To: Family Is Culture Legislative Review
Via email: familyisculture@facs.nsw.gov.au
Date: 27th May 2022

Feedback from Family Inclusion Strategies in the Hunter Inc (FISH) - Response to NSW's Family Is Culture Legislative Review.

Thank you for the opportunity to participate in the consultation of the legislative review of the recommendations in the Family is Culture report.

Family Inclusion Strategies in the Hunter (FISH) is a parent and family led community organisation based in the Hunter Valley of NSW. We are majority led and staffed by parents and family with lived experience of the child protection system. The parents on our Management Committee and our peer support and advocacy team have experienced child removal and restoration. We bring this lived experience expertise to our response to this submission and to all the work we do.

FISH was established in 2014 and formally incorporated in 2016. We are a registered charity and provide a range of services in our community including individual peer support and advocacy, support groups and workshops, workforce development and more. We run community events and promote greater family inclusion in child protection processes and the lives of children in care. We are a children's rights organisation, driven by the needs of children and their right to family, community and culture.

FISH is advocating that peer parent and family support and advocacy be integrated into child protection and out-of-home care service design and into the broader system. We have attached a brief overview of peer parent and family advocacy and some of the ways it might manifest (Appendix A). References used in this submission are provided at Appendix B.

For more information about FISH, including the peer parent and family advocacy services we currently provide, please visit our website at www.finclusionh.org where you will also find this submission. Please contact us at contact@finclusionh.org as required.

We commend all the Family is Culture (FIC) recommendations to the NSW Government. The review undertaken by Professor Davis and her team was groundbreaking in Australia. Its findings are likely to apply to all states and territories. We call upon the NSW Government to show leadership and implement all the recommendations including those discussed below.

Section 1:

Recommendation 15: Public interest defence.

We support this recommendation. The public interest defence is both a sufficient deterrent and an adequate mechanism to protect the privacy of children and young people, along with other elements of the existing legislation.

The FIC recommendation does not subjugate privacy or child safety in any way to the public interest. The examples in the FIC report amply demonstrate that more transparency and improved accountability is needed. It is hard to imagine an area of greater public interest

than the welfare and safety of children in the care system. It is in the interests of children in NSW to have a high level of scrutiny of the way the system operates and for these processes and the experiences of children and families to be publicly discussed, so long as this does not compromise privacy or safety.

Recommendation 17: NSW Ombudsman's jurisdiction.
We support this recommendation. Casework activities and interactions play a vital role in whether care proceedings commence and on the subsequent outcomes. We have participated in research which has highlighted how the conduct of individual caseworkers and /or carers can have an enormous influence on children's lives, in a positive or negative way (Ross et al, 2017). Caseworker conduct is currently unpredictable for families. It varies a lot between individual practitioners, carers and agencies. This variability and unpredictability is a key way that families and children experience the lack of accountability embedded in the child protection system in NSW. It is fair to say that for families and children their experience of casework is "the luck of the draw".

Casework activities are rarely adequately scrutinized by the court which has neither the time nor the expertise to critically review them or view them through the lens of a child's experience. For example, the day-to-day conduct of caseworkers and their ability to form constructive relationships is almost entirely free of scrutiny by the court and may not be seen as relevant. Yet we know the caseworker-parent relationship is crucial to restoration. The same is true of the role of carers. The FIC report has also found that caseworkers regularly ignore policy. This suggests that policies and guidelines to support better and more consistent practice are unlikely to be adequate. Children and families need casework practice to have external oversight in a timely way.

The discussion paper asks what safeguards would be needed to ensure proceedings are not prejudiced. We suggest there are adequate safeguards in place. There are a range of other processes that already regularly coincide with care proceedings. The NSW Ombudsman currently reviews and investigates matters in other sectors when legal proceedings are afoot. It is not being suggested that care proceedings be on hold at any time. We would not anticipate that an Ombudsman investigation would prejudice care proceedings. In fact, such investigations may enhance them as casework processes would have more transparency and problems may be addressed earlier. If caseworkers are aware that their conduct may be investigated by, rather than shielded from, the Ombudsman, this may contribute to more consistent practice and attention to the needs and rights of families and children.

There is good evidence locally and internationally that a lack of accountability and power imbalances work to reduce the likelihood of a positive relationship between caseworkers and parents (Ross et al, 2017; Newton, 2020; BCN & IPAN, 2021). If combined with other recommendations, the expanded involvement of the Ombudsman as recommended will help improve accountability and reduce these power imbalances.

Recommendation 19: Parliamentary Committee oversight.
We support this recommendation. Parliamentary oversight would make the OCG accreditation functions publicly reportable and more transparent. This is particularly important in the light of questionable accreditation processes that are prolonged or lead to lower expectations of standards of care.

FISH support greater transparency in the child protection system and agree with FIC that out-of-home care processes are currently hidden from view with little or no accountability to any part of the community. Importantly there is little or no transparency or accountability to families who have had their children placed in the care of unaccredited or partially accredited agencies. Currently families are excluded from accreditation processes, causing great anxiety and adding to grief, loss and trauma. A role for families in assessing and accrediting

agencies who provide care to their vulnerable children is urgently needed. This needs to go beyond consultation with families or the representatives of families. A strong role is needed for families to determine the suitability and capacity of an agency to care for children well.

Recommendation 26: Active efforts: We support this recommendation. If properly implemented this recommendation may shift the onus onto the state to preserve families and *prevent* the removal of a child, including using state resources to solve problems that are contributing to a child being in harm's way. It will enhance the existing legal requirements and send a clear message to DCJ casework teams that removal is truly to be a last resort, considered only after they, DCJ and other agencies, have *acted* to make children safer at home, addressing the conditions that are causing risk.

Current practice, underpinned by legislation and the culture of the child protection system, assumes that parents alone are responsible for harm to children and that they alone need to "act" to protect children. The evidence and our experience tell us this is far from true. There are a range of social and economic conditions that impact on child safety that are well beyond the control of parents and family members, which are greater for Aboriginal families due to colonisation. For example, there is good evidence that insecure housing, intergenerational trauma and inadequate legal and policing protection from family violence contribute substantially to child safety and to child removal. There is evidence in Australia and internationally that a lack of suitable and affordable housing acts as a barrier to restoration and that almost all families impacted by child protection processes are dealing with poverty, housing insecurity and inequality. There is also evidence that casework processes are individualised and almost entirely ignore these social conditions and do little to help families resolve them.

We call upon the NSW government to implement recommendation 26 and other recommendations that require DCJ and other agencies to actively offer help and support to families to help resolve social problems and protect children. We need to address social inequities and respond to the needs of family in community with a strengths approach that empowers families and increases their access to resources. It is important that recommendation 26 and other recommendations are understood and implemented as a mandate on DCJ and the broader sector to offer appropriate services, not a mandate on children and families to take them up.

The discussion paper may imply that there are already provisions and mechanisms in place that ensure children are not removed unless necessary. However, the FIC report and the disproportionality of First Nations children in the system make it clear that current provisions are either inadequate or not fit for purpose and lack suitable accountability mechanisms. That is certainly the experience of FISH in our own interactions with the system and with the families that we work with. The current emphasis in the child protection system is on surveillance and investigations. Families are monitored and investigated but they are not actually helped. Current expenditure demonstrates this with 80 – 90% of expenditure going on surveillance, investigations, court processes and out-of-home care with very little is invested in families and communities (Australian Government Productivity Commission, 2020). This is a well-documented phenomenon here and internationally.

This recommendation needs to be implemented with care or it may become tokenistic. Demonstrating active efforts need to go beyond providing examples of referrals being made and the like. The views and experiences of families will be crucial in determining if active efforts have been made and in whether the state has taken genuine responsibility to prevent removal. Active efforts need to consider the need to warmly and appropriately persist in building trust, being trustworthy and addressing the range of family, social and economic conditions that contribute to risk. Families understandably distrust DCJ, and the agencies

funded by DCJ. This distrust is not a weakness or deficit in families themselves and should not be treated as such.

Recommendation 48: Evidence of prior removals.
We support this recommendation that section 106A be repealed. The impact of section 106A on families has been well documented by FIC and elsewhere (March et al, 2017). 106A has allowed newborn babies to be removed without comprehensive assessment, suggesting that DCJ processes prior to the birth of “high risk” babies have focused almost entirely on surveillance and investigations. There has been little or no investment in helping these families to stay together. 106A has caused enormous grief, loss and trauma.

Even when families are not separated from their newborns, they are regularly forced to wait throughout the pregnancy for DCJ to communicate to them whether they will be separated. This causes enormous anxiety and stress to pregnant mothers.

106A runs counter to the policy intent to keep families together and prevent removal and has driven recurrent removal of newborns – a key driver of growing rates of out-of-home care for Aboriginal children (Marsh et al, 2015). It has almost solely impacted the most vulnerable families and children in the community including Aboriginal mothers and babies. Repealing 106A will not increase risk to subsequent children - it will help ensure appropriate assessment is carried out and that children will have more opportunity to remain in their families. Combined with other recommendations it will help ensure families and children are helped to stay together.

The discussion paper asks how the court can consider risk to Aboriginal children without discriminating against them. We would argue the court **can only** adequately consider risk to Aboriginal children by acting fairly and in a non-discriminatory (non-racist) way. This applies to children from other groups too. Any discrimination against Aboriginal children is harmful and risky. Rather than relying on Section 106A we suggest that one way DCJ and other agencies can avoid discriminating against Aboriginal children is by actively addressing the socio -economic and historical factors that contribute to their vulnerability to removal – as discussed in relation to Recommendation 26 and other recommendations.

Recommendation 54: Alternatives to removal.
FISH supports this recommendation. We would comment however that the effective and ethical use of these alternatives relies on the broader implementation of the FIC recommendations, especially those that relate to accountability and addressing power imbalances. For example, Temporary Care Agreements may be misused, and families may understandably distrust DCJ’s intentions in suggesting them and other options. Effective use of these alternatives also requires families to have access to early and free legal help, accessible information, and family advocacy (see Appendix A).

In our experience, other legal remedies, such as supervision orders, may be being poorly used. Supervision orders purport to facilitate ongoing help to families during difficult times, including post restoration and periods of crisis. In reality, supervision orders are largely concerned with surveillance, not help. Families receive little actual support or resources during this very challenging post restoration period or during crisis periods. Again, advocacy offers solutions to families and equips them to request needed support and navigate complex relationships with caseworkers they fear.

Recommendation 65: Children at criminal proceedings.
FISH supports this recommendation as a matter of principle. If a child is in the parental responsibility of the Minister, it is appropriate that a delegate of the Minister, the DCJ caseworker, attend court when a child or young person is facing criminal proceedings in

juvenile or adult court. We agree with FIC that NGOs should also attend court, along with a DCJ representative, when they have case management responsibility.

The lived experience of many children, young people and their families tells us that for much of the time there is a not a good relationship, or any relationship, between children and young people and their caseworkers. For DCJ it is quite likely there will be no relationship at all as case management will be with an NGO.

Children and families experience very high caseworker turnover in NGO's and DCJ. It is likely they will not know the caseworker who attends court well, if at all. It is imperative that children and young people are supported by people who know them, who love them and who have their best interests at heart. FISH submits that these people are far more likely to be parents or other family members than they are to be paid staff from DCJ or agencies. We suggest that a greater emphasis on family inclusion in court processes for children in care will ensure children and young people are also supported in court by loving family members.

Recommendation 71: Aboriginal Child Placement Principles.
FISH supports this recommendation. The use of SNAICC's ATSICPP are appropriate as these elements capture the original intent and purpose of the Principles. FIC has rightly pointed out that current legislation has led to a misunderstanding of the ATSICPP as solely a placement hierarchy. All the Principles apply all of the time.

There is a central role for Aboriginal families and communities in the effective implementation of the placement principles including within court processes and casework decisions. Children's Court processes do need to be amended to ensure they also integrate matters beyond placement and family contact. Accountability mechanisms to Aboriginal families and communities need to be integrated across the system including in the Children's Court. There are a range of ways this could happen, and suitable methods and strategies need to be developed by the Aboriginal community. FISH is aware there are some initiatives underway here.

Recommendation 76: Identifying Aboriginality.
We support FIC recommendations in this section in their entirety. We hold concerns that when there is uncertainty about a child's Aboriginality that DCJ and the broader sector may feel a sense of urgency to confirm or deidentify which may then lead to poor decision making. We would suggest that any deidentification should not be rushed given the case examples in the FIC report, the fear many people may feel about identifying as Aboriginal to child protection authorities and the need for family and community to engage in thorough and sensitive explorations. This requires a curious and considered approach, which may result in delays that could be perceived as inconvenient in relation to legal or other casework proceedings.

The discussion paper asks what caseworkers should consider when determining Aboriginality. We suggest this question is flawed. It is not the role of a caseworker to make this determination although they may share information and engage with family and community. This determination needs to be made by Aboriginal family and community.

Recommendation 112: Supporting restoration.
FISH supports this recommendation. FISH supports all efforts to achieve restoration goals. Our work in the community is actively supporting families to do all they can to be reunited with children.

As argued earlier, in relation to recommendation 26, the emphasis needs to shift to DCJ establishing, with the family, what is preventing restoration and acting to support restoration, to inform the court process more fully. It is abundantly clear that restoration is not occurring

at adequate rates in NSW and that the system needs substantial changes. It is equally clear that the Care Act and the way it is currently being applied is contributing to low restoration rates. Legislative reform, as described in FIC aims to address and change this. We note that at the time of writing the most recent national data shows that restoration rates in NSW are around 8% - the lowest in Australia (SNAICC, 2021).

We suggest that we need new and innovative solutions to increase restoration in NSW. The system is currently perfectly designed to deliver exactly what it is delivering – low restoration rates, long stays in care and disproportionality. FISH and others, especially as led by Aboriginal communities and families, have new solutions in the form of parent and family peer advocacy and support. This is described further in Appendix A with more information available at our website. FISH is also delivering restoration workshops with parents in the Hunter Valley. Our work is evidence informed and well targeted to the policy problems in NSW.

Recommendation 113: Placement with kin or community.
FISH supports this recommendation. Children have a fundamental right to be raised in their own families, communities, languages and cultures. We suggest the Court needs to see an exhaustive process of family finding, family meetings and evidence of family-led decision making before endorsing care arrangements with strangers. The Court would need to ensure there has been substantial participation by family in any decision that led to a child being placed outside of the family network. It is our experience that a decision to place an Aboriginal child in permanent care not with relatives is highly risky. It is a decision that should be both rare and only made when supported by the child's family and community.

We feel recommendation 113 has links to recommendation 71. Notwithstanding emerging initiatives that are underway, we suggest that the participation of Aboriginal families, young people and communities is largely absent from Children's Court processes and that we need to build intentional ways for this to happen, with Aboriginal people playing a leadership role in service design. Solutions need to be developed and designed by Aboriginal people themselves with appropriate accountability mechanisms built in.

FISH submits that all children and young people will benefit from this recommendation.

<u>Section 2:</u>
Recommendation 8: Self-determination.
FISH supports this recommendation. FIC notes that "weak form" self-determination, as is currently the case in NSW, is unlikely to have any meaningful effect and indeed, is not having a meaningful effect. To explore its meaning in a child protection context is very important, especially as we move towards Aboriginal Community Controlled Organisations (ACCOs) leading change in the child protection system.

FISH supports Recommendations 6, 7 and 8 and calls on the Government to implement these in full. We endorse the guidance provided by FIC in terms of what is meant by self-determination and suggest that this descriptive work and determining how it will be given effect, is best done by Aboriginal stakeholders in the child protection sector community in NSW as recommended by FIC. FISH calls upon all non-Aboriginal agencies in this sector to transition away from providing out-of-home care services with Aboriginal children and young people.

Recommendation 9: A new Child Protection Commission.
FISH supports recommendation 9. We agree with FIC that significant and transformative change is needed to the oversight and regulation of the child protection system. If implemented as described by FIC, rather than adding complexity, the new Commission will

simplify oversight, reduce fragmentation, and increase accountability. The current fragmented approach is both bewildering and inaccessible to families and children.

As this Recommendation appears sound, we suggest it be implemented rather than considering other options which may further fragment and complicate the system. Other options may also water down the FIC intent.

Recommendation 12: Publishing final judgments.
FISH supports this recommendation. It is an important contribution to improving transparency and scrutiny of care proceedings. The Children's Court is closed. This means that the media and other interested parties cannot observe proceedings and that the visibility of proceedings to the public is very low indeed. The routine publishing of judgements, appropriately deidentified, is a contribution to improved transparency as is the case in other closed jurisdictions. We endorse the other reasons provided by FIC including improved access to judgements for research purposes, to legal practitioners and to unrepresented litigants.

Publishing judgements would help to create the conditions for the engagement of the community in proceedings. However, Aboriginal community engagement in proceedings requires greater effort and more substantial changes, many of which are described in other FIC recommendations. The FIC does not appear to be arguing that this recommendation standalone to achieve this.

Recommendation 25: Early intervention services.
FISH supports this recommendation. We agree that offering suitable support services should be mandatory before a care application is made. Essentially, evidence needs to be presented to the Court that the family has been offered meaningful prevention services. See Recommendation 54 and 26 above for more about our views.

The services being offered need to be appropriate and suitable. They should not overstep the mandate of DCJ, and they should be negotiated with families themselves as families are the experts in their own situations. We would also recommend that where there is a risk of removal, families should be offered a peer family advocate (see Appendix A). Family advocates are people with lived experience of child protection processes who offer help, support and advocacy to families currently going through similar processes.

It should be an expectation of a contemporary and evidence informed child protection system that suitable services be offered to families and children at risk of separation. The international and Australian evidence is clear that if families receive suitable help and support, targeted to their circumstances, removal is less likely, and restoration is more likely. Both outcomes are consistent with government policy. It is therefore reasonable that such a requirement be enshrined in legislation, especially as we know from FIC and other research that families often do not receive the help they need to stay together.

The requirement for support services to be offered and provided is a mandate on government and service providers, not on families. If a ROSH report is not made but the family is regarded by DCJ as at risk of removal than the mandate to offer and provide services would apply. For example, if a family requests assistance of DCJ. There will be a need to integrate these services with advocacy services to ensure that power imbalances are addressed and that DCJ do not overstep their mandate or coerce families.

There are a range of possible non-legislative ways to improve support of families by DCJ and other agencies. These include reducing service gateway requirements such as requiring DCJ endorsement /approval for intensive family support services, ensuring services are

adequately funded, ensuring supply keeps up with demand and ensuring that housing and poverty issues are included more often in case plans and service responses.

Recommendation 28: Notification service.
FISH supports this recommendation and note that FIC has described the implementation of an *advocacy* service. We suggest the term *advocacy* be used for clarity.

The success of the family advocacy service will rely on its successful design, resourcing, and implementation. We note that FIC has described an independent service drawing from the approach undertaken by GMARNSW and we support this. We would suggest that peer parent and family advocates be built into the advocacy service as part of a multi-disciplinary approach.

The provision of effective independent advocacy services with all families interacting with the child protection system has enormous potential to address many of the concerns raised by FIC and by multiple inquiries into child protection. Importantly, independent advocacy as early as possible will target power imbalances and support greater transparency. Research internationally has linked peer parent and family advocacy to reunification, to increased kinship care and to shorter stays in care (BCN & IPAN, 2021; Gerber et al, 2019; LaBrenz et al, 2020). It is a sensible and evidence informed innovation that is urgently needed in NSW. There are existing initiatives emerging in Australia that can be drawn upon including the work of GMARNSW and FISH (Cocks, 2021). See Appendix 1 for a description of peer parent and family advocacy and ideas for consideration.

Recommendation 94: Reviewing carer authorisation decisions.
FISH supports this recommendation. Children need every opportunity to be raised in family and in culture including opportunities created by the independent review of a decision to not authorise or de authorise a family member.

We also recommend that parents, family, and children have a greater say in carer authorisation processes including decisions to not authorise, to de authorise and in regular review processes. Current processes exclude family almost entirely from assessment and review processes and this is clearly not in the best interests of children.

We welcome this recommendation applying to all children, strengthened by parent and family inclusion as described above.

Recommendation 102: Public reporting on Family Group Conferencing.
FISH supports this recommendation which is linked to and reliant on recommendation 9.

We support the need to regularly report on Alternate Dispute Resolution, including family group conferencing. There is good evidence to suggest that the success of ADR processes, including family group conferencing, is highly dependent on how it is implemented and who implements it (Melz, 2021; McGinn et al, 2020). It is important that the goals of ADR processes are clear and shared with family, with community and with the public. FISH agrees that family group conferencing with Aboriginal families requires a culturally safe approach including Aboriginal facilitation.

Recommendation 117: Period for restoration.
This recommendation is concerned with **linking** service provision to timeframes in Section 79(10). This recommendation would, we believe, see the lack of or incomplete or inadequate provision of services or a failure of DCJ to respond effectively to the family's needs, being able to be identified as a special circumstance. This would then allow for an extension of timeframes to determine whether restoration is to be pursued. It is important

that the service provision concerns not simply be linked to a lack of services. It should also be linked to inadequate or incomplete services. FISH supports this recommendation.

In practice, DCJ and the courts require parents alone to make changes within these timeframes and there is little or no emphasis or responsibility for DCJ or agencies to take "active efforts" to provide resources, services or create the conditions for safe restoration, even when those conditions are beyond the control of parents. Factors such as poverty, inadequate housing and access to mental health or substance use services tend to be ignored as they are not within parent's control. This approach of sole focus on parent change is undermining restoration and prevention. Implementing this recommendation, combined with others, may go some way to ensuring that DCJ and agencies take responsibility for ensuring restoration is possible.

Principles to guide restoration decision making may assist but their effectiveness will depend on what the principles are. We would suggest that family inclusion is a key principle to be considered. Other principles need to be developed by Aboriginal families and communities. Key to the success of principles will be ensuring power imbalances are addressed and families are empowered and resourced.

We agree that DCJ and other agencies should be required to take active efforts to support restoration as outlined throughout FIC and this submission.

Recommendation 122: New agency to run litigation.
We support this recommendation. This recommendation has emerged from FICs observation that the evidence presented to the Children's Court by lawyers acting for DCJ needs to be of the highest quality. We would also agree with FIC that the evidence needs to be comprehensive and include family strengths and the social context of the family situation. FIC found that evidence presented by DCJ was, at times, false or misleading. Research supported by FISH has also found parents and family have this experience regularly (Ross et al, 2017). This is a very grave finding which must be responded to properly. If it is not responded to appropriately, it will understandably continue to fuel distrust.

Recommendation 123: Rules of evidence.
We support this recommendation. The discussion paper refers to the Children's Court as an informal jurisdiction, able to consider a range of information. The reality is different. Families do not experience the Children's Court as informal. They experience it as formal, confusing, and frightening. They see the Court receive a lot of information without adequate time to properly digest, analyse and test it. They experience information being shared about them that they do not agree with, and they are not able to contest.

FIC has found that false or misleading information is provided to the Court at times, calling into question the accuracy of the information the Court has to make very grave decisions. It seems clear from FIC and from lived experience that a greater level of discipline is needed to ensure the Court has access to accurate information and that parties have an opportunity to test evidence submitted to the Court more than they currently do.

We note that families and children already experience the Children's Court as adversarial for much of the time. FIC provides parameters that would apply to situations when the rules of evidence might apply and has not disempowered the Court in any way.

<u>Section 3</u>
Recommendation 11: For-profit OOHC providers.
FISH supports this recommendation. FISH agrees that adoption accreditation for for-profit agencies is not appropriate given the additional emotional investment of stakeholders in an adoption decision and the legacy of adoption practice. Given the pathway to adoption from the

care system, often without child or family consent, there are now growing commonalities between the two sectors which bring the OOHC sector into the purview of the UN convention which requires that adoption providers be not for profit.

DCJ concerns around this recommendation appear to be around the availability of placements in areas where they are scarce and ensuring that DCJ can secure a placement from a for profit agency if no placement is available elsewhere. FIC is describing a high level of distrust in the OOHC sector by Aboriginal people which is further fuelled by the perception that for profit providers have an incentive to keep children in OOHC where they are generating money. This is an understandable and reasonable source of distrust which parents often share with FISH and parent peer advocates. Good policy would address this distrust including by implementing recommendation 11.

Recommendation 20: Accrediting OOHC agencies.
FISH supports this recommendation. The current approach undermines the OCG's role to ensure children are cared for within agencies that can meet basic standards of care.

Implementing Recommendation 20 will not in itself prevent Aboriginal organisations from becoming accredited. Barriers to accreditation do exist but not as a result of high care standards – noting the current standards equate to a minimum required standard and not "best practice". We suggest that the genuine barriers to Aboriginal organisation accreditation be addressed including adequate resourcing.

The best way to ensure children are cared for in family, culture and community is to invest in families and in community to prevent child removal.

Recommendation 121: Adoption.
FISH supports this recommendation. We support the Aboriginal communities' strong position on the adoption of Aboriginal children. FISH is opposed to adoption without consent except in the rarest of circumstances and we have previously argued that a primary focus on legal permanence, such as adoption, is not good policy and not consistent with what children need (FISH, 2019).

We support the recommendation in FIC that the adoption of Aboriginal children from the care system should not occur. We feel that any perceived benefits to individual Aboriginal children are outweighed by the significant costs that continue to be borne by the Aboriginal community in the form of unjust child removal in NSW and a failure to invest in genuine solutions to support children to be with their own families, in culture.

The adoption of Aboriginal children, even if it is rare, continues to fuel distrust and distract policy and community efforts which need to focus squarely on prevention, on reunification and on strengthening families and communities. Its rareness is not an argument for its continuation – just the opposite. An investment in adoption is a failed opportunity to invest in prevention, in restoration and in families and communities. Efforts of DCJ and the sector must be redirected to family support, family strengthening and to ensuring that all Aboriginal children are raised safely in family and community.

Recommendation 64: Known risks of harm of removal.
FISH supports this recommendation and agrees with FIC that the current legislation does not facilitate the Court considering the grave risks that an out-of-home care experience has for any child. We would support this recommendation applying to all Australian children in the care system, who also come from families with trauma histories and who face separation from extended family, from siblings and from culture and community.

The research evidence about the care system is complex and fragmented. It is not reasonable to expect Magistrates to be across this evidence easily, especially how it might apply to individual children and families. For example, the potential risks associated with permanent removal for a child varies depending on age, stability of care, family involvement and a range of other factors.

Children removed from their families are subsequently abused by individuals and by systems when in out-of-home care. This possibility is not in dispute and needs to be considered by the Court.

Thank you for the opportunity to provide our views to this process. We note there is an intention to not publish submissions. We would suggest a more appropriate approach would have been to give submitters the opportunity to not have their submission published, as opposed to not publishing any of the submissions. By not publishing submissions this may continue to contribute to a non-transparent approach.

In the interests of transparency and to lead change, FISH has published this submission on our website so that the NSW community, including parents, families and children currently impacted by child protection processes and the broader Aboriginal community, can see what we have written.

To discuss this submission please contact Jessica Cocks, Management Committee Member, on 0455 092 960 or at contact@finclusionh.org.

Family Inclusion Strategies in the Hunter Inc.

Peer Parent and Family Advocacy (parent advocacy) in child protection – a pathway to better outcomes for children and families.

Background

Families face systemic barriers to participation and inclusion in child protection processes in NSW. Research into family experiences nationally and internationally has revealed remarkable consistencies including the following:

- Families have trauma histories and are further traumatised by child protection processes
- Families are almost always living in poverty are more likely to be First Nations or to be of colour and more likely to be under scrutiny by child protection authorities.
- Families fear and distrust child protection authorities
- Child protection practices and processes are arbitrary and unpredictable.
- Families want to participate and are vital to better outcomes for children.
- Families lack culturally suitable early help and may distrust providers of early help.

It is increasingly clear that families and communities themselves have solutions. Aboriginal organisations and activists are providing this leadership in a range of ways including the work of Absec and the Aboriginal Case Management Policy, Grandmothers Against Removals NSW (GMARNSW) and the Family is Culture Report – just to name a few.

Another example of family and community leadership is Family Inclusion Strategies in the Hunter (FISH). FISH is a parent and family led organisation in Newcastle which has been trialling innovative solutions to promote inclusion and participation since 2014 including **parent advocacy**. The FISH President is a parent with lived experience of child removal and reunification. She was herself in the care system as a child.

What is parent advocacy and where can it happen?

Parent advocacy is a form of peer advocacy where parents and family who themselves have had experience of the child protection system, help other parents and family to navigate it. Unlike conventional practices in child protection which tend to operate at an individual family and parental functioning or casework level, parent advocacy operates at individual, group, community, and systems levels. Figure 1 provides an overview of parent advocacy at all these levels.

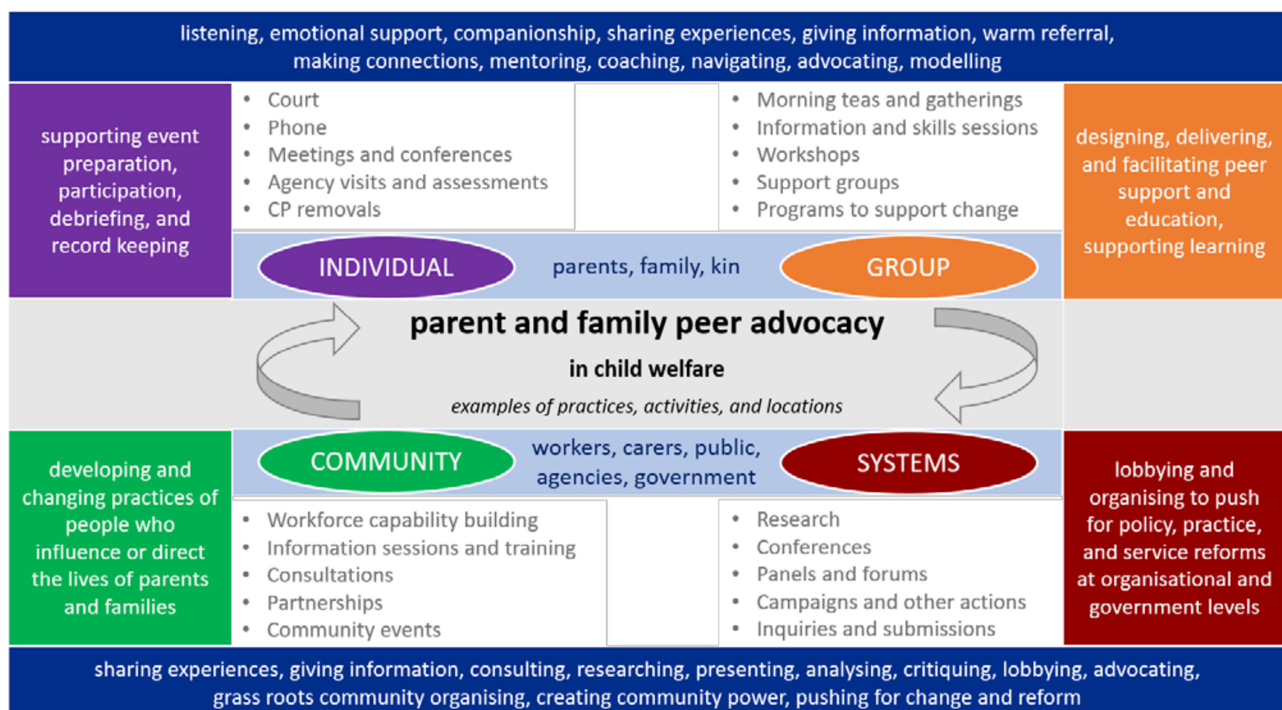
Parent advocacy can operate independently of other services and programs as demonstrated by FISH and GMARNSW. It can also be integrated into existing and new service design throughout the care and protection system including legal services, reunification and prevention programs and family support services. At the time of writing, FISH is conducting pilots of meeting support and advocacy with DCJ casework teams in the Hunter area. These pilots offer more intensive partnership and modelling wotrk with child protection authorities. The FISH team is also visiting non-government agencies to inform them about parent advocacy and identify how parents, family might access advocacy during their interactions with these agencies.

How are parent advocates trained and what do they do?

Training programs and support processes have been developed in various initiatives in Australia and overseas. Training includes modules on the child protection system, historical issues including the Stolen Generations, trauma, professional boundaries, dynamics of family violence, supervision, self-care and more. Parent advocates participate in individual and group supervision as well as debriefing after support events.

The roles of parent advocates varies among settings. One example is the role of parent advocates in multi-disciplinary legal services. They provide information and emotional support, share their own experiences, make warm referrals and advocate for parents during child protection processes and meetings. Figure 1 provides an overview of the activities and roles parent advocates may play.

Figure one – overview of parent advocacy. © Family Inclusion Strategies in the Hunter (May 2022)



Some examples of parent and family advocacy initiatives

GMARNSW provides parent and family advocacy with Aboriginal families in their communities. Their approach to advocacy has been recommended by the Family is Culture report.

FISH delivers parent advocacy in the Hunter Valley of NSW. FISH recently published the outcomes of the original pilot project entitled *From Little Things; Big Things are Coming.* The pilot project was delivered in collaboration with the Children's Court and multiple other stakeholders including DCJ, ALS and Legal Aid. Its ongoing delivery by FISH continues and has some wages funded recurrently by the Ian and Shirley Norman Foundation. The full report is available here.

The Family Inclusion Network of Southeast Queensland (FINSEQ) has been providing systems and community advocacy, funded by the Queensland Govt, since 2017. In 2019 the Queensland

Parent Advisory Committee (QPAC) was convened. QPAC has trained parents and family, including First Nations parents and family, to advise the Minister on policy issues. In 2022, FINSEQ received funding to trial the development of a peer workforce in child protection.

The Family Inclusion Network of Western Australia has provided independent (non-peer) advocacy to child protection involved parents since 2008. Since 2018 they have been developing a peer workforce in community and systems advocacy. They have now received philanthropic funding to continue to build peer skills in WA.

Internationally parent advocacy in child protection is also growing. For more information about parent advocacy globally visit the International Parent Advocacy Network.

What does the global evidence say?

Multi-disciplinary teams in legal services integrating lawyers, social workers and parent advocates are strongly supported. One large study in NYC involving more than 20,000 children found **increased reunification** rates (>65%), **shorter stays in care and an increased likelihood of kinship care** over foster or residential care (Gerber et al, 2019). In a **prevention** context, multi-disciplinary legal services are also supported (Uni of Michigan Law School, 2013).

Parent advocates **within child protection teams** have an established link to **reunification** that is now emerging in systematic reviews (LaBrenz et al, 2020). Parent advocacy in **court processes** has a link to **participation and reunification** (Bohannen, 2016).

Parent advocacy during preventative /diversionary processes such as **safety planning conferences** has been linked to **prevention and increased kinship care** (Lalayants, 2021).

Is parent and family advocacy aligned to the Closing the Gap targets and to FIC?

Yes. It is particularly relevant to removing the over representation of Aboriginal children in the child protection system and in care through effective early help and reunification (Target 12) and to ensuring people have access to information and services to enable participation in decisions about their own lives (Target 17).

Opportunities for us to innovate now in NSW.

Drawing on the evidence from overseas and the learnings from early innovations here in Australia, there are now opportunities to plan for, trial, evaluate and scale parent and family advocacy initiatives in NSW with a particular emphasis on Aboriginal families. We would suggest:

- Developing and implementing multi-disciplinary teams (integrating parent advocacy) in the delivery of legal services that are already provided with parents, in care proceedings
- Developing and implementing multi-disciplinary teams in legal services as part of a preventative and family support service.
- Working with families and communities to build a peer /lived experience workforce in child protection, with a view to integrating parent advocates more broadly.
- Developing community and systems parent advocacy
- Co designing localised individual and group parent advocacy in agreed locations of need
- Working with families and communities to identify other opportunities to build parent advocacy initiatives at individual, group, community, and systems levels.

Appendix B References to the FISH Submission

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