Family Inclusion Strategies in the Hunter
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Submission to the Discussion Paper, Reshaping Child Protection.

Background and Introduction

Family Inclusion Strategies in the Hunter (FISH) is a partnership of parents with children in care or with a care experience and child protection and out of home care practitioners. Broader FISH involvement incudes parents with experience of the child protection system, workers from a range of agencies and backgrounds, educators, researchers, young people and carers. The FISH leadership group is made up of people and parents with diverse experience and exposure to the child protection and out of home care system in NSW.

More information about FISH can be found at our website at www.finclusionh.org. We are concerned with improving outcomes for children and young people (including family preservation and restoration) and promote respectful, meaningful family engagement and inclusion as a pathway to achieving this. We are a children's rights organisation.

We very much appreciate the opportunity to make a submission. The voices of parents and family of children in out of home care or involved in child protection intervention have never been sufficiently included in discussions about legislative change or in the policy and practice discourse generally in NSW or anywhere in Australia. Yet parents and family are vital stakeholders in the system and have a unique and lifelong connection to children and young people no matter how long they remain in care or what legal order they are subject to. All children need their parents love, care and support.

Family inclusion is relevant across all aspects of the legislation and in all aspects of the child protection system.

Time constraints have meant that we have responded generally to the proposed changes and have not addressed every point specifically although we have addressed some. Our submission is therefore written under the following headings:

1. What is family inclusion in child protection and out of home care (OOHC);
2. Building a culture of family work, restoration, family inclusion and permanency;
3. Children's experiences in care including experiences of adoption and guardianship arrangements;
4. Adoption

What is family inclusion in child protection and out of home care?

In consultation with parents and other stakeholders FISH has developed this definition:

"Family inclusion is the active & meaningful participation of parents and family in the system, in practice and in the lives of children. It requires open, warm, professional relationships aimed at building equity. It is underpinned by respect & trust."

When we do family inclusion:

- Relationships between children and their families are ongoing and have depth;
- Children and young people are more likely to stay at home AND to be restored home after experiencing shorter entries in care;
- Relationships between parents and other stakeholders, including and especially carers, are informal, child focused and have integrity;
- Parents and family are involved in and crucial to decision making with and for children and young people. For example, parents and family are included in decision making about a possible placement;
- Power imbalances between parents, family and other stakeholders are acknowledged and ameliorated;
- Children and young people in care see and know their parents and family in a relaxed and non-stigmatising way;
- Permanency and stability for all children impacted by the system is more likely;
- Children and young people leave care with a secure family and social support network that is lifelong.

There are several models and processes available already that have the capacity to help improve the safety of children and young people in care and prevent entry to care including Family Group Conferencing. However these will only have success when there is a family inclusive and restoration practice culture across all aspects of the system including the courts, FACS, out of home care agencies and other related agencies and organisations. Family inclusion is an ethical pathway to better outcomes for children and young people including children being safer and experiencing permanency no matter what the legal order or whether or not restoration occurs. Please see our report *Building Better Relationships,* completed in 2014 for more information about family inclusion and its implications and a research report into parent experiences of the out of home care system "*no voice, no opinion, nothing",* completed by Ross, Cocks, Johnston and Stoker (2017). Both are annexures to our submission.

A culture of family work, restoration, family inclusion and permanency

Permanency for children in the care system is important to prioritise. However, permanency has become conflated in NSW with particular court order outcomes such as adoption. In the discourse the concept of permanency appears to have become separated from restoration and this is clearly not in children's interests. Permanency is something that we can and should achieve for all children. It is not a legal order and is never achieved in a court room – it is lived experience.

We need to look to the broader society to improve our understanding of what permanency actually means. Permanency for the majority of Australian children is achieved in family life where children are raised by their parents in close connection with extended family, kinship, cultural and community networks. In some cultures extended family play a greater role than others but in all cultures the roles of mother and father are crucial and central to children's wellbeing. In societies that truly care for children, parents are cherished (Bowlby, 1951, cited in Bretherton, 1991). This is just as true for children who are separated from their parents by the child protection system as it is for any other child.

For Australian children separated from their parents by the child protection system through no fault of their own, family relationships remain crucial no matter how long they are separated. (Samuels, 2008, Mendes, Johnsen and Moslehuddin, 2012). We also know that children who have regular

contact are more likely to return to their parents (Fernandez, 2013, Prasad and Connolly, 2013) although there is limited research overall into restoration experiences in this country including no evidence that we have found that Australia has a high "failed restoration" rate.

Despite very poor data collection we have good reasons to believe that restoration rates in Australia are unacceptably low. For example, Marsh, Browne, Taylor and Davis (2017) found that of babies removed at birth in one NSW hospital the restoration rate was as low as 6.6% - much lower than comparable populations overseas. This suggests there is a crisis in restoration practice in this state. We know that these babies were removed because of the risk of neglect and emotional abuse in the majority of cases (AIHW, 2017). We also know that social problems with social causes such as poverty, homelessness and family violence are the lived experience of these families. Surely more could have been done to prevent removal or return these young babies safely home. It is certain that if restoration rates remain this low then there will continue to be a state of crisis in NSW's child protection system. The very low restoration rates alone suggest we can safely assume that a high number of children currently in care could have been safely restored but have not been.

Research done by Ross et al (2017) found that of 18 parents interviewed about their experiences when children were removed, there was limited assessment or planning for restoration and most were told very early that their children would not be restored. Their experiences expose a statutory system, in both the government and non-government sector, that does not promote restoration, has a culture of parent and family exclusion and does little to support families staying together prior to removal. A culture of family exclusion is ultimately a culture that runs counter to permanency.

What does the concept of "restoration" mean?

Restoration in New South Wales, Australia and internationally is understood as a process of reunification with parents who have been separated as a result of statutory intervention. Children who have been removed from their parents are "restored" to their care and their natural family relationships are also restored in a way that does not require ongoing regulation. Restoration "restores" the care arrangements that were in place before the intervention occurred. To shift from this understanding misunderstands the nature of kinship care arrangements that arise from children's court proceedings. Many children in kinship care arrangements are being cared for by family members they didn't know before they were removed from their parents. They often lose contact with a whole side of their families and many children are separated from their siblings through a combination of kinship and stranger care arrangements potentially including adoption. Such arrangements should never be understood as restoration.

To broaden the concept of restoration to include children who are restricted from living with their parents as a result of statutory child protection intervention (including the capacity to return to their care when families and children choose) will also create significant cross jurisdictional difficulties in data collection and measuring the outcomes of children in care. This will reduce the accountability of NSW and may lead to a perception that more children are being returned home than is actually the case. This confusion is not in the interests of Australian children, young people and families who already suffer as a result of poor data collection and outcomes measurement.

The role of extended family and kinship care, especially in Aboriginal communities

The Care Act is already able to integrate the breadth of family systems and structures in community although the practice of agencies, courts, FACS and practitioners may not. It is not the role or within the power of any Act to regulate or predetermine the nature of these structures which shift and change as part of family and community life.

The Care Act already has the principle of participation enshrined along with sections which relate to Aboriginal children and the role of Aboriginal families and communities. We support these principles and call for them to be properly implemented in practice. At the moment, the Aboriginal Placement Principles are widely misinterpreted by FACs and NGOs as being solely a hierarchy of placement options. If interpreted in this way they will always fail.

Rather than change the definitions of extended family and kinship care we suggest that the Aboriginal Placement Principles and other relevant sections of the Act be properly implemented. We refer you to the Family Matters Campaign (Family Matters, 2016) for more information and a proposed way forward.

The role of Family Group Conferencing, other family meetings and ADR.

We would support the introduction of mandatory family group conferencing which requires and empowers family decision making prior to child removal or immediately afterwards when children are removed in an emergency. This needs to be an absolute requirement, not just a requirement for FACS to consider. Family group conferencing and a full range of family decision making processes are already available to FACS teams and to OOHC agencies. A compulsory meeting, with judicial review, is necessary in order to shift practice and may contribute to the integration of a family work and family empowerment culture in FACS and OOHC agencies over the longer term and if combined with other culture change mechanisms.

Unless power imbalances between parents, children and other stakeholders are acknowledged and dealt with, family meetings and ADR processes will not work. Family group conferencing alone will not eliminate power imbalances which in themselves contribute to poor decision making. Research in the Hunter Valley (Ross et al, 2017) has found that parents experienced all legal processes as adversarial and disempowering including ADR processes. These processes are only effective when power imbalances are mitigated and the processes are undertaken respectfully and curiously in ways that genuinely seek solutions from family. Ross et al (2017) found that FACS and OOHC agencies were deficit focused which added to power imbalances, undermined family decision making and relationship based practice. Parents experienced being poorly informed about processes and often did not understand what was going on. Any increased emphasis on ADR, including Family Group Conferencing will only be successful if these issues are addressed through the provision of advocacy and support. Along with skilled legal representation (also needed in NSW) this can make a positive difference.

These and other family inclusive initiatives are currently being researched by our president as part of her Churchill Fellowship project (see Churchill Memorial Trust at www.churchilltrust.com.au). Some examples of practices and programs that work and which are included in her itinerary are multi-disciplinary advocacy teams inclusive of emotional and practical support (www.cfrny.org, Ketteringham, Cremer and Becker, 2016, Lalayants, 2013). These are practical and proven approaches that make a difference and help to build a culture of family inclusion and restoration. Restoration and preservation rates have substantially increased in New York City.

Earlier help and action before removal that does not define engagement solely through the lens of parental behaviour and as a parental characteristic.

There is no formulaic list of services or prior action that can be developed in legislation to define what needs to happen before a child can be removed. However, there does need to be an increased emphasis on parents, families and children being offered support and help that meets their needs and reflects their lived experience. The work done prior to removal needs to be helpful, practical,

clearly aligned with children's needs and take into account the understandable mistrust that many parents, children and families feel towards service providers. Ultimately prior action needs to be reflected by a trustworthy and caring system that cultivates a context of engagement. This is not engagement that offers parents and family "chances" or uses their perceived "failure to engage" against them in court. Family work needs to recognise that parent and family engagement is a complex process involving relationships, agencies, systems and practices. It is not a parental characteristic. This is described by Rockhill, Furrer and Duong (2015) and by Rockhill and Furrer (2017) who talk about creating the conditions for engagement and the importance of integrating anti oppressive practices and ameliorating power imbalances. We recommend that FACS and other agencies adopt this approach of parental engagement and move away from the individualised parental characteristic approach that is currently in place.

Action taken prior to removal – the practice reality despite legislative requirements

There is no way to pre determine what prior action should occur and to what intensity as every situation is different. Our experience is that current practice in NSW does not require any particular action to be taken prior to removal and is often defined by the number of reports received or a view of the parents that was developed very early and on paper, often before parents even knew they were being assessed. There are already clear legislative requirements that child removal be a last resort and that the least intrusive action be taken. The following is an example only of a not infrequent experience in the Hunter Valley. It is an amalgam of a range of cases so as not to identity anyone but we feel it is a good reflection of what many parents encounter in their dealings with the child protection and OOHC system.

Karen, Tom and baby Levi

Sole parent, Karen, aged 19 and a care leaver, has a 2 year old baby son, Levi. Karen and Levi's main support is her own mother and aunt who live together in a NSW housing commission 2 bedroom flat. When Levi was born Karen was living with her mother but the crowded situation increased tension in the household. Karen secured alternative housing with the help of an after care service. However she left this arrangement as the flat she was allocated was in a large estate with a lot of crime and drug use. While she couch surfed, Karen left Levi in the care of her mother and aunt for days at a time although she saw him almost every day and regularly returned to care for him at her mother's flat, usually for weeks at a time, until tensions rose again. Karen's approaches to FACS and the after care service for further help with housing and other assistance were rejected as she had relinquished her flat and had already received her full entitlement of after care assistance. Karen became angry at this response and swore at workers. Keeping housed, making sure Levi was cared for and ensuring she and Levi had the basics to survive became a full time job for Karen.

Karen and Levi's father, Tom, continued to spend time together. They had a volatile relationship characterised by domestic violence. Karen reported some incidents to police but as she regularly needed to rely on Tom for couch surfing episodes she was unwilling to get an AVO against him or for him to be charged. Levi rarely saw his father.

Karen and Levi were offered brochures by FACS and advised to look support services up on websites. Karen felt angry and upset at FACS about her past history and their current approach to her problems. Meanwhile, FACS received, over time, a number of reports about Tom's violence, homelessness and her time away from Levi. During this time FACS referred Karen and Levi to a placement prevention service. However they never told Karen about the referral, the service was not able to reach her and the plan was closed within a few weeks.

Eventually, Karen received a phone call from her mother to say that Levi had been removed and placed in care with strangers. She was told his removal was due to her itinerant lifestyle, her homelessness and Tom's violence. He had been removed from her mother as FACS wanted to make sure Karen did not have unsupervised access to him and because of concern about her mother's history. Karen was told within a few weeks there would be no attempt at restoration. No attempt was made by FACS to build a relationship with Tom. FACS did not change their view over the next few months despite Karen visiting her son regularly, receiving positive reports about her time with him and Levi's obvious attachment to her and distress at his loss of her. A referral to an intensive restoration service was denied because it was not the case plan goal. This was despite no assessment being undertaken that Karen knew about. Far from not complying with a case plan, Karen was simply told there was nothing she could do to get her son back. Karen later found out that the assessment FACS did to decide this was based solely on her history and information collected from her file, much of it from before Levi's birth.

FISH receives calls from parents in this situation regularly. In our experience many of the parents who contact us have many strengths, acknowledge they face difficulties that need to be resolved and are willing to do almost anything to get their children home. Their experiences reflect a culture that excludes family, lacks curiosity and is not supportive of restoration. In cases like this FACS relies on parent's previous actions such as relinquishment of housing and a negative relationship with FACS workers as evidence that families are not engaging with services. This is an example of engagement being defined as a parental characteristic rather than a relationship based process involving numerous stakeholders. FISH also regularly comes across situations where fathers are almost totally overlooked.

FISH is uncertain that this pressing problem can be solved by legislative change. If FACS and OOHC agencies do not genuinely make restoration or family preservation their first priority as already required by legislation than we respectfully suggest this is not likely to be a legal problem. There is a need to urgently shift the practice culture of the entire sector towards family inclusion and restoration. Legislative change may well backfire on children's chances to be raised by their own parents as the emphasis of evidence gathering will simply shift to proving what has been offered to parents and refused even when these services may not match parent's or children's needs or may not have been offered within the integrity of a family inclusive assessment.

We would suggest that prior action needs to be considered from the perspective of children and families and reflect their lived experience which is likely to include poverty. For example, if a family needs housing then sufficient prior action needs to be the provision of **suitable** housing that meets the needs of children and is provided in consultation with them and their needs. If there is a lack of food, then food should be made available. If there is a drug dependency problem then trauma informed treatment should be offered in a timely way that is inclusive and supportive of family relationships including treatment that keeps families together. This may not always be abstinence and will always be more than drug testing. Sufficient prior action must include a willingness <u>by services</u> to build trust with families and not expect it. Families currently have little reason to trust child protection and out of home care agencies.

FISH supports the availability and value of intensive programs such as Newpin. However, these programs do nothing to address the social causes of child removal and they are also very hard to access because of the complex gateway requirements required by FACS. One young woman recently helped by FISH waited for months for a referral to get through FACS's gateway to Newpin. The onus of proving that she "deserved a chance" at Newpin was very much on this young mother which is yet

another example of an understanding of engagement as a parental characteristic. It is difficult to see how this experience was child focused.

Parental requirements to demonstrate change before ending PR care order arrangements.

Again, it is impossible to pre determine what parents should do in legislation in any formulaic way as children's experiences and needs vary. A broader understanding of parent engagement is vital as already described. Parents should never be expected to meet requirements or submit to services that do not match children's needs or are unrelated to the reasons the child is seen to be in need of care.

Any requirements should be child centred rather than concerned primarily with parental behaviour change. For example, if the issues about a child relate to physical abuse and there is no suggestion of a link to alcohol or drugs then abstinence should not be a requirement. If it is important that parents make specific changes then these need to be clearly specified by the court and adhered to so that restoration does actually occur when parents do what is agreed. It is important that family decision making processes be used to develop plans that make sense for children and families.

Family violence deserves a special mention here. It is our experience that woman are often held to account for their partner's violence and that children are removed when women are unable to prevent violence. This is both poor practice and terribly unjust towards women and children. Women are not able to stop their partners or ex partners from being violent and they need the support of the law. Child removal is not a solution in these situations and causes further trauma, grief and loss to children. Adequate protection from police, legal services and other services that allows women and children to stay safely together is needed.

The threat of adoption or reduced contact time should never be used as a lever to facilitate parental change. This has been raised repeatedly in adoption and other forums in NSW as a potential parental motivator. This power laden approach has no basis in evidence and, according to motivational and change theories, may well be counterproductive (Forrester, Westlake and Glynn, 2012). It also portrays adoption and reduced time with children as a version of parental punishment and lacks a child focus.

The use of short term care orders.

We would support the increased use of short term care orders only in situations where restoration is planned. It is our understanding that this is where there is an emerging evidence base and that this is consistent with practices in other jurisdictions both here and overseas.

It is important that short term care orders are a period of time where support is offered – not just surveillance. Support should be matched to the needs of children and families and not be tied to the length of a care order. It should be offered by skilled workers, including workers with lived experience such as peer parents (see for example Berrick, Young, Cohen and Anthony, 2010), outside of FACS and OOHC agencies and have the flexibility to increase and decrease over time. It is normal for families to experience fluctuations in need as transitions and difficult times occur. These times of increased need should not necessarily be interpreted as failures of previous interventions or a missed "chance".

There is no requirement for short term orders to be used to support other legal orders to be made and such arrangements may backfire on children. There is current capacity through the use of care plans for other legal arrangements to be worked towards. Making this change will continue to

conflate permanency with arrangements other than restoration and confuse legal permanency with actual permanency.

A realistic possibility of restoration

All children have the right to be raised by their own parents and families whenever possible. Children also have the right to ongoing relationships with their parents and family which enables them to build a healthy identity and develop normally. Overall, we would argue that what courts are really deciding in many cases is whether there is a realistic possibility that services are available to support restoration or that a quality assessment will occur. Tight timeframes impede this possibility along with other factors that are just as important such as worker skill, a fragmented system and rules and procedures that distance and damage children's relationships with their families.

The discussion paper refers to two programs that may assist with restoration. Both are evidence informed although neither have existed for any length of time in this context in New South Wales. As we have learned from previous initiatives in New South Wales, the devil is in the implementation and whether or not these programs will genuinely offer restoration to children remains uncertain. (Valentine and Katz, 2015). Neither of these programs address the social and cultural causes of child removal in New South Wales which has seen the highest rates of forced removal of Aboriginal children in history and, we know from experience, removes children from poor families almost exclusively. For some families these programs will not be suitable and the entry criteria and processes are likely to be challenging. At the time of writing it is our understanding that there are considerable difficulties in recruiting staff to these programs and we would suggest this is likely to be an ongoing problem, especially in regional areas.

The timeframes in NSW are too short to allow services and families to form a view about restoration. Timeframes here are much shorter than the US which has a significantly higher restoration rate than New South Wales. This has led to early decisions about restoration being made that simply do not allow restoration needs to be assessed, planned and pursued.

The decision that restoration is not realistic is problematic and complex. It is rarely an accurate depiction of family life, requires a deficit focus and is a point in time decision. We know from practice that time and time again, children return home to their families from care, no matter what the legal order. Restoration can and does meet the needs of many of these children, including those who have experienced loving and stable kinship or foster care, sometimes well after a court has determined it is not realistic. FISH is aware of times when it has quickly become apparent that children could have been safely restored and it was timeframes and poor practice that drove the original decision, not the best interests of the child.

There is no Australian evidence that we know of that New South Wales has a high "failed" restoration rate. High numbers of failed restorations, where children enter and re enter the care system multiple times, should be sensibly guarded against, but should not dictate policy and practice. Especially when it is not a current practice phenomenon. Every child deserves to be restored safely home whenever possible.

These two quotes from parents demonstrate current experiences of parents when children are removed. These experiences are contemporary (Ross et al, 2017).

When you do ask for ideas and that from [statutory agency], they seem to close you out … I've asked a few times 'what is it that you want to see me do so I can have my children back?' And it stops there.

I know what to do now [after two children have been removed]. It's taken me all this time but I know what you expect of me. I didn't get any help from you. I had to learn it all the hard way.

FISH also supports the proposed extension from 6 to 12 months in section 136 (3) to support restoration to parents as part of a care plan. Barriers to permanent restoration should be removed wherever they are. We see no risk arising to children from this change.

Children's in care experiences – regardless of the legal order.

This section discusses how children experience care now and in the event proposed changes are made. For the purposes of this paper, when we refer to children in care we are referring to all children who remain subject to an order made in the Children's Court or the Supreme Court of NSW and who are away from the care of their parents as a result of child protection proceedings. Our comments about supervised and other contact arrangements should be seen as relevant to children subject to guardianship and adoption orders and foster care or kinship care, permanent or temporary.

Supervised family contact arrangements, family relationships and permanency

Children in care benefit from quality time with their families including their parents, siblings and extended family. There is no evidence that supervision per se improves the quality of children's time with their families and emerging evidence that it makes it more challenging and tense (Bullen, Taplin, Mc Arthur and Humphreys 2016 and Ross et al, 2017). In our experience and in the literature, foster and other carers, including permanent carers, may perceive a need for ongoing supervision which is concerned primarily with adult needs and wants including a worry that the exclusivity of the adoptive parental role will be undermined (Chateneuf, Oage and Decaluwe, 2017). These concerns are best addressed in other ways and there is no evidence that supervision arrangements will help them. Supervision arrangements run counter to open and respectful relationships and should only be used when there are current safety concerns or for some other pressing and transparent reason.

"*Contact is always supervised but it's never explained why… my mum would never do anything to us*" Quote from Create report (2014)

"*A supervised visit at a park is better than a supervised visit in a hot room, with toys that are broken… under the microscope*" Quote from Cocks (2014)

If permanency can only be supported by supervised family time after a legal order has been made then we would suggest that the care arrangements, regardless of the intent of the legal arrangements, are not likely to be sustainable over time. Genuine permanency is achieved in enduring relationships and connectedness, has a child focus and is defined by the lived experience of children.

If a guardianship or any other order can only be achieved through the ongoing legal and practical surveillance of children's time with their family then the court would be sacrificing actual and lived experience permanency to achieve a particular legal outcome. This is not in children's interests and we do not support it.

The discussion paper also refers to the potential for contact orders to support guardianship orders. We would suggest that this is a fundamentally flawed starting point. Contact orders and any other part of the Care Act should serve the interests of children, not promote guardianship as a legal outcome.

Shifting the discourse to relational permanency

The proposed changes that relate to children's in care experiences do not progress what is most important – children's lived experience of permanency and better long term outcomes.

There is growing evidence that legal orders, including adoption and guardianship, do not in themselves improve children's outcomes or contribute to permanency. Much of the research used in support of adoption comes from places where adoption arrangements are closed – something which we know causes harm and which we have rejected for good reasons in this country. We know that children who are adopted away from their siblings often lose these relationships despite the best intentions of their adoptive parents (Meakings, Coffey and Shelton, 2017) and we know that the vast majority of children who enter care do have siblings, often many siblings, and that they are very important relationships for children's wellbeing (McDowell, 2015)

Boddy (2013) argues that a narrow focus on legal permanence may have worked against permanence and stability for many children in the "looked after" system in the UK. The care system in the UK, with its emphasis on adoption, remains in crisis with increasing numbers of children entering care and is now being subject to yet another review (Community Care, 2017). Family involvement and increasing restoration is likely to be an area where improvements are identified as needed.

There is Australian evidence to link stability in care with improved outcomes in young adulthood and this evidence is not linked to any particular legal order. (Cashmore and Paxman, 2007, Mendes et al, 2012). It is well supported in the evidence that a more stable experience with ongoing support beyond the age of 18 will lead to better outcomes into adulthood. Ongoing and stable connections to families contributes to positive outcomes as adults. (Mendes et al, 2012).

The majority of evidence available to practitioners and policy and program developers in Australia is from overseas. We have tended to rely on research emerging from the US and from the UK and to a lesser extent on evidence emerging from New Zealand and other places including other parts of Europe. We rarely rely on evidence that has been generated locally and we would argue that this is risky and leads to poor implementation outcomes.

Recent evidence emerging from the UK suggests that legal permanence created by adoption per se is not a significant factor in achieving actual permanence and stability for the many children and young people. In the UK around 5% of children in the out of home care system are subsequently adopted and almost all of these are under 5 years of age. Most are without significant behavioural challenges or extreme pre care trauma. Disruption rates for adoption converge with other children in out of home care as the age of placement increases. (Research in Practice, 2014, p. 7). Those children who experience very high levels of trauma before placement are more likely to experience placement breakdown, regardless of the legal order that is made.

Research from the US has found that "broken" adoptions are an increasingly common phenomenon and that policy and legislative adoption targets and mandated timeframes have contributed to the pursuit of legal permanency at the expense of actual permanency and children's interests (Post and Zimmerman, 2012). The ongoing payment of allowances in the US (and now here in New South Wales) to support adoption arrangements suggest to us that adoptions may not be stable from the beginning. Are we worried that adoptive parents won't be there for children if we don't pay them? How will this payment make children feel?

Publication that may identify children as being in care.

There is no need to change or strengthen the Care Act in this respect which is already more than adequate. This will run counter to the lived experience of children and families including permanent foster and kinship families. The widespread use of Facebook and other forms of social media makes "publication" a commonplace event for Australian children. The most common breakers of this proposed law will be children and young people themselves, to say nothing of their carers and families. This does not promote a normal life, may increase stigma and is not in children's interests. We suggest that children, families and other stakeholders be supported in practice and in relationship to use social media and other forms of media carefully and respectfully – much as we should support other Australian children and families.

The role of the Secretary in making arrangements for children in guardianship arrangements when their guardians have died.

Guardianship arrangements should not be made unless they are genuinely and relationally permanent. If children are in guardianship arrangements that require FACS to become reinvolved when guardians die then we would argue that these arrangements require ongoing support and supervision anyway. All parents have to plan for their children in the event of their death. In family life these arrangements are made within and among family members. We would suggest that there are many guardianship arrangements currently in place in NSW that have been made in a formulaic way without adequate consideration about their genuine permanency.

Sections of the discussion paper that relate specifically to adoption.

Here we will refer to the proposed changes that relate to adoption. In all of our responses we have taken a children's rights approach, rather than an approach that focuses on the rights of parents and other adults. This is not to say that parents and adults don't have rights – we all have human rights and these are inalienable. But FISH is a children's rights organisation and we will continue to respond using this lens. We also refer you back to our responses about relational/lived experience and legal permanency as these are relevant to the intent of the proposed changes.

Overall we feel the government's policy objectives are not well aligned to the proposed changes to adoption. For example, there is a clear policy objective to keep families safely together in the first place and to restore children to the care of their families. However we know from research and practice that children placed with foster families who have a clear goal and hope to adopt will not be likely to be safely restored (Monck, Reynolds and Wigfall, 2004). Families who want to adopt, with the best of intentions, may work to prevent children from going home (Chateauneuf et al 2017). We would argue that an approach for young children that attempts to simultaneously plan for both adoption and restoration will inevitably and significantly compromise restoration, particularly when there is already a culture of removal.

Another example of poor alignment is the government's intent to reduce the pressure on the OOHC system. In these attempts the government has increased financial incentives to adopt and will need to provide ongoing support to many adoption arrangements. If adoption numbers do increase, especially for older children entering care, then it is absolutely inevitable that adoption breakdowns will increase. This is what has occurred overseas where legal permanency has been prioritised over relational and actual permanency (Post and Zimmerman, 2012). Even research that claims support for adoption in the UK (where rates are much lower than the US and are most common with very young children) has found that adoption needs for support converge with foster care when children's needs are similar. (Selwyn quoted in Fronek, 2013).

The third example where the government's policy intent does not match its proposals is for openness in adoption. The proposed changes will make openness even more difficult to achieve. There needs to be a much longer discussion and debate, inclusive of parents, children and family, about what openness means in adoption and in other care arrangements.

Transferring OOHC adoptions to the Children's Court

There is no justification for transferring these adoptions, arguably the most complex forms of adoptions with very vulnerable families, to the Children's Court. There is no evidence that the expertise in the Supreme Court is not adequate and, as far as we are aware, the Supreme Court is a rigorous and child focused jurisdiction – perhaps more so than the power laden Children's Court which may lack the time to consider matters carefully. There are no particular delays or a lack of success in the Supreme Court in relation to adoptions from care. Children have the right to retain their identity, their relationships and their family. Adoption, even open adoption, threatens this and should be treated with great gravity. The proposal appears to suggest that only children in out of home care will be subject to an inferior jurisdiction – perhaps the most vulnerable group of children in New South Wales. This is contrary to children's rights and arguably contravenes our international treaty obligations.

Increasing the grounds for dispensing with parental consent.

This is opposed. There are already ample grounds for dispensing with consent in the making of adoption orders. Consent should never be dispensed with solely on the basis that parents cannot be located and the greatest onus for making efforts to contact parents should lie with the State, not with parents who frequently face significant social and economic barriers in their interactions with systems. This proposal runs the risk of making the dispensation of consent an administrative or technical process.

Children have a right to have their parents genuinely involved in planning for their future. Children benefit from ongoing relationships with parents, siblings and other family. Increasing the grounds for dispensing with consent will do nothing to improve outcomes for children and there is no evidence that it will. We would argue that such changes are a reversion to past practices as is stated in the discussion paper and will do children and families harm.

Limiting parent's rights to be advised of an adoption

The premise of this proposal, presented as a parental right, is fundamentally flawed. Children have rights, as we know from our history, for their parents to not only be advised of these processes but to be involved, well supported and represented.

Imposing this proposed change on children is contrary to their interests and their needs. The discussion paper argues there can be difficulty in contacting a parent in order to facilitate a speedy resolution. Rather than remove the requirement of agencies and systems to engage with parents it is more fruitful to explore the reasons for this difficulty than to take away children's rights to have their parents involved whenever possible. We would suggest that parents need high quality legal representation, support and advocacy (as described in our international children's rights treaty obligations and elsewhere in this submission) to fully participate.

We suggest that if a parent genuinely cannot be located then an application to the Supreme Court can be made to dispense with this requirement. This application should only be granted if the Supreme Court sees evidence that genuine and persistent attempts by agencies to find and engage

with parents have been made. This may include using investigation techniques coupled with sensitive and caring communication. Parents will need support and advocacy to become and stay involved and this will ensure a more rigorous and child focused process.

There should be no set time limit. Such a limit will simply lead to formulaic practice. The Supreme Court should take time frames and other factors into account including the views of children who are making sole consent. In our experience children want and need ongoing relationships with their parents and when this is denied them, for whatever reason, it causes them great harm.

Providing clear grounds for dispensing with parental consent.

It is not clear who would benefit from this proposal as written. It can be hard to determine in advance what might be suitable grounds for contestation and children have the right to have their parent's objections fully explored. If restoration is an option for children then this should be explored fully and we would seriously question why adoption without consent would be sought for a child who is able to live safely at home with their parents.

Legislation is often a "blunt instrument" when it comes to achieving social change in Australia and we argue that in this case these proposed changes around adoption will do great harm.

Conclusion

We thank you for the opportunity to submit. We respectfully suggest that the timeframe for this discussion paper was far too short and that broader consultation, especially with parents and children, is warranted, not only in this discussion paper but in all aspects of the administration and reform of the child protection system in this state. Organisations such as FISH are one of very few organisations that include the lived experience of parents and family. Unlike other stakeholder organisations, FISH has no funding and operates on a voluntary basis. Parents impacted by FACS involvement and child removal are a very disadvantaged group. They are almost always poor, from disadvantaged areas, are likely to have a history of trauma, to have a care experience, be Aboriginal and have many other vulnerabilities. Hearing and integrating the voices of parents and family with children in care is crucial to better outcomes for children and improving child welfare practice and policy.

There are many initiatives locally and overseas that will progress government policy far better than these proposed changes. These include evidence based peer mentoring programs, approaches that promote openness and relationships between carers and parents, the development of parent advisory groups to support the implementation of relationship based interventions and parent advocacy based in agencies and courts. We would be happy to provide more information about these ideas.

We also refer you to our website at www.finclusionh.org and appendices as substantial parts of our submission. We are able to be contacted at contact@finclusionh.org.

Appendices:

1) Ross, N, Cocks, J, Johnston, L and Stoker, L (2017). *No voice, no opinion, nothing: parents experiences when children are removed and placed in care,* University of Newcastle.
2) Cocks, J (2014). *Building Better Relationships: outcomes of the family inclusion practice forum,* Family Inclusion Strategies in the Hunter Inc, Newcastle.

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