Preliminary analysis of 2nd print of *Children and Young Persons (Care and Protection) Amendment (Family Is Culture Review) Bill 2021* as amended following Legislative Assembly Second Reading debate 23 February 2022

This is a preliminary analysis of the 2nd print of the Bill as amended by the Legislative Council to advise the Minister in preparation for the Bill's consideration and debate in the Legislative Assembly.

Significantly, the Bill has been amended to remove amendments contained in the First Print that would have:

- removed adoption for Aboriginal children (Sch 3, FIC Recommendation 121)
- disenabled the Guardian from accrediting not-for-profit bodies (Sch 6, FIC Recommendation 11)
- disenabled the Guardian from accrediting non-Aboriginal designated agencies that did not fully comply with accreditation criteria (Sch 2 FIC Recommendation 20)

The corresponding FIC Recommendation is identified for each of the main items of the Bill.

Item of Bill	Section being amended	Description	Analysis	Options to revise Bill	Legal Aid NSW's comments
	2. Commencement	This Act commences on the date of assent to this Act.	Time is needed to prepare for implementation, updating procedure documents, preparing guidance material and communicating with the sector, and to make a business case for additional resources needed to operationalise the changes and ensure they operate effectively. Many of the provisions have resource impacts on the Court, Dept and service system, eg additional costs of: • Mandated early intervention supports • People and experts appearing before Children's Court Seeking commencement on proclamation is unlikely to be supported. **Recommend** moving amendment to provide that the Bill commences 12 months after assent (or however long is required for sector readiness)**.** **How long would the Children's Court need to operationalise the provisions of the Bill if it were passed unamended.**	**Commence 12 months after assent.**	**Legal Aid would need to develop a training package to upskill practitioners about the changes. It's likely that this package would only be able to be properly developed once other key stakeholders like the Children's Court had finalised their implementation plans.**
Sch 1	**Amendment of Children and Young Persons (Care and Protection) Act 1998 (Care Act)**				
[1]	**3. Definitions**	Inserts • a definition of Aboriginal and Torres Strait Islander Child and Young Person Placement Principles (refers to s 13 which is being amended) and • new definition of Aboriginal community controlled organisation as 'means an organisation that meets the criteria prescribed by the regulations.'	No issue with inserting a definition of Aboriginal and Torres Strait Islander Child and Young Person Placement Principles into the list of definitions in section 3 of the Care Act, and referring to section 13. The substantial amendment is at section 13 below. Some concerns about the proposed definition of Aboriginal community controlled organisation (ACCO) to avoid unauthorised sub-delegation of power issues. • Items [9] and [10] refer to 'recognised' ACCOs. • Item [17] amends s 264(1A) to provide a power to make regs about '*the recognition, for the purposes of section 83A(5)(e) and 87(2A)(b)(ii), of Aboriginal community controlled organisations.'* Query whether this adequately covers power to prescribe criteria to determine what constitutes an ACCO and whether the power to declare an ACCO as 'recognised' needs to be set out in the parent Act. PCO advice to be sought. Possible alternative definition: *A (recognised) ACCO is an organisation declared by the Minister to be a recognised ACCO in accordance with the regulations.* (Minister can delegate this function under Act) Note: functions of ACCOs under Bill (considered separately): • s 83 to approve permanency plan • s 87 to be heard in care proceedings • s 13C - Minister has to report every 6 months on the number of ACCOs it funds to deliver services under s 13A	**Clarify definition of ACCOs**	**No concerns are raised by Legal Aid in regards to the definitions.**
[2]	**9 Principles for administration of Act** **FIC Rec 8**	In deciding what action it is necessary to take in order to protect an Aboriginal or Torres Strait Islander child or young person from harm, it is to be presumed that	This provision is unnecessary as the Act already contains a principle that provides that in determining what action to take to protect a child or young person from harm, the course to be followed must be the least intrusive intervention in the life of the child and their family consistent with the paramount		**Legal Aid NSW agrees that the Act currently includes the 'least intrusive intervention' principle and that any child being removed from a family causes harm.**

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		removing an Aboriginal or Torres Strait Islander child or young person from the child's or young person's family causes harm.	concern to protect the child or young person from harm and promote their development. Removing <u>any</u> child or young person from the child or young person's family is the last resort irrespective of cultural background. The principles guide decision-making under the Act. All principles are secondary to the overarching paramount principle in s 9(1) - the safety, welfare and wellbeing of the child or young person. If this were inserted in the Act, how big an operational impact would it have?		**If it was considered that particular reference to a presumption was important then it could be expressed in more general terms (to include all children) or could be incorporated into an existing principle.**
[3]	**13 Aboriginal and Torres Strait Islander Child and Young Person Placement Principles** **FIC Rec 71**	Amends section 13 to require all decision makers to apply the five elements of the Aboriginal and Torres Strait Islander Child and Young Person Placement Principle in matters involving Aboriginal and Torres Strait Islander children and young people, where relevant to the decision being made.	The five elements are prevention, partnership, placement, participation and connection. This amendment would explicitly incorporate the five elements of the SNAICC Aboriginal Child Placement Principle in the Care Act. Aligns with National Framework for Protecting Australia's Children commitments. Aligns with DCJ's Aboriginal Case Management Policy.		**Legal Aid NSW supports this but notes that this amendment should be coupled with training for practitioners, caseworkers, Magistrates and others working within families in this space as well as policies, practice notes and guidelines as to what these five elements mean in practice and how they should be considered at each stage of proceedings by each of the various decision makers.**
[4]	**13A Aboriginal and Torres Strait Islander Family Support** **FIC Rec 25 – 26, 54**	The intent of this amendment (and new section 13B below) is to mandate the provision of support services to prevent entries into OOHC. Section 13A is a new provision that: • Acknowledges placement of Aboriginal children or young people in OOHC has serious negative consequences for the children/young people, their families and the entire indigenous community • Introduces a principle requiring the Secretary to take **active steps** to reduce the need for these children to be removed from their families and be placed in OOHC • Without limiting the generality of the above principle, the Secretary **must** take active steps when exercising functions and powers under: o Section 17 – Secretary's request for services from other agencies o Section 37 – Alternative dispute resolution by the Secretary o Section 63 – Evidence of prior alternative action o Section 85 – Provision of services to facilitate restoration.	Improving the provision of services is a policy and practice issue (and resourcing one), changing the legislation will not necessarily change practice or guarantee resources are available to boost supply. Mandating the provision of early intervention services may detract from the principle of self-determination. This may also be counterproductive, in particular in circumstances where the family does not participate or refuses to accept a referral which may be looked at negatively by the court. The Act already contains provisions requiring prior alternative action, and specifically provides that ADR must be offered to families. A list of specific alternatives to be considered prior to removal is unnecessary, could lead to an unhelpfully prescriptive approach and may detract from effective and innovative casework tailored to the specific circumstances of each family.		Legal Aid is supportive of any legislative change that facilitates families accessing more culturally safe early intervention and support services. However, we accept that there are significant resource implications and that there may also be difficulties with mandating for the provision of services where the services may not exist, may be at capacity or have long waiting lists. Legal Aid also supports legislative change that would mandate or more strongly encourage the use of other existing pre removal tools (eg parenting capacity orders) as an alternative to removal. Additionally, Legal Aid NSW considers that families should also be able to access culturally safe legal advice at the time that families commence working with DCJ so that families can make informed decisions about engagement with services and agreeing to these types of arrangements. Legal Aid NSW also notes that the term self determination does not exclusively mean an individual and can includes community and ACCO's. 'Active steps' tailored to the circumstances should involve the family, community and ACCO's as opposed to being determined solely by the Secretary. Legal Aid NSW agrees that there is a risk that the mandating of services may detract from the principle of

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		• Active steps must be tailored to the circumstances of the child, young person and their family and include (but not limited to): ○ the provision of family support services (accessible, adequately resourced and culturally appropriate), where practicable designed and delivered by ACCOs ○ considering the use of parental responsibility contracts, parent capacity orders, temporary care arrangements and other steps prescribed in the regulations.			self determination so it would be important for there to be structures/policies to ensure that decisions about the engagement (and which services) with services are decisions ultimately made by the families themselves as opposed to being made by case workers. This is particularly important because often the refusal/lack of engagement of families with support services is relied upon in subsequent Court proceedings without proper consideration of cultural safety and the appropriateness of the referral or 'active steps' taken. It is noted that without any sort of accountability or consequence for a failure to comply, there is a risk that this change may (as is suggested by the FIC report has been the case with section 63) become nothing more than a box ticking exercise with little practical impact upon outcomes for families. Legal Aid suggests that accountability could be enhance through a combination of strategies including: - The front loading of initial Court appearances including more active case management, therapeutic Court models, support services, collaboration of agencies and services; - Greater judicial resources to undertake more rigorous case management in the first month post removal to ensure that all options to keep children safe at home have been properly explored with the Courts oversight and input; - Greater access to support services, legal representation and mechanisms to ensure legal advice is able to be accessed pre removal.
	13B Declaration by the Children's Court	A relative of an Aboriginal or Torres Strait Islander child or young person may apply to the Children's Court for a declaration that the Secretary has failed to take active steps under section 13A to reduce the need for the child or young person to be removed from the child	Requires consultation with Children's Court and legal stakeholders to consider implications. Preliminary analysis: • lack of clarity about what 'active steps' means • seems to require a review of casework and casework decision-making and query whether this is a function of the Court; it is already a function of oversight bodies eg NSW Ombudsman.		**Legal Aid NSW supports what is ultimately trying to be achieved by this provision, which is to ensure there is greater accountability of what is done by the Secretary in the early stages of working with a family.** **Legal Aid NSW also supports mechanisms that facilitate**

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		or young person's family and placed in out-of-home care. The application can be made during care proceedings for a care order, or a PCO or <u>at another time</u>. A declaration by the Children's Court may include: • the ways in which the Secretary has failed to take active steps • other things the Secretary could have done to fulfil their duty to take active steps.	• an application may be brought at virtually any time by any relative of the child (which is defined broadly in the Act), including potentially after final orders are made • query what the practical effect such a declaration would have ie what remedy would follow from such a declaration eg if made during care proceedings, Court may dismiss the application/ direct the Secretary to file further evidence? • such applications may delay proceedings, create more interlocutory applications, increase costs. • would there be any appeal rights from a decision to make declaration/or decline to make declaration? would this be on questions of law in Supreme Court for prerogative relief? • Note under new s 13C, Minister will be required to report on the number of declarations made by the Court – separation of powers issue?		**the involvement of more relatives of ATSI children and young people as part of Court processes.** **However, we query whether this proposal would achieve these things. For example, a relative bringing an application for a declaration at the time the matter is listed for Final Hearing will simply result in the Court making a declaration in the context of the Court needing to determine the long term arrangements for children that prioritise their safety, welfare and wellbeing. It is unclear how a mechanism that allows a declaration to be made necessarily facilitates any real and meaningful change.** **A declaration would be simply that. It would be difficult to imagine a situation where you would advise a relative to take steps to seek a declaration in these circumstances.** **This would also create another way that relatives could potentially be involved in proceedings (in addition to being joined or having a right to be heard). There is a risk that this provision might create false expectations of something more being obtained than what is actually provided for in this section and ultimately detract from what is being sought to be achieved. An alternative could be to amend Section 87 or 98 to connect this concept with the concept of a relatives right to be heard about the impact of an order.**
	13C Reporting responsibilities of the Minister FIC Rec 75	Proposed section 13C inserts a new provision requiring the Minister within 12 months of section 13A commencing to table in both houses of Parliament a plan setting out: • active steps that will be taken under s13A to provide family support services and • how the active steps will be delivered and funded. The Minister will also be required to table bi-annual reports in both houses of Parliament setting out: • Government's achievements against the above mentioned plan • Actions the Minister has taken to engage Aboriginal and Torres	This seeks to make the Minister accountable for implementing the Aboriginal and Torres Strait Islander principles already contained in the Act as well as the new principles proposed in ss 13 and 13A. The Minister is already accountable to Parliament on the effective administration of her portfolio responsibilities. The Minister's functions are also subject to the oversight of the NSW Ombudsman and the Children's Guardian. Other reporting mechanisms are in place to obtain information about funding provided to Aboriginal community-controlled organisations, including DCJ's Annual Report.		**This recommendation is connected to the above recommendation. If the above recommendation was to be introduced then Legal Aid NSW would support a reporting requirement as proposed.**

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		Strait Islander people to negotiate and agree about implementation of programs and strategies that promote self-determination • the means approved by the Minister by which Aboriginal and Torres Strait Islander families, kinship groups, representative organisations and communities can participate in placement (and other significant) decisions under the Act (existing provision: s 12) • An assessment of effectiveness of actions relating to self-determination and participation in decision making. • any Aboriginal community controlled organisations that have been funded to deliver services and the amount of funding each organisation has received. • s 13B declarations made by the Court			
[5]	**61AA Application for care orders – Aboriginal and Torres Strait Islander children and young people** **FIC Rec 112-113**	Requires the Secretary to provide a report with every care application (except an application for an emergency care and protection order) that • provides a detailed justification for any removal, and • demonstrates the removal is the least intrusive option that could be employed • sets out active steps Secretary has undertaken under s13A to reduce the need for the child or young person to be placed in out-of-home care (support services, alternatives to removal)	The Care Act already requires the Secretary to: • take the least intrusive action to guarantee the safety of a child or young person • comply with the permanent placement principles - the first placement preference must always be to seek restoration and consequently, family preservation. • offer Alternative Dispute Resolution to the family of a child or young person before seeking care orders from the Children's Court • where Care Orders are sought, the Secretary must provide evidence of what prior alternative action the Department has taken before filing the application for care orders.		**Legal Aid can see the merit in requiring the Secretary to provide more detail at the time of removal in line with what is proposed in Section 61AA, particularly in relation to 61(a) and (b). LANSW would also propose the inclusion of information about the assessments undertaken of extended family and a detailed explanation of why a child has not been placed in a kinship placement or with someone known to them. It is suggested that these should also be required for children who are not Aboriginal or Torres Strait Islander and could be incorporated into the existing Section 63. Legal Aid NSW considers it beneficial to include these subsections into the existing section 63 (despite there being other sections that reflect the other responsibilities of the Secretary) to ensure they are complied with and their importance is appropriately recognised and prioritised.**
[6]	**63 Evidence of prior alternative action** **FIC Rec 54**	Gives the Children's Court a power to dismiss a care application or discharge a child or young person from the care responsibility of the Secretary if: • the Secretary does not provide evidence of prior	Reverses the current s 63(2). The Court already has discretion to make, or not make, the orders sought, based on the evidence before it, or make other orders it thinks are appropriate and in the best interests of the child, so these same outcomes can be achieved under current provisions.		**Legal Aid NSW considers this change to be unnecessary. The Court is currently required to consider whether an interim order should be made allocating parental responsibility to someone other than a child or young**

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		alternative action under s 63 or • the court isn't satisfied by the information provided by the Secretary under s 63 that alternatives were adequately considered including the provision of family support and assistance.			**persons parents. It is difficult to understand how this provision would interact with other provisions in the act (for example Section 69) and how the Court could ever dismiss an application as proposed on the basis of a failure to provide information as requested in isolation. If the Court was not satisfied that an interim order should be made allocating parental responsibility elsewhere or that the matter should not be established, then this would have the same effect as what is currently proposed and is already available to the Court under the Act. As an example, if a parent had been producing urinalysis screens that were consistently positive for ice up to the date of removal and no offer was made to assist the parent to access a rehabilitation facility at the time of the filing of the application, it is highly unlikely that an appropriate way forward is to dismiss the application and return the child to that parent in response.**
[7]	**79AA Aboriginal and Torres Strait Islander children and young people – special circumstances**	Requires the Court to take the following matters into account when making an order allocating PR to the Minister for an Aboriginal or Torres Strait Islander child / young person- • the Secretary has taken active steps under section 13A to provide support services to the family of the child or young person. • the steps the Secretary has taken to provide support services to the family under new section 13A • the availability of other support services that are reasonably required to support restoration.	The Act already gives the Court a wide discretion about what matters to take into account when determining what order to make. It can already take into account the availability of support services to assist restoration.		**Legal Aid NSW is not opposed to this amendment.**
[8]	**83(5) Permanency Planning**	Repeals existing subsections 83(5)-(9) and inserts a new s 83A. This amendment will allow DCJ to determine whether there is a realistic possibility of restoration for Aboriginal children within 4 years of an interim order being made (versus 2 years for all other children).	Extending the timeframe of 48 months may have the unintended consequence of Aboriginal children languishing in care and not being restored to their families**.** Making it 4 years is not likely to be in the best interests of the child given there is substantial evidence indicating that the success rate of restorations declines after 6 to 12 months. When the Court approves a permanency plan involving restoration, guardianship or adoption, the Act provides that an order allocating PR to the Minister should be made for up to 2 years. However, the Court may make an order longer than 24 months where it is satisfied that there are 'special circumstances' that warrant it. The Act does not define or limit what the Court could consider to be special circumstances. Section 79(10) gives the Court a wide discretion, and there is nothing to prevent the Court from taking into account the availability of support services to assist restoration when determining what order to make under section 79 (*is this correct, or does the definition of s 83(8A) constrain the Court?*). Ultimately, the Court must have regard	Any options to amend this provision?	Legal Aid questions the basis for proposing a period of four years for restoration to occur. This would mean that children would remain in a situation of uncertainty as to whether they will return home for double the amount of time that is currently legislated.

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			to the objects and principles of the Act, and the paramount consideration is the safety, welfare and wellbeing of the child.		
[9]	**83A Consideration of permanency plan by Children's Court** **FIC Rec 112-113**	This amendment replicates the existing provisions in s 83(5)-(9) with some significant amendments.	It retains the 6 and 12 month timeframes (depending on the age of the child) that apply to the Court for deciding whether to accept the Secretary's assessment of a realistic possibility of restoration. However, it limits the Court's ability to extend that period to 3 months (currently unlimited). It retains existing s 83(7) for non-Aboriginal and Torres Strait children. But for Aboriginal and Torres Strait Islander children, before it makes a final care order, the Court must find that: • permanency planning has been appropriately and adequately addressed, • all efforts have been exhausted to facilitate placement with extended family or kinship group recognised by the Aboriginal or Torres Strait Islander community to which the child or young person belongs • If the plan does not involve restoration, that there is no realistic prospect of restoration having regard to the circs of the child and evidence that the family, if given the supports mandated under s 13A, could satisfactorily address the issues leading to removal of the child • the permanency plan includes a cultural plan that explicitly states how it will support continuing contact with the child's or young person's Aboriginal or Torres Strait Islander family, community and culture, and • the permanency plan has been approved by a recognised ACCO. It also provides that a permanency plan is of no effect until approved by the Court.		Legal Aid NSW queries what issue this proposed amendment is attempting to address. The proposal appears to limit the length of proceedings to a maximum length of 15 months. It is unclear why this specific length of time is considered appropriate. The pandemic is a good example of why discretion and flexibility is sometimes required. The provision appears to also be drafted in mandatory terms which means it isn't clear what would occur if a matter needed to be adjourned past the 15 month mark. It is Legal Aid NSW's experience that specialist magistrates are proactive in ensuring that matters progress as quickly as possible where this progression is consistent with the objects and principles of the Act. It is also not clear why it is proposed that a permanency plan should have no effect until approved by the Children's Court. For example, if the Secretary proposed to offer support services to a family would this prevent these services from commencing work with the family? We would welcome further consultation in respect of this amendment.
[10]	**87 Making of order that have a significant impact on persons /opportunity to be heard** FIC Rec X	Clause (2A) imposes a duty on the Children's Court to consider the effect of the care order on the relevant Aboriginal or Torres strait Islander community, and give a representative of the relevant community or a member of an Aboriginal Community Controlled Organisation with a relevant connection to the community the opportunity to be heard in the proceedings. Subclause (2B) gives a power to make regulations for: • remuneration of individuals who are heard by the Children's Court • payment of the reasonable expenses incurred by an individual who is heard by the Children's Court.	Section 87 currently provides that the Court must not make an order that has a significant impact on a person who is not a party to the proceedings unless the person has been given an opportunity to be heard on the matter of significant impact (see also *June*). If the impact is on a group of persons (such as family), the court can approve a representative of the group to be given the opportunity to be heard (rather than all). Consultation with the Court and DCJ Legal required on the potential impact of this provision on proceedings. Financial implications for DCJ to remunerate members of community or reps of ACCOs.		**This amendment is not opposed in principle. It would be helpful to understand how this principle may work in practice For example, what information would the Court have in order to consider the effect of the order on the community? Would the Court determine the parameters of the opportunity to be heard in the usual way? For example, limiting this to addressing the Court on certain issues?**
[11]	**93 General nature of proceedings**	Provides some guidance to the court when deciding whether to apply the rules of evidence in care proceedings. New provision	The NSW Children's Court has previously advised that its current broad discretion to apply the rules of evidence to all or part of proceedings (s 93) should remain and not be curtailed by any prescriptive criteria. Both the Court and Legal		The current wording provides for broad discretion in relation to the application of the rules. We suggest that this is more a training issue as

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	FIC Rec 123	says Court can determine that rules of evidence apply if (a) a party wants the rules of evidence to apply to the proof of a fact, AND the court believes that proof of that fact is or will be significant to the determination of the proceedings, or (b) if the court is otherwise of the view that it is in the interests of justice to direct that the laws of evidence apply to the proceedings or part of the proceedings.	Aid have advised that it is likely to add to the complexity of matters, increased formality and interlocutory applications. To consult with DCJ Legal, Legal Aid and Children's Court on this provision.		opposed to an issue that requires legislative reform.
[12]	**93AA General principle for proceedings concerning Aboriginal and Torres Strait Islander children and young people**	Inserts a rebuttable presumption that in any care proceedings involving Aboriginal and Torres Strait Islander c/yp, the Court must presume that the removal of a child or young person from their family or community causes harm, and contributes to breaking the child or young person's connection to country, and imposes duty on court to actively consider the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles. Also, when giving reasons for its decision, the Children's Court must set out how it has considered the presumption, and if the presumption has been rebutted, the grounds for the rebuttal, and how it has applied the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles, the principle of self-determination and the principle of participation.	How would this provision be operationalised? Legal Aid has noted that it is difficult to require judicial officers to consider *"the known risks of harm to children of being removed from their parents or kin",* particularly if evidence about such risks were not relied upon in a particular case. In each case there should be evidence before the court that addresses how risks of removals for Aboriginal children will be mitigated through care planning and compliance with the Aboriginal Child Placement Principles. Consultation with Legal Aid and Children's Court required.		**Legal Aid NSW queries whether this amendment is necessary given the proposed amendments to the principles of the Act. We have also previously raised the issue of what specifically the Court would be required to consider and whether they would be relevant to that particular case. It may be beneficial for the amendment to actually articulate specifically the known risks for consideration.**
[13]	**105 Publication of names and identifying information** FIC Rec 15	Inserts a defence to a prosecution under s 105 if it is proved that the person who published or broadcast the name of a child or young person acted in good faith, and • to promote the safety, welfare or well-being of the child or young person • or otherwise in the public interest.	Adopting defences to prosecutions under this provision effectively sanctions the publication or broadcasting of information, notwithstanding the considerable harm that might be caused to a child. Also a 'public interest defence' to a criminal penalty is inappropriate, as the person disclosing could not be certain they satisfied the test until they were prosecuted. A young person can already consent to the publication and the Secretary can consent to publication for children and young people under parental responsibility of the Minister. Another solution could be to lower the age of which a child can consent to a publication identifying them as being in OOHC from 16 to 14 years of age which is consistent with a child's capacity to make other decisions such as consent to their own medical treatment and enter into civil contracts to their benefit. This gives a mature child control of any publication identifying them and prioritises their views, interests and rights. Another option could be to also allow the Children's Court to consent to the publication or broadcasting of the name of a child or young person who is or has been under the parental responsibility of the Minister or in out-of-home care, if the Children's Court considers that the publication or broadcasting of the name of the child or young person would be in the public interest having regard		- **Could potentially encourage (and therefore increase) the publication of material that is sensitive and might cause harm to the child.** - **More appropriate approach is for determination as to whether material should be published to be made before publication to ensure that there is proper consideration of the interests of the child and regulation of the information published.** - **Query whether public interest is the right test given the objects**

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			to the rights and interests of the child or young person. This amendment, if accepted, would allow people, including media organisations, to apply to the Court for such approval rather than the Secretary, or, in the event of the Secretary's refusal to give consent, in spite of the Secretary's refusal. Both these alternative options mean effectively that permission is sought <u>before</u> a child's name is published or broadcast, rather than after the fact, when the harm may already have been done.		**and principles of the Act;** - **LA NSW accepts that there is a lack of understanding (and therefore public confidence) in the decisions made in the Court and that the publication of all decisions would assist with addressing this issue;** - **If consideration is being given to other alternatives (including children being able to consent) then age should reflect age that a child is presumed to have capacity to instruct a legal representative (12 years).**
[14]	**106A Admissibility of certain other evidence** **FIC Rec 48**	Removes the provision that requires the Court to admit evidence of previous removals of children and instead requires the Court only to admit evidence where a parent is named by a police officer or coroner as 'a person of interest' or as a person who may have been involved in causing a reviewable death of a child or young person	Although a prior removal of a child from a parent and their non-restoration is a potential risk factor, DCJ needs to make an assessment of the current risks to the child who is the subject of the care proceedings, and needs to provide evidence showing why the parent is unable to care for that child at that time. Prior removals may be irrelevant to that particular assessment. We acknowledge the FIC Report's finding that the current provision has possible unintended impacts on children, as vulnerable families may avoid prenatal care and other support services due to the fear of having children removed at birth so potentially putting children at risk. Aboriginal Affairs noted that this provision has received national attention as it has been brought up at numerous times in conversations regarding "closing the gap".		The fact that a child has previously been removed and not restored is important information for the Court to consider in the context of the safety of subsequent siblings. The Court needs good quality evidence about the circumstances surrounding the removal of the previous child so that the Court can make an assessment as to the relevance of the previous removal to the current proceedings. However, if Section 106A is preventing families from engaging due to concerns about an immediate removal then Legal Aid would support this amendment provided the information was mandated to be made available to the Court in some other way.
[15]	**248A Collection of information by Secretary and Children's Court**	Any information collected under this section and that is made publicly available must not be identifiable.	The proposed amendment would be consistent with existing privacy legislation.		
[16]	**263A Review of provisions inserted by Children and Young Persons (Care and Protection) Amendment (Family is Culture Review) Act 2022**	The Minister is to review within 2 years the amendments made to this Act by the Bill to determine whether the policy objectives of the amendments remain valid. A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.	It is standard for new legislation to contain a review provision to check that the amendments are working as intended. If passed, the review of the Bill could be included as part of the planned 2024 legislative review		
[17]	**Section 264 Regulations**	Creates a regulation making power for regulations to be made about the recognition	See above re ACCOs in the definition section.		

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		of Aboriginal community controlled organisations, for the purposes of section 83A(5)(e) and 87(2A)(b)(ii).	Minor legislative issue about whether we need another reg making power to prescribe criteria against which ACCOs are assessed. PCO advice will be sought.		
[18]	**Sch 3 Savings and transitional provisions**	These provisions: • apply the amendments in Items [5]-[10], [11]-[12] and [14] to current proceedings that haven't been finally determined.	DCJ Legal and Children's Court advice to be sought about the operational impact of applying these provisions to current proceedings on foot.		