

22 December 2020

Joint Committee on Children & Young People
NSW Parliament
By email: childrenyoungpeople@parliament.nsw.org.au

Submission to NSW parliamentary inquiry into child protection and social services systems

Dear Committee Members,

Thank you for the opportunity to make this brief submission to the review of the child protection and social services systems in NSW.

ABOUT COMMUNITY LEGAL CENTRES NSW

Community Legal Centres NSW is the peak representative body for 40 community legal centres in NSW. Community legal centres are independent, non-government organisations that provide free legal services to people and communities facing economic hardship, disadvantage, discrimination and domestic violence.

Many community legal centres offer legal support to families on a wide range of child protection matters including risk of significant harm reports, care and protection orders, contact arrangements and disputes and restoration. We work collaboratively with government agencies and NGOs to help parents, children, grandparents, carers and guardians navigate the system, access early support services and prevent issues escalating. Our services are independent, client-centred, trauma-informed, focused on early support and embedded within communities.

Since November 2019, our members' capacity to deliver these critical services has been compromised by the NSW Government's decision to defund the Legal Aid NSW Care Partners Program. Over five years following the 'Safe Home for Life' reforms in 2019, this program funded up to 18 community legal centres to deliver early legal advice and assistance to families engaged with the child protection system.

Community legal centres stand in solidarity with Aboriginal and Torres Strait Islander people, families and communities. We condemn the ongoing removal of Aboriginal and Torres Strait Islander children from their families, cultures and countries and their continued over-representation in out-of-home care in NSW. We strongly endorse the 125 recommendations made by the 'Family Is Culture' Independent Review of Aboriginal Children in Out-Of-Home Care in November 2019.

GENERAL COMMENTS

Since 2014, reforms to child protection laws and Department of Communities and Justice (DCJ) policies have prioritised providing early support to families to help them keep their children safe at home and reducing the number of matters heard in the Children's Court. Despite the stated commitment to early support and family preservation, child protection expenditure remains crisis driven.¹ At the same time reforms, including amendments to the *Children & Young Person's (Care and Protection Act) 1998* in 2018, have elevated adoption and guardianship up the hierarchy of child placements.

In 2017-18 the NSW Government spent \$2.2 billion on child protection. Of this, 54% (\$1.2 billion) was spent on out-of-home care, permanency support, guardianship and adoption and just 6.8% (\$149.5 million) on early support and prevention.² NCOSS notes that the NSW Budget for 2020-21 invested no new money in child protection and 'failed to make substantive investments in early intervention.'³

Despite repeated attempts at reform and countless government and independent inquiries, the child protection system in NSW remains broken. Aboriginal and Torres Strait Islander children remain grossly over-represented, making up 34% of children in out-of-home care.⁴ Parents who were removed from their families as children continue to have their children removed at disproportionate rates. And the 'care-criminalisation' cycle continues unabated.⁵

In the last five years alone, a plethora of reviews have made hundreds of recommendations about how to reorient the child protection system towards early support, prevention and family preservation, including:

- [Independent Review of Out of Home Care](#) ('Tune' review) (2016)
- NSW Parliament's General Purpose Standing Committee No. 2 [Inquiry into Child Protection](#) (2017)
- Statutory review of the *Children & Young Persons (Care & Protection) Act 1998* (2018)
- [Independent Review of Aboriginal Children in Out-of-Home Care](#) ('Family Is Culture' Review) (2020)

While we welcome the interest in this very important issue, we are concerned that unless the Government begins to take seriously and implement recommendations that have already been made, this inquiry may have little fruitful outcome. In particular, we are deeply disappointed by the NSW Government's lacklustre response to the Family Is Culture Review. Urgent action is needed to ensure the experiences of the children whose stories informed the review are not repeated. The solutions are clear. No further reviews are needed.

As such, this short submission recommends the NSW Government immediately:

- 1. Fund and implement the 125 recommendations from the Family Is Culture Review, prioritising legislative reforms.**
- 2. Provide adequate, recurrent funding to Aboriginal-controlled and community-based independent legal services, to assist families navigating the child protection system.**

¹ David Tune AO (2018), *Independent Review of Out of Home Care in New South Wales: Final Report*

² New South Wales Legislative Council (2017), *Final Report - Child Protection*. GPSC No. 2, Report 46.

³ NCOSS NSW Budget 2020-21 Analysis: Child Protection: <https://www.ncoss.org.au/nsw-budget-2020-21-analysis-child-protection/>.

⁴ Davis, M (2019), *Family Is Culture Review Report*. <https://www.familyisculture.nsw.gov.au/>.

⁵ Ibid.

1. Immediately fund and implement the 125 recommendations from the Family Is Culture review, prioritising legislative reforms

The Family Is Culture Review was unprecedented. Commissioned as a result of sustained community advocacy and conducted over nearly three years by a largely Aboriginal team, the final report reflects the lived experiences of Aboriginal people, families and communities forced into contact with the child protection system in NSW. Its 125 recommendations present a clear and comprehensive blueprint for further structural, legislative, policy and practice reforms to reduce the over-representation of Aboriginal children in the system – with a central focus on self-determination, transparency and early intervention.

1.1. SELF-DETERMINATION

Recognising and giving effect to the right to self-determination for Aboriginal and Torres Strait Islander people and communities is a central theme in the Family Is Culture Review. Under international law, the right to self-determination is the right to freely determine political status and economic, social and cultural destiny. Drawing on recommendations from the Bringing Them Home report, the Family Is Culture review notes that meaningful, ‘strong form’ self-determination involves the devolution of power from the state to Indigenous peoples.

Despite using the language of partnership and empowerment, the NSW Government continues to fall short on self-determination, particularly in the context of child protection. This ongoing failure is reflected in its response to the Family Is Culture Review’s recommendations:

- During the seven months in which it developed its response to the Family Is Culture Review, the NSW Government failed to engage with Aboriginal communities.
- Establishing the Aboriginal Knowledge Circle by Ministerial appointment will not progress meaningful self-determination.

Aboriginal and Torres Strait Islander people and communities must drive the reform process. What is needed is a genuine process to empower Aboriginal-communities to develop and deliver culturally safe and effective responses to at risk children and families. **As a first step, the Family Is Culture Review calls on the NSW Government to engage with Aboriginal communities, child-protection and legal peaks to develop a shared understanding of self-determination in the child protection context (Recommendation 6).**

1.2. SYSTEM OVERSIGHT

Community Legal Centres NSW supports the Family Is Culture Review’s recommendations for greater oversight and accountability of the child protection system NSW. However, we share concerns that the Government’s response to create an identified Aboriginal Deputy Children’s Guardian within the Office of the Children’s Guardian does not deliver the comprehensive system oversight it recommended.

The Children’s Guardian oversees out-of-home care in NSW. While this is an important function, out-of-home care is just one part of a large and complex system, which encompasses early intervention and family support, the Children’s Court, foster care, guardianship arrangements, family preservation, restoration and adoption. Providing oversight for one element at the system’s acute stage typifies a fragmented and disingenuous approach that is unlikely to have a real impact on reducing the number of Aboriginal children removed from their families and placed into care.

Reducing the number of Aboriginal children entering care requires targeted support for and investment in the critical, early stages of the child protection system, as well as independent oversight of child protection casework culture and practice at DCJ and across the funded non-government sector. The Family Is Culture review concluded these outcomes could best be achieved by establishing an independent Aboriginal statutory authority with the powers and resources to provide public accountability and oversight on behalf of Aboriginal children, families and communities, across the child protection system (including child protection and out-of-home care), in order to address compliance issues identified by the review (Recommendation 9).

1.3. LEGISLATIVE REFORM

Legislative reform is the focus of many recommendations from the Family Is Culture Review. This includes multiple critical reforms to the *Children & Young Persons (Care and Protection) Act 1998*, which focus on mandating the provision of early supports to Aboriginal children and their families (recommendations 25 and 26), strengthening safeguards against unwarranted removal (recommendation 54), and enforcing the proper application of the Aboriginal and Torres Strait Islander Child Placement Principle (recommendations 71 -75, 82). These reforms are essential to addressing known failings in the current system that result in the unacceptable over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in NSW.

In addition, the Family Is Culture Review addresses the significant concerns surrounding the adoption of Aboriginal children into non-Aboriginal families, which for many represents a final and irreparable separation from family, country and culture. The Family Is Culture Review cites clear evidence of the intergenerational harms caused by this practice. It recommends the immediate amendment of the *Adoption Act*, to end the adoption of Aboriginal children from out-of-home care (recommendation 121).

Delaying the consideration of these recommendations to 2024 (beyond the life of the current Parliament) as proposed in the NSW Government's response, is unacceptable. **We recommend the NSW Government immediately commence a process, which involves Aboriginal stakeholders in consultation, drafting and reviewing, to implement the full suite of legislative reforms recommended by the Family Is Culture Review.**

1.4. THE NSW GOVERNMENT'S RESPONSE

At just six pages long, the NSW Government's response does not adequately engage with the Review's detailed findings or specifically address any of its extensive recommendations. The measures announced (the appointment of a Deputy Children's Guardian as an identified position, the formation of an advisory group appointed by the Minister and an internal Departmental 'Aboriginal Outcomes Taskforce' to work with Aboriginal organisations and communities to implement reforms) do not clearly or directly link to specific recommendations. This makes it difficult to understand which recommendations government is acting on and which it is choosing to ignore. In some cases, the response fails to make clear whether announced measures are new or simply an exercise in rebranding or repurposing existing structures and processes (for example the 'Aboriginal Outcomes Taskforce' that will oversee reform implementation).

We remain deeply concerned the government has not supported or prioritised key reforms. Perhaps most crucially, neither the government's response nor its 2020-21 Budget, identifies

whether or how much funding it will allocate to implementing the Review's recommendations this year or in future years.

To meet the threshold for basic transparency, the NSW Government must immediately release a detailed breakdown of its response to each of the Family Is Culture Review's 125 recommendations. The breakdown must make clear: whether the government accepts or rejects the recommendation, what action it plans to take in response, if any; and how much funding it will allocate to implementation, if it cannot be incorporated into existing program funding.

2. Significantly expand funding for community-based, independent legal assistance services for families navigating the child protection system

There is a considerable power imbalance between the parents of children involved in the child protection system and staff employed DCJ or non-government out-of-home care providers. For many Aboriginal parents and families, this imbalance is heightened by past personal experience of the child protection system and intergenerational trauma arising from the history of government intervention in Aboriginal people's lives and communities.

The Family Is Culture Review found that without access to free, independent, culturally safe supports, including legal advice and assistance, many Aboriginal families experience disempowerment and difficulties engaging with the system. This finding accords with the experience of many child protection lawyers and advocates in the community legal centre sector who support Aboriginal and non-Aboriginal families to navigate the child protection system.

To address this, the Family Is Culture Review recommended the NSW Government prioritise funding for Aboriginal-controlled services providers. It also recommended sustained funding for community legal centres and Family Violence Prevention Legal Services to ensure Aboriginal families have access to free, independent legal advice and support (see recommendations 29 and 52 in particular).

Between 2014 and October 2019, many community legal centres, including specialist services such as Wirringa Baiya Aboriginal Women's Legal Centre, Women's Legal Service NSW and Intellectual Disability Rights Service, as well as geographically based community legal centres, received dedicated funding through the NSW Legal Aid Care Partners Program. This funding enabled 'Care Partners' to deliver legal advice and assistance to families engaged with the child protection system. Services included supporting families to:

- understand the child protection system and DCJ's role and responsibilities within it, and to prepare for case planning and Family Group Conferencing processes
- access support services to address DCJ's safety concerns for their children
- understand legal and court processes, apply for a grant of Legal Aid for Children's Court proceedings and prepare evidence to put before the Court
- negotiate arrangements for contact with children who have been removed or resolve disputes with DCJ and other service providers
- apply to the Children's Court to have children restored to their care under section 90.

Care Partners also used program funding to deliver community legal education to members of the public and to other community service organisations about the role early legal advice can play in supporting families to navigate the child protection system.

Importantly, community legal centres combine legal advice and assistance with specialist non-legal advocacy and casework for people and families with complex needs. This includes people with intellectual disability, women experiencing family violence and Aboriginal and Torres Strait Islander people. Within specialist child protection teams, lawyers and non-legal advocates work together to identify legal and non-legal needs, provide culturally safe services and make warm referrals to appropriate services. This interdisciplinary early support can help families avoid the unnecessary escalation of issues, court action and child removals.

The sudden cessation of Care Partners Program funding from November 2019, has severely limited community legal centres' capacity to deliver these critical services, including to Aboriginal and Torres Strait Islander families, women in prison and parents with intellectual disability.

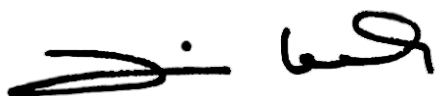
In line with the recommendations from the Family Is Culture Review, Community Legal Centres NSW recommends that the Care Partners Program be re-instated and dedicated funding for child protection legal services be significantly expanded to adequately meet need and ensure access to justice for families engaged with the child protection system in NSW. This should include adequate recurrent investment to enable:

- the Aboriginal Legal Service (NSW/ACT) to significantly expand its child protection and family law practice
- Community legal centres in NSW to significantly expand specialist child protection teams that deliver early legal advice and assistance for children and families navigating the child protection system.

MORE INFORMATION

Thank you for taking the time to consider our submission. If you have any questions or require further input, please contact our Policy & Advocacy Manager, Emily Hamilton via emily.hamilton@clcnsw.org.au or 9212 7333.

Yours sincerely,



Tim Leach

Executive Director