 2 Inquiry into Child Protection in NSW findings on the 'harm of removal'. The

[15] Ibid, 204.
[16] Ibid, 210-211.

Committee heard existing legislative provisions enable the Children's Court to take into account the harm of removing a child from his or her family however it:

> "…*was not convinced that the Children's Court adequately took into account the body of evidence about the intergenerational nature of child removals, or the effect of child removal on other wellbeing indicators, such as 'educational performance, substance abuse, work opportunities and life expectancy'*."[17]

Accordingly the Committee recommended that the NSW Government amend the Care Act:

> "…*to include a specific provision requiring the Children's Court of New South Wales to consider the known risks of harm to a child of being removed from their parents or carer and placed into care, together with the risks of leaving the child in their current circumstances, when making a decision on potential child removal in care and protection proceedings*"[18]

Similar to evidence presented by DCJ to the 2017 General Purpose Standing Committee, the DCJ Discussion Paper notes there are existing principles contained in the legislation to enable the Court to consider the consequences of removal, as well as again invoking the principle of 'least intrusive option'. However, the FIC Review agreed with the 2017 Inquiry findings that existing legislation is inadequate to ensure the harm of removal is adequately considered in judicial decision making.

In recommending an explicit legislative provision to require judicial officers to consider the known risks of harm to an Aboriginal child of being removed, the FIC Review noted the varying knowledge base of individual judicial officers, particularly non-specialist Magistrates. It also noted that DCJ frequently withheld evidence or presented misleading information that may affect the Court's ability to engage in balanced decision-making. Accordingly the FIC Review suggested an explicit provision may remind judicial officers of the need for close scrutiny of the quality of the evidence presented to justify removal.

The DCJ Discussion Paper asserts that this recommendation is specific to Aboriginal children, and would not apply to non-Aboriginal children. However the FIC Review's analysis of the harm of removal is applicable to all children in OOHC, consistent with the 2017 Inquiry. The specific element that applies to Aboriginal children is the consideration of the particular harm of severing an Aboriginal child's connection to culture "…the Review is of the perspective that there is a specific element of cultural harm that the Court should consider in matters involving Aboriginal children".[19]

As such, while the FIC Review was focused on Aboriginal children, the evidence and rationale related to this recommendation is broadly applicable and would likely benefit all children, as well as providing a direct prompt regarding the specific harm of disconnection from culture for Aboriginal children.

We support the inclusion of a provision requiring judicial consideration of the known risks of harm of removal, particularly as they relate to Aboriginal children.

Theme: Care criminalisation

The FIC review made recommendations 65 to 70 in response to evidence that Aboriginal children in OOHC are more likely to be in contact with the criminal justice system. One of these recommendations requires legislative change and we have identified it for immediate implementation.

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[17] Ibid, 232.
[18] Ibid, 232.
[19] Ibid, 234.

Recommendation 65 – Children at criminal proceedings

> The NSW Government should amend s 7 of the *Children (Protection and Parental Responsibility) Act 1998* (NSW) to enable a court exercising criminal jurisdiction, with respect to a child, to require the attendance of a delegate of the Secretary of the Department of Communities and Justice in circumstances where the Secretary has parental responsibility of the child.

The FIC Review noted the overrepresentation of children and young people in OOHC in the criminal justice system. It raised concerns that the plight of children and young people in OOHC is compounded by a lack of support from DCJ when it is their 'parent', during police investigations or court proceedings. It cited information from NSW that there was no evidence of assistance for a third of children, and that only half of those under 13 years of age was accompanied at court by a caseworker.

The FIC Review observed that as a result of this failure to provide the child or young person in OOHC in contact with the criminal justice system with a support person "…the Court misses out on the full information about the young person's circumstances ... and the young person misses out on the guidance and assistance of a support person."[20] Providing this support could help facilitate better outcomes for the child or young person.

The FIC Review observed that there is no obligation, legislative or otherwise, on a representative of DCJ or a non-government OOHC agency to attend court as a support person. Although the Court may require a parent to attend criminal proceedings relating to their child, the definition of parent does not extend to the DCJ Secretary, even when they have parental responsibility for the child.

The DCJ Discussion Paper outlines DCJ's policy requiring casework support for children in OOHC within the criminal justice system in its discussion of this recommendation. However it omits the FIC Review's evidence and findings that children do not always receive support from DCJ, and in some instances where support is provided at court that the support is not appropriate.

Given the Minister assumes the role and responsibilities of the parent for children in OOHC, the FIC Review concluded that DCJ should have the same legal obligation to that placed on other parents to attend a criminal hearing if requested by a court. As such it recommended that a court should have the power to mandate the attendance of a DCJ caseworker in individual cases, whether or not the child is case managed by a non-government OOHC provider.

We are of the view that this additional legislative requirement as recommended by the FIC Review is needed to promote meaningful change to DCJ practice.

Theme: Introduction to the Aboriginal Placement Principle

The FIC review made recommendations 71 to 82 in response to concerns about longstanding non-compliance with the Aboriginal Child Placement Principle (ACPP) and deficiencies in DCJ policy and casework practice in relation to particular elements of the ACPP. The majority of recommendations relate to policy, data and practice change. Two recommendations require legislative change and we have identified one for immediate implementation.

Recommendation 71 – Aboriginal Child Placement Principles

> The New South Wales Government should amend the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to ensure that its provisions adequately reflect the five

[20] Ibid, 240.

different elements of the Aboriginal Child Placement Principle, namely, prevention, partnership, participation, placement and connection.

The FIC Review raised widespread concerns with the way the Aboriginal and Torres Strait Islander Child Placement Principle (ACPP) is interpreted and applied. It cited evidence from its cohort file review of the devastating impact that current non-compliance with ACPP is having on Aboriginal families and communities in NSW.

The FIC Review observed that the ACPP is commonly misconstrued as a physical placement hierarchy, when it is actually a broad principle made up of five elements aimed at enhancing and preserving Aboriginal children's sense of identity, as well as their connection to their culture, heritage, family and community. The five elements are prevention, partnerships, connection, participation and placement.

The FIC Review raised concerns that the Care Act does not reflect the true interpretation of the ACPP. It referred for example to s 13 of the Care Act, as an example of how the Act may contribute to the common misunderstanding of the ACPP as solely limited to a sliding placement hierarchy. The section is titled 'Aboriginal and Torres Strait Islander Child and Young Person Placement Principles', despite only dealing with the placement and, to a lesser extent, connection elements of the ACPP.

Accordingly, the FIC Review recommended that the Care Act be amended to more adequately reflect the different elements of the ACPP.

We are of the view that additional legislative amendments as recommended by the FIC Review are needed to reflect the five elements of the ACPP. We note that this does not simply involve the insertion of the five elements of the principles into the act, but that there should be consideration given to embedding the five elements throughout the legislation.

Theme: Placement

The FIC Review made recommendations 84 to 96 in response to findings that DCJ often removed Aboriginal children without considering less intrusive options as required under the Care Act. One of these recommendations is for legislative change and we have identified it for immediate implementation.

Recommendation 94 – Carer authorisation

The NSW Government should ensure that the NSW Civil and Administrative Tribunal has jurisdiction to review a decision not to authorise a carer.

The FIC Review raised concerns about the lack of ability to challenge a decision by a caseworker not to authorise a person as a carer. This was in the context of enhancing compliance with the ACPP and the placement of Aboriginal children with extended family or kin. The FIC Review noted there is no longer a right of review to the NCAT about a decision made to refuse authorisation of an applicant as a carer, following legislative change in 2015.

The FIC Review found evidence of widespread issues with the carer assessment processes. In almost half of the cases examined, family members were not formally assessed to care for Aboriginal children who entered care. In a number of cases there were other issues raised with the actual assessment process and outcome, including a failure to record reasons for an unfavourable assessment and the use of culturally unsuitable carer assessment processes.

The FIC Review acknowledged the need for the exercise of discretion in decision-making about carer authorisations, but stated without the possibility for independent review the use of discretion was open to abuse. Accordingly this recommendation is also associated with addressing the lack of accountability regarding the exercise of authority within the child protection system.

The DCJ Discussion Paper defers consideration of this recommendation to a future, unspecified date. It states that DCJ has amended the carer authorisation mandate which provides relative/kin care applicant with the ability to seek an internal review. If a person is not satisfied with the review outcome, they can apply to the Supreme Court of NSW or complain to the NSW Ombudsman.

However the FIC Review considered these avenues of review to be, "…incomplete and ineffective".[21] It cited the lack of internal record keeping about reasons for decisions undermining the basis for review and the large volume of complaints made to the Ombudsman coupled with lengthy investigation processes and no enforcement powers. As such, the FIC Review recommended the NCAT have jurisdiction to review a decision not to authorise a carer.

In a related, albeit separate finding, the recent OCG Special Report on FIC further recommended that, "DCJ should review the legal requirements under the Care Act which requires kinship carers to go through the formal carer authorisation process as part of their statutory review of the Act in 2024."[22]

We support the recommendation made in the FIC Review Report to broaden the jurisdiction of NCAT to review decisions made by DCJ regarding authorisation of carers and welcome the adequate resourcing of the Tribunal to provide for any increase in applications and the provision of a culturally appropriate process for applicants.

Theme: Restoration

The FIC review made a suite of recommendations in response to concerns about the low rates of restoration and evidence of poor casework practice to support restoration, despite restoration being the NSW Government's preferred position and the priority for permanency under the existing legislation (Recommendations 106 to 120). The majority of these recommendations focus on funding, policy and practice change. Three of these recommendations require legislative change and we have identified all of these for immediate implementation.

Recommendation 112 – Supporting Restoration

> The NSW Government should amend s 83 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to allow the Children's Court of NSW a more active role in ensuring restoration is a preferred placement.

The FIC Review highlighted concerns about the lack of restoration of Aboriginal children to their parents and the lack of transparency around restoration decision-making. The FIC Review noted that increasing exits from the system, with restoration as the preferred method, is one of the key ways to reduce the number of Aboriginal children in OOHC.

While the FIC Review supported the legislative and policy position of the NSW Government that restoration should be the preferred option for placement, it flagged a large gap between restoration as the preferred legal and policy position and the implementation of that position for Aboriginal children.

The FIC Review found that less than one-fifth (16%) of cases reviewed with a care plan identified restoration as a possibility. Around one-third of cases (34%) had deficiencies in restoration goals provided to parents, and in more than one-third of cases (35%) no casework was provided to parents to support restoration.[23]

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[21] Ibid, 304.
[22] NSW Office of the Children's Guardian (2022) *Special Report on Family Is Culture*, 50.
[23] Davis M. (2019) *Family Is Culture Review*, Sydney, 346-7.

> "…*the Review is of the perspective that restoration was a possibility in far more of the cases than those where it was deemed possible by the department. If appropriate casework had been undertaken with more families who had children removed, the successful restoration rate would have likely been far higher. All parents should have the opportunity to receive appropriate and targeted casework support when their children are removed*."[24]

The recent OCG Special Report on Family Is Culture similarly identified that not enough emphasis is placed on exploring meaningful restoration options and birth family contact to support restoration outcomes. [25]

The FIC Review discussed the current operation of s 83 of the Care Act and proposed that the Children's Court can play a valuable oversight role in promoting the implementation of the preferred placement hierarchy. However, it concluded that, "…it is questionable whether the current framing of s 83 allows the Children's Court to adequately promote the preferred position of restoration, rather than approving permanent placement elsewhere."[26]

The DCJ Discussion Paper contends the Children's Court is already required to assess DCJ's determination of whether there is a realistic possibility of restoration. It also notes DCJ is required to take the least intrusive actions, offer ADR and comply with the placement hierarchy. It does not address the considerable evidence in the FIC Review that current practice falls well short of policy and legislative requirements, with the review cohort showing a very low number of cases in which the Department assessed that there was a realistic possibility of restoration in the care plan.

The FIC Review concluded that the NSW Government should review s 83 of the Care Act to ensure that what is required of the Children's Court aligns with s 10A of the Care Act and to empower the Children's Court to actively encourage restoration. It suggested a revised s 83 could be an important mechanism to promote higher restoration rates of Aboriginal children.

We support the recommendation to review the restoration provisions within s 83 of the Care Act and consider it necessary to support changes in casework practice.

Recommendation 113 – Placement with kin or community

The NSW Government should amend s 83 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to expressly require the Children's Court of NSW to consider the placement of an Aboriginal child with a relative, member of kin or community, or other suitable person, if it determines that there is no realistic possibility of restoration within a reasonable period.

Related to the issues about low restoration rates of Aboriginal children to their parents outlined in recommendation 112 above, the FIC Review examined other opportunities to strengthen the role of the Children's Court in promoting restoration under s 83 consistent with s 10A of the Care Act.

The FIC Review endorsed Legal Aid NSW's submission that "…section 83(3) could be amended to provide that where the Secretary assesses that there is no realistic possibility of restoration of a child or young person to their parents, the Secretary must prepare a permanency plan either: recommending placement with a relative, member of kin or community or other suitable person(s), or indicating that there is no suitable person, and submit that plan to the Children's Court for consideration."[27]

The DCJ Discussion Paper notes NSW has committed to implement the ACPP into legislation and the Children's Court is already required to have regard to the permanency

[24] Ibid, 346.
[25] NSW Office of the Children's Guardian (2022) *Special Report on Family Is Culture*, 18.
[26] Davis M. (2019) *Family Is Culture Review*, Sydney, 341.
[27] Davis M. (2019) *Family Is Culture Review*, Sydney, 342.

placement principles in s 10A. However, as noted above, this omits the FIC Review's findings about the failure to adequately apply these provisions in practice.

We support the recommendation of the FIC Review that the legislation be amended to expressly require the Court to consider the placement options for Aboriginal children.

Recommendation 117: Period for restoration

> The NSW Government should amend s 79(10) of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to ensure that it is linked to service provision that would support Aboriginal parents to have their children restored to their care.

Related to the issue of the low restoration rates for Aboriginal children, the FIC Review identified issues related to the rigid two-year timeframe for parents to achieve their restoration goals once a permanency plan has been approved and parental responsibility allocated to the Minister under s 79(9). It noted this timeframe may not give parents an appropriate amount of time to make changes.

It noted this was in part because restoration work is often limited to un-coordinated and cold referrals and because of lengthy waiting lists for the services that are generally linked to restoration goals. The FIC Review discussed challenges in accessing housing, mental health and drug and alcohol services, noting that extensive wait lists mean the restoration period may expire prior to services being made available to a parent.

The FIC Review was of the view that parents should have a longer period to address complex issues, and that this should be accompanied by support services delivered by Aboriginal Community Controlled Organisations (ACCOs). It noted that under s 79(10) the Children's Court can grant an extension of the 24 month period if it is satisfied that there are special circumstances that warrant the extension. However it recommended further clarification of this section to ensure that special circumstances include enabling Aboriginal parents to access services linked to restoration goals.

The DCJ Discussion Paper cites the existing discretion of the Children's Court and defers consideration of this recommendation to a later period. It does not acknowledge the systemic issues identified by the FIC Review in relation to the availability of services for parents to meet their restoration goals.

We support this recommendation, and acknowledge that a reallocation of resources for restoration services would likely minimise the delay caused by extensive waiting lists and limited services.

Theme: Adoption of Aboriginal Children

The FIC review made one specific recommendation about the adoption of Aboriginal children, which we have identified for immediate implementation.

Recommendation 121: Adoption

> The NSW Government should amend the *Children and Young Persons (Care and Protection) Act 1998* (NSW) and the *Adoption Act 2000* (NSW) to ensure that adoption is not an option for Aboriginal children in OOHC.

The FIC Review raised concerns about the NSW Government's permanency policy and provisions which permit adoptions of Aboriginal children from OOHC despite Aboriginal communities' ongoing rejection of adoption as an option for our children. The FIC Review contended that adoption undermines Aboriginal children's rights to family, community, culture and identity, and potentially breaches their human rights.

The FIC Review addressed at length why Aboriginal communities are strongly opposed to the adoption of their children. It surmised that,

> "*The alien nature of adoption to Aboriginal culture, the horrors endured by the members of the Stolen Generation and the enduring impact of the trauma and loss of connection to culture caused by forced removals of Aboriginal children have all led to the wider Aboriginal community to conclude that adoption is not a suitable option*"[28]

The FIC Review's data findings showed adoption of Aboriginal children is occurring at a low rate, and that rates have not significantly changed. However it cautioned that, "…there is little guarantee that this will remain the case in light of the comprehensive framework that has been established to expedite adoptions from OOHC in NSW."[29] The FIC Review noted the rhetoric of pro-adoption discourse and pressures on an overburdened child protection system make adoption an attractive mechanism for government.

The DCJ Discussion Paper suggests that the recommended legislative reform on adoption is unnecessary due to the adequacy of existing policy settings. In its discussion paper, DCJ notes the NSW Government's position that, "…there should not be a blanket prohibition of adoption of Aboriginal children", asserting that there are significant safeguards already in place. This includes the placement hierarchy in the Care Act along with a requirement to consider alternatives to adoption prior to making an adoption plan. This position assumes positive casework practice and compliance with existing legislative principles despite the clear findings of the FIC Review to the contrary.

The NSW Government's stance on adoption fails to respect Aboriginal communities' opposition to adoption. DCJ's analysis does not consider the overwhelming evidence presented throughout the FIC Review about the child protection system's failures to implement existing safeguards in practice. It omits that the FIC Review identified several instances where Aboriginal children's interests had not been safeguarded in relation to adoption due to identification issues, failures to ensure connections to family, community or culture, and a failure to adhere to the placement hierarchy.[30]

The DCJ Discussion Paper suggests that a prohibition on adoption would prevent adoption by Aboriginal families, Aboriginal foster carers or Aboriginal children consenting to their own adoption. The FIC Review devoted extensive discussion to Aboriginal communities' opposition to adoption and was clear that adoption should not be an option for any Aboriginal children in OOHC, given community opposition.

The FIC Review concluded that:

> "*In light of widespread opposition from the Aboriginal community to the practice of adoption for Aboriginal children; the fact that adoption is not a culturally accepted practice; the history of the forced removal of Aboriginal children; the damaging consequences of loss of connection to culture and sense of identity that may accompany adoption; the fact that 'permanency' should be perceived as more than legal permanency; and the evidence uncovered in this Review that at least one OOHC provider is opposing restoration based on a view that the child would be better off being adopted by his foster carers, the Review has concluded that legislation should provide that adoption cannot not be pursued for Aboriginal children*." [31]

We support the introduction of a provision that removes adoption as an option for the permanency for Aboriginal children and are of the strong view that there are better options available to safeguard the rights and lifelong wellbeing of Aboriginal children in OOHC.

[28] Davis M. (2019) *Family Is Culture Review*, Sydney, 372.
[29] Davis M. (2019) *Family Is Culture Review*, Sydney, 380.
[30] Davis M. (2019) *Family Is Culture Review*, Sydney, 379-380.
[31] Davis M. (2019) *Family Is Culture Review*, Sydney, 380.

Theme: Reforming the Children's Court

The FIC review made recommendations 122 to 125, aimed at ensuring the Children's Court operates with more transparency and improves access to justice for those involved in proceedings. One of these recommendations requires legislative change and we have identified it for immediate implementation.

Recommendation 123: Rules of evidence

> The NSW Government should amend the *Children and Young Persons (Care and Protection) Act 1998* (NSW) so that, as in s 4(2) of the *Uniform Evidence Acts*, the rules of evidence do not apply unless: (i) a party to the proceeding requests that they apply in relation to the proof of a fact and the court is of the view that proof of that fact is or will be significant to the determination of the proceedings; or (ii) the court is of the view that it is in the interests of justice to direct that the laws of evidence apply to the proceedings.

The FIC Review identified that DCJ often provides false or misleading evidence to the Court, and in some cases may fail to provide relevant evidence entirely.

The FIC Review noted that the Children's Court is not bound by the rules of evidence unless it determines that the rules apply to the proceedings under s 93(3) of the Care Act. This means proceedings can be run efficiently and expeditiously, but it also means the quality of evidence presented to the Court needs to be carefully scrutinised to ensure that it is sufficiently reliable to form the basis of factual findings.

The FIC Review noted submissions to a 2017 Parliamentary Committee inquiry that the rules of evidence should apply to care and protection proceedings to ensure evidence presented by DCJ was 'tested' in the sense that it was adequately screened for accuracy and truthfulness.[32]

The FIC Review examined s 4(2) of the *Evidence Act 1995* (NSW), which enables a party in proceedings to request the court direct that the laws of evidence apply in relation to proof of a significant fact. The FIC Review suggested the Care Act should be amended to read along similar lines. This would ensure parents and young people can request the laws of evidence apply where the truth or reliability of evidence is disputed, and would provide greater clarity to judicial officers about when the rules of evidence apply.

The DCJ Discussion Paper defers this recommendation to a later period. It notes the court needs to have all relevant information to make a fully informed decision in the best interests of the child and that it already has the discretion to place appropriate weight on types of evidence and apply the formal rules of evidence.

However, the FIC Review observed that there is no legislative guidance about when the court should decide that the rules of evidence apply and recommended that this is provided to judicial officers in a similar manner as exists in the *Evidence Act*. This is intended to promote greater accountability by DCJ and improve the quality of the evidence it presents to the Court, noting that the rules of evidence "should apply if it is in the 'interests of justice'."[33]

We support the amendment of the legislation as recommended by the FIC Review, as a means of ensuring not only that relevant evidence is before the Court, but that the quality of the evidence before the Court is improved.

Conclusion

Better outcomes are achieved for Aboriginal children and young people when they are safe, strong and thriving by being cared for in their communities. The legislative changes

[32] Davis M. (2019) *Family Is Culture Review*, Sydney, 388.
[33] Davis M. (2019) *Family Is Culture Review*, Sydney, 388.

recommended by the FIC Review are critical to keeping more Aboriginal children safely together with their families so they can thrive. These legislative changes, along with policy and practice change, are an essential tool to drive system reform, underpinned by self-determination and greater oversight and accountability.

DCJ's consultation period runs until 5pm on **Friday 27 May 2022**. We encourage you to make a submission in consideration of the issues we have raised in this paper to: familyisculture@facs.nsw.gov.au (Subject: 'FIC legislative review submission').

If you would like to discuss any of the issues raised in this paper, or would like to provide feedback to our organisation that we might include in our submission, please contact:

- Solange Frost, Senior Policy Officer, AbSec at solange.frost@absec.org.au or 0438 332 864, or
- Zoe de Re, Acting Principal Solicitor, Aboriginal Legal Service (NSW/ACT) at policy@alsnswact.org.au.

About us

We are a collective of four organisations with a shared interest in improving outcomes for Aboriginal children and families involved in the NSW child protection system. We work together to achieve systems change through the full implementation of the Family Is Culture Review Report recommendations. We are comprised of:

AbSec - NSW Child, Family and Community Peak Aboriginal Corporation is a not-for-profit incorporated Aboriginal controlled organisation. We are the peak organisation for Aboriginal children and families in NSW.

ALS (NSW/ACT) is a not-for-profit Aboriginal community controlled organisation providing culturally safe legal and support services to Aboriginal and Torres Strait Islander women, men and children across NSW and the ACT since 1970. We provide those legal services in the areas of care and protection and family law, criminal law and some civil law.

UTS Jumbunna - The Jumbunna Institute for Indigenous Education and Research (JIIER) Research team is a leader in Aboriginal and Torres Strait Islander research excellence and advocacy. The Jumbunna team prides itself on frank and fearless research and advocacy driven by the Indigenous communities it serves. Its vision is to promote, support and embody the exercise and recognition of Aboriginal and Torres Strait Islander sovereignty and self-determination.

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit organisation that works to build a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. We have been working in collaboration with First Nations organisations since 2017 to achieve better outcomes for Aboriginal and Torres Strait Islander children, families and communities in the NSW child protection system.