

Know Your Rights.

Aboriginal Families Navigating the NSW
Child Protection System & Finding Supports

I'm worried my child could be removed

Stay one step ahead if you think your child could be removed
by the NSW Department of Communities and Justice.

This guide includes the experience and advice of Aboriginal families who have been through the New South Wales child protection system and were part of the **Bring Them Home, Keep Them Home** (BTHKTH) research at the University of New South Wales. The families have given us permission to share their experiences.

These are family experiences of what they found works for them that is shared. This does not constitute AbSec advice or views. AbSec recommends seeking independent legal advice wherever possible to assist you in your own circumstances.



First contact from DCJ

As soon as DCJ contacts you or you know a report has been made:

- Write down what they say.
- If possible, make sure you have someone with you when talking to DCJ.
- Seek legal advice and an advocate (support person) as soon as possible.

ROSH reports

DCJ usually find out about you and your family because someone made a risk of significant harm (ROSH) report. DCJ have a legal responsibility to investigate all reports. Some are labelled as old or untrue, but others might be labelled as lower risk. You usually won't be told about the reports until you have a DCJ caseworker knocking on your door.

Sometimes DCJ say there are lots of reports, but this can be a tactic and it could just be a few reports on the same issue. Ask DCJ about the following and write down their answers:

- How many reports are on my file?
- When were these reports made?
- What are the reports about?



I got a phone call from [their grandfather] saying, why did FACS just call me and ask if I can take the kids? I said, what do you mean, he goes, I can't take the kids. I said, I don't want you to take the kids what are you talking about? So I'm coming to pick them up.

- Parent, BTHKTH research



First contact from DCJ

What happens if someone from DCJ comes to my house?

There is usually a first visit to your house, which could be a check-in or a safety assessment. Either way, DCJ will always be assessing you when they are with you. DCJ say they will try to ring you before they visit your home¹.

If they are being fair and transparent, they should organise a time with you to do the safety assessment instead of just showing up. They can also talk to your children, doctors, hospitals, police, teachers or other relatives before they talk to you.

- **Ask what DCJ think the current safety worries or allegations are and write this down.**
- You don't have to tell them anything until they do the safety assessment with you. **If you do say something, write down what you told them.**
- **Ask for a copy of their notes.** They will take notes for every single one of your meetings.

At this home visit, DCJ will most likely want to see your child. This is often distressing for Aboriginal children.

DCJ caseworkers are required to *"talk with the child, family and others with empathy, acceptance, respect and curiosity, in a way that they can understand and that respects their culture, language needs and any disability"*². This means DCJ should be speaking respectfully about you when they are talking with your child.

- **Your child has their own rights. They should also have someone with them** (family member, support worker, advocate), that is not a DCJ worker.

DCJ are required to plan for the most effective and respectful approach during assessments³, but this is not the experience of other Aboriginal parents.

One parent said *"Some things that they were doing, they were going through my cupboards, going through my clothes, going through my drawers, fully rummaging through things. I didn't know they weren't allowed to do that, I thought they were allowed to do that."*

DCJ is required to be transparent and honest at home visits⁴.

- **Record or write down what they told you** so that you can go back to that and be clear about what is happening.
- **Ask them any questions you have**, to make sure you understand the process.

You have a right to ask the caseworker if they have done a cultural consultation, so they can better understand your cultural experiences and needs⁵.

- **Ask them if they did a cultural consultation before meeting with you.**

Everything you do, say, and even the way you look, can be used by DCJ and may end up in a Court document. It's the experience of other Aboriginal parents that DCJ can judge you if you show aggression or anger, even sadness, but they can also judge you if you show no emotion at all.

- **Tell them why you are feeling the way you are and write this down** so that when it comes to court you can use this as evidence.
- If you are worried about how a worker has judged, you can **write an email or message explaining why you responded in the way you did**. If they have a different view about why you responded in the way you did then you have evidence of it.
- **Protect yourself by having someone else speak on your behalf whenever possible.**

If you are worried about how you were treated by DCJ, there are complaint processes outlined in another of our guides 'Key contacts when involved with child protection'. You can also:

- **Speak to the caseworker's manager or the managers' manager.**
- **Tell a support service** you are working with.
- **Speak to your lawyer, advocate, and support person.**



If you are feeling anxious, sad and in other ways not feeling good, you can call these numbers at any time:

13 yarn: 13 92 76

QLife: 1800 184 527

Brother to Brother: 1800 435 799

Lifeline: call 13 11 14, text 0477 131 114

Yarning Safe n' Strong: 1800 959 563

Suicide Call Back Service: 1300 659 467

¹ DCJ Guide for Families, p.12.

² Standard 4.1, DCJ Practice Framework Standards.

³ Standard 6.3, DCJ Practice Framework Standards.

⁴ Standard 8, DCJ Practice Framework Standards.

⁵ DCJ Guide for Families, p.12.

Create your own evidence

The system collects information in their reporting, investigation, and assessment processes.

The information caseworkers record on their database is called evidence and can be used in court to justify removal.

How do I collect my own evidence?

When DCJ goes to court, they create a story about you and give it to the judge. They will often add assumptions without the full picture or your family's voice. This is often harmful to families.

- **Write down information in a way that works for you** (phone, book, emails).
- **Keep copies of everything**, screenshot text messages from your caseworker, keep a record of call logs, and ask for all of your paperwork. Save this in more than one location, such as printed out or a hard drive.
- **Listen to what DCJ is saying about you and your family**, this will tell you what story they will tell the court.
- **Write down what they say.** Document what happens at any meetings, home visits, family time, or assessments.
- **Make a note of what you agree with and don't agree with.** When you know what they are saying is not right, collect evidence to prove it.
- **Keep photos and videos that are relevant to the allegations** (if there are any). If they show you something, ask for a copy of it.
- **Ask people who know about what happened to make a record it.** Ask your support service to record what you want them to know. These notes can be requested by the court.
- If you have a meeting with DCJ on the phone or in person, **ask your advocate or support person to write down what they are hearing** including what you said to DCJ.
- **Ask DCJ for a copy of the meeting record** so that you can correct anything they might have written down wrong. Their notes should say what you said, and not what they think you meant.
- **If DCJ are leaving you voicemails, you should keep these** in case you want to use them in court.

Try to keep all communication between you and DCJ in messages and emails (written form). This can help DCJ stay more accountable. Parents say that DCJ are more controlled in meetings and can be less controlled in messages or emails.

- **Add your advocate, support service, or lawyer to the email.**
- **Make sure that the email you are using has enough storage space** to save all emails you will need or make one email address just for your emails with DCJ and services.
- **Save numbers in your phone so you know who is calling.** Caseworkers will often call from a private number.

You can choose to let it ring out and go to voicemail and call back when you are ready or email them instead. At every opportunity, turn the call into an email or a meeting with a support person and/or advocate present.

“You say, after every visit, I want my notes... it's very important that you get those, because if there's something in there that you're not aware of, you're not going to find out until it's already in the hands of the courts, and something could be said really bad and blown out of proportion.”

- Parent, BTHKTH research

Asking for assistance

Ask the caseworker if you can record the conversation, but if you record a conversation without asking permission, you are going against the law and it can't be used in Court. A mobile phone or other recording device is considered a "listening device."

One mum said "I actually have a recording of this because I had no support person at the time and I was terrified of DCJ – FaCS because I didn't trust them and I knew what they did in their meetings and how these conversations went so I did not feel safe. I did not have a support person with me at all... I really felt like that was a really unfair power imbalance in that setup so I brought a recorder and I have this recording."

- **You can ask to record the conversation**, but you should ask "is this a private conversation?" If they say no, you can press record.
- **You can install cameras in your house** (dash cam, surveillance cameras).

Find people who will help you hold onto your truth. Get community members to write character references. Be seen by community who can speak to your commitment to keeping your child safe and working on DCJ's worries. Even though DCJ will say that they cannot talk about your case to anyone, you can talk to anyone you like about what they have said to you in meetings.

Build your own case and tell your story

Don't let the story built by DCJ be the only story.

One mum has said "...I was working three jobs, studying, doing NA, urinalysis, drug and alcohol counselling, child programs or parenting programs, still meeting up with lawyers... still traveling to Newcastle twice a week, every week."

The Judge at Court needs to look at all evidence, so create a story that goes against DCJ's version of your family. Show who your family is and their relationship to your child.

Language is important

If what DCJ says does not represent what happened, or the way it happened:

- **Write it down**, and if it feels safe enough, let them know.

You can send the case worker a message to let them know you understand they are worried and then explain what really happened or the full story behind it. Your text messages will be placed on your child's file.

Getting hold of Information

DCJ can get copies of information from services and use this against you, such as drug and alcohol counselling notes and records of attendance. There are some counselling notes that are private, including sexual assault counselling.

- Make a list of the evidence that you think could be used against you.
- Work with your support network to make sure that what is written about you is true.

DCJ caseworkers are required to give families copies of assessments, case plans, and safety plans⁶. When a care application is made, the Secretary (DCJ) must quickly give the parents a copy of the application and any other documents. The information must be written in a way the parents can understand⁷. It's the experience of parents that DCJ don't tell you that you have a right to these notes, but you should keep asking.

⁶ Standard 4.2, DCJ Practice Framework Standards.

⁷ Section 64 (4) (5), Children and Young Persons (Care and Protection) Act 1998.

Preparing for court

DCJ can decide to go to court at any time. If DCJ remove your child and put in (file) an application to the court, it will have to be in Court within 3 working days (and definitely no later than five days), and you will be given three working days to respond to the court.

This is a stressful time. You can tell your lawyer to challenge any application in Court, but it will help them if you are able to contact them early, provide some of your notes or evidence and they can prepare the case with a little bit of notice.

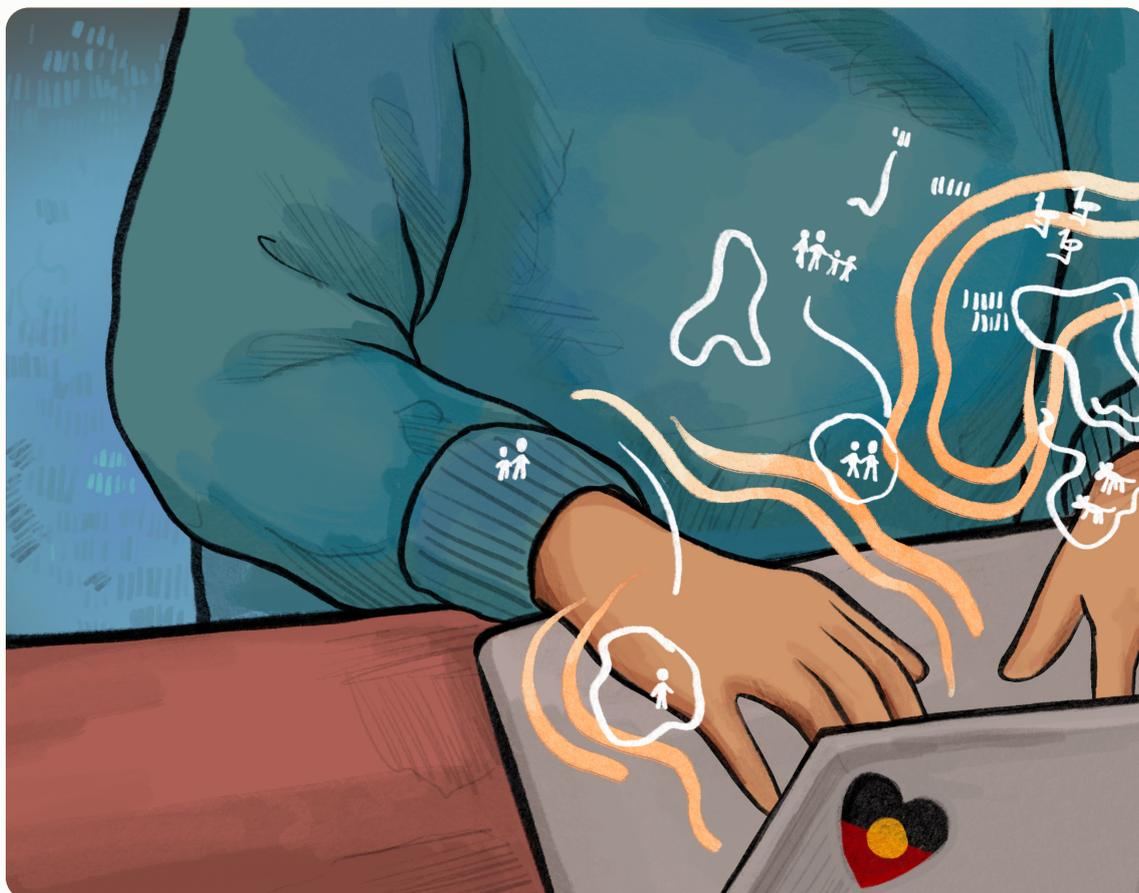
- Have your evidence ready for your lawyer to use in Court.

If you have documents or records of meetings that DCJ has not included in their court documents then they can get in trouble from the court for not behaving in the highest professional standards (being model litigants).

Writing about your family must be “respectful, fair, and accurate”. The background story of any actions or words by you or your child should also be included⁸. An example of DCJ not doing this, is if at Court DCJ builds a positive case for the foster carer but deliberately leaves out positive information about your family.

If violence is mentioned, it should be described clearly, with responsibility given to the person who was choosing to be violent⁹. You could ask DCJ if you can take a photo of what they have written, and read it and sign it, to check in real time if they have written and recorded things accurately. You can make a note in your own record if they refuse to change what they have written. You will then be sent the documents and can compare them.

If you are experiencing domestic and family violence there are sometimes funds through support services (like Staying Home Leaving Violence) you can apply for.



⁸ Standard 4, DCJ Practice Framework Standards.

⁹ Standard 4.3, DCJ Practice Framework Standards.

Build your support team

Aboriginal parents have said that having a good support team made the biggest difference for them when dealing with the child protection system and making sure their family stays together.

Your support team can be people who understand you and will support you in ways that work for you.

“I’ve got heaps of services that I’ve been involved this whole time, since before my recovery, and I think that’s helped a lot because back then, when my kids were taken, I had no one, and they took full advantage of the fact that I didn’t have support.”

- Parent, BTHKTH research

Form your supports

- **Make a list of the family and kin, community members, friends, lawyer, advocates, and support services or others who understand the child protection system.**
- **Write down what your supports helps you with and how.**

They can be workers who you are already working with or who you have worked with before. They don’t all have to know each other or work as a team. You might want different people for different kinds of support at different times.

Some people don’t understand the child protection system or think that it doesn’t take kids anymore. Share information guides like this with them so they can take your worries seriously.

When you have a support person, find out what they know about the system and how they will support you and your family. Will they manage the child protection system in a way that gives you time to do what you and your children need?

In all meetings with DCJ you are entitled to have a support person with you. If you invite someone to be a support person when you are talking with DCJ, make sure they understand how you want them to support you.

Sometimes DCJ can use the way support people respond against families, such as “your mum (your child’s nan) does not agree with the department so we can’t consider her as a person who could care for your children.”

Supportive caseworkers

Your caseworker should support you, though if you feel like they’re only acting against your family, and you’re trying to work with them:

- Ask for a new case worker.
- You have the right to an Aboriginal case worker (under the Aboriginal Case Management Policy)¹⁰.

Knowing who to talk to — and who not to

Identify people who are safe and unsafe to talk openly to.

All workers funded to work with children are mandatory reporters which means they have to tell DCJ if they think what is happening is something they have to report under the law. You will need to be very careful of how you engage with mandatory reporters, especially in the school and medical environments. They should tell you if they are a mandatory reporter.

- **Tell the mandatory reporter you would like to do the report together**, so that you can say what is going on. They can do this, but they don’t have to.
- **Look back at your list of supports and think about who understands you, who will support you in a way that works for you and your family**, and who understands the dangers in the systems that you are dealing with.

¹⁰ <https://absec.org.au/aboriginal-case-management-policy/>

Get legal advice or representation

It is important to get legal advice as soon as possible.

Getting a lawyer early can help avoid your case going to Court. They can help you understand your rights and responsibilities.

Aboriginal Legal Service (NSW/ACT) Limited

1800 765 767

Legal Aid NSW

1800 551 589

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“It wasn't until I got my lawyer, he came in and he's like 'I heard your situation. I heard that you're not being represented properly. I'm here and I'm staying.' If it wasn't for my lawyer, then I don't know how long it would have taken me to know what I was doing.”

- Parent, BTHKTH research

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When to act

Once your case is taken to court, the more information your lawyer has, the better they can do their job.

- Contact a lawyer as soon as DCJ contacts you.

Before DCJ takes a child off their parent, DCJ usually gets legal advice from their own legal team. If you are meeting with DCJ and you think they are planning to take your child, you can ask them if they have asked for legal advice. This could give you an idea about whether they are thinking about taking your child away.

DCJ may give you a piece of paper called a Temporary Care Agreement or a Family Action Plan. It's important to check this with a lawyer, even if you think you understand it or think it is okay.

Where to find help

To find a lawyer or legal advice, contact organisations like:

- Aboriginal Legal Service (NSW/ACT) Limited 1800 765 767
- Legal Aid NSW 1800 551 589
- LawAccess NSW 1300 888 529
- Women's Legal Service NSW 1800 810 784
- Your local Aboriginal organisation
- Ask around in your community.

Some lawyers offer their services for free (probono) if you are not able to get legal aid, or at lower rates for clients they see through certain organisations, such as women and children's refuges.

Not all lawyers have the time to support you in the way you need or may give you advice that you don't think is right. If you think that the lawyer is not going to support your case in the way you need, then you can ask for a different lawyer.

- If your court date comes and you don't have a lawyer yet, (you may still be waiting to hear back), you will be given a Duty Lawyer.

As Duty Lawyers are not familiar with your case and might not understand you as a person, you can ask them to ask that your case be heard later in the day, to give more time to speak to them about your story, or to find another lawyer that is there on the day. Or you can ask them to ask for an adjournment (a delay). But the Court will still be wanting to make decisions while you look for a new lawyer.

Find a child and family support service

Each support service is different, and can make a big difference.

Ask around in your community or look online for local services that you think will be most helpful to you.

“I’ve got my licence now because (support service) said if you get your licence back, and you get a car, it will help you... I had to stand in front of the judge by myself and ask for my licence back and everything. So, I done all that by myself just so I could help go and see my daughter.”

- Parent, BTHKTH research

Choosing a support service

There are two different types of child and family support services: Aboriginal Community-Controlled Organisations (ACCO) and Non-Government Organisations (NGO’s). ACCOs are Aboriginal community-led organisations that have culturally safe services created for mob and are accountable to the communities they work in. It’s important for you to have choice in the support you want or need.

Additional support services like mental health and wellbeing services, drug and alcohol services, and domestic and family violence services can also be helpful supports. Some ACCOs are a ‘one stop shop’ and offer a range of these services under one roof.

One parent said “I’d been actively engaged with [service]... they pretty much covered everything that the jail needed me to do, like doctor’s appointments...transport, they could do everything that I would otherwise have to get approved, it was all already there.”

If you are actively involved with support services, DCJ will see that you have access to formal supports, which could address some of their worries about your family. However, DCJ’s expectations of you should always be directly linked to worries about your child’s safety and wellbeing.

- If you are worried about confidentiality, **ask them how they make sure your information is not shared with people who do not need to know.**
- With any service you go to, you can ask them about how they report to DCJ.
- **Ensure you have someone with you when you are with DCJ that gives you back some power**, like an ACCO support person to advocate with you. Having a witness helps to prevent caseworkers acting badly and walking over you.

Another parent said “...their tone’s changed now, that I have [worker from ACCO] and they’re involved, they’re very focused on cultural needs and now they want to do restoration... It’s almost like they’re [DCJ] intimidated because I actually have someone by my side who knows what they’re talking about and knows they can’t push me around anymore sort of thing. It’s done a full 180.”

Referrals from DCJ

Depending on the service you want to use, you might need a referral from DCJ but ask the service to make sure.

There are some services you can access through a ‘community referral pathway’, where you can access support services without a referral from DCJ. This will usually mean you have to speak with their intake worker.

Find an advocate

Advocates and support people can help you say what you need, explain what is going on and make you feel less alone or scared.

They can also do things outside of meetings like write support letters, reports, send emails to encourage workers to support you.



...When you're going to DCJ visits, going – yeah, I mean having someone there for support would be massive, for your journey, to be there for like the 12 months, the 24 months, do you get me?

- Parent, BTHKTH research



Understanding the role

Advocacy is something that is done. It is not a particular job. It could be a worker or someone in your community.

Advocates and support people can help you in meetings and home visits with DCJ, going to the police station, going to hospital or when going to court, or talking on the phone with someone. They can be witnesses to what is said and decided upon, take notes and support you to make decisions.

- Find someone who fits this role and meet with them before you meet with DCJ, so they understand where you are at, what you need, what your experience has been, and what you are worried about.

It is important that your advocate listens to you and understands what you are worried about. They should respect your decisions, communicate to others your hopes and wishes, not say anything that goes against your evidence or argument, make you feel more supported and safer, and ideally understand the child protection system. If they tell you to just do what DCJ says then you might want to think about whether they are the right advocate for you.

Some parents have said that the best way to find either an advocate, support person or service, is word of mouth in their community or asking ACCOs.

Parents and advocates say that some DCJ workers don't really like you having advocates and sometimes DCJ can try to make your life harder. This does not mean that you should not have one. You are entitled to have a support person with you.

Types of advocates

Some advocates can attend meetings as part of their roles (like case workers) and some do not have the capacity to (like some private counsellors).

It's best if advocates are a recognised professional, so that they have more power to help protect you. Family attending as support also need protection.

People who are not lawyers cannot provide you with legal advice but can explain processes to you. Your Lawyer cannot attend DCJ meetings unless discussing legal matters. You can also have your advocate meet with yourself and your Lawyer.

Playing the system's game

Some parents talk about being involved with DCJ as “playing the game.”

“The narratives they give you, the system is causing you harm, they are hurting your kids, you need to ‘play the game’ so that you can protect your kids as best as you can. And you need to prepare yourself for a long battle that might not end well.”

- Parent, BTHKTH research

Do what you can and take action

Find out what DCJ's concerns are and ask your support team what you can do to get ahead of DCJ's plan. If you can prove you have made ‘changes’ towards the case plan goal, the chances of your kids staying with you could be better.

If there are things DCJ might see as an ‘issue’, you can work with your support team to begin working on this before DCJ even finds out about it. You can look at the main things you agree with and work on them, whilst also disagreeing with some of the other things they have said.

One parent said: “They were like, oh, well, you’ve been clean for so long– and you’re working, all this, we’ll just cut them down for you. Then they just stopped giving them to me, my urines. I made them start urine-ing me again, because coming up to Christmas, as well, you know what I mean.”

Get ahead of the game

Aboriginal parents have used a strategy called ‘strategic compliance’. This is when they agree to do what DCJ is asking them to do or go above and beyond it, in their own way. Parents are not blindly following what DCJ says, or even agreeing with them, but understand what could happen if they do or don’t do what DCJ says, or do even more than they are asking.

One parent said: “If they say to do that course, go do two, go do three courses, do more than what they ask. If they ask you, oh slow down on the drugs, get off the drugs all together...If you start showing initiative for yourself then they will do more...”

This can be a hard decision for parents to make because it can feel like you are admitting to doing something wrong when that might not be what’s actually happening. But if you don’t do what they say, they might label you as uncaring or unsafe. A way to deal with this is by creating your own evidence.

If you do choose to do what DCJ say:

- **Think about if the actions on the plans are going to help the situation or make it worse.** Think about times when the problem wasn’t around or when you beat it, so that you can come up with a plan that works for you.
- **Make sure that what you say you are going to do is something that you know you can do.** This is because DCJ can use you not doing what you agreed to do against you, even if it’s a small thing.
- **Write emails and messages to the DCJ workers and support service workers, saying every single thing you are doing to work towards DCJ’s goals.** Your support service workers can put this in their notes, and this can be used as evidence in Court to back your story up.

Safeguard your family from DCJ

Some family members pretend to agree with DCJ¹¹ so they can keep a relationship with their children. This is because it became clear that DCJ was not helping families to stay connected with their children, even though they are legally required to¹².

Other Aboriginal parents have said it was hard when their family members took the side of DCJ, especially when DCJ did things to create tension in their relationships.

Parents said their family were also scared of losing their child to foster care or them not being seen as good enough carers for them. A parent has said "...you will need to try and get through this and work hard to maintain your relationships with your family, and it won't be easy."

Everything had to be a secret...The girls were programmed. You can't say that you live with your mum... I was separated from the girls, which was really hard... because mum and dad were just adamant that it had to be the way DoCS said, and then DoCS started showing their true colours, and mum and dad started to see through it and started to go, you can go down to your mum's now.

- Parent, BTHKTH research

Family meetings

A family meeting involving your family, community members, and supporters, can be a chance to decide on what you want as a family in a way that works for you, led by your family and supports, without DCJ.

This yarn can focus on what's going on for you as a family and why, what you are already doing well, and things you want to work on for your child. If you trust your family and community to support you, try and be as open and honest with them as you can. You will need these supports if you have to go up against DCJ. This can also be a place for your family to talk about how everyone will approach DCJ and what they will and won't tell them.

- Find somewhere you feel comfortable, safe and where most people can do it. You can make this an online meeting if this works best for you. Meeting on country might help you draw strength to have the hard conversations.
- Invite the people who already have a relationship with your child that you trust. Bring people who can offer ideas and different ways of helping out.
- If you feel you need some help in coordinating this meeting, think about a friend or family member who is respected by the people you want to be there, such as an Aunty or a service you trust.

A family meeting without DCJ can be really helpful at any stage in the process especially before DCJ get involved, but if they do get involved, it would be best to do this as soon as possible.

Some people like to have a talking stick to make sure everyone gets a say and that people don't talk over each other. Write down who is going to do what and how and by when. This is so everyone is clear on what they are doing, but also it can be used as evidence of the support you have. Getting people to sign the agreement can be helpful. Everyone can take a photo of what they are agreeing to.

You might need to have separate family meetings with different people if there is conflict, a worry about violence, or someone is taking over and not letting others be involved.

¹¹ 'Playing the Game': How Aboriginal Families Navigate Child Protection Systems to Restore Their Children Home From Out-Of-Home Care, 27 May 2025

¹² Section 12, Children and Young Persons (Care and Protection) Act 1998

Finding ways for your child stay with family/kin

Sometimes DCJ will ignore placement principles, skip finding family members, and place the kids with foster carers, even though they are not meant to. DCJ often use information they already know about family members to say that they don't need to have conversations with them.

One parent said: "I was very determined...to get them to put him into Aboriginal family care straightaway because I was like straight onto them, I said no, I want him to be with family...they were constantly moving him around, so how am I supposed to know if he's okay or if he's safe there?...as soon as I knew that he was with family my stress levels were down to zero and it was like, yeah."

- Advocate early for your children to be placed with family.
- Remind your DCJ caseworker of their legal responsibility to follow the Aboriginal and Torres Strait Islander Child and Young Person Placement Principle, which says the first option should be to place an Aboriginal child with Aboriginal family¹³.
- Remind DCJ of their responsibility to follow the Aboriginal Case Management Policy (ACMP), which says decisions should be led by Aboriginal family.
- Bring family along to DCJ meetings so that the workers get to know them, even if they think they already know them.

If you think your child will be removed, think of family and community members that could take care of your child/ren temporarily.

You can decide to make a family arrangement legal through the Family Court to try and avoid DCJ involvement. You can go to family court and hand over interim parental responsibility to a family member through an affidavit (a written statement) or consent orders. DCJ can still be a part of the court proceedings in Family Court, but they cannot remove the child if there is a family arrangement in place with no worries or risks. Once DCJ has taken a child, you must go through the Children's Court, not Family Court. Ask your lawyer if family law can help your situation and how to do this.

If this family member gets a Working With Children's Check (WWCC), character reference, police check or any other probity checks, this could make it harder for the Court to say no to them being a carer. However, not being able to get a WWCC is not the end of things. You should talk to your lawyer about this. The Court can give Parental Responsibility to a family member who does not have a WWCC. The WWCC is only needed if DCJ has Parental Responsibility and they are looking to make your family member an authorised carer (approved to provide out-of-home care (OOHC) to children).

Placing your child with someone else does not always mean it is forever. Your child being placed with a family or kin can make restoration (coming home) easier. It also means that your children are with someone that they know.



¹³ Section 13, Children and Young Persons (Care and Protection) Act 1998

What should DCJ be doing?

Laws and policies

The child protection system is guided by laws. To put these laws into practice, they write policies. DCJ is supposed to follow these laws and policies. There is also a thing called a practice framework that is supposed to guide the way they work with families and communities. Policies and practice frameworks are not always followed.

You can read the laws, policies and practice framework if you want to see if DCJ caseworkers are doing what they should be. If you feel safe enough, ask DCJ how they are making sure they are following them when they work with your family.

You can mention these laws and policies to DCJ, such as wanting a family meeting, participating in decisions about your children, or where your child is placed.

Ask your lawyer and support team to help collect, track and write up evidence about how DCJ have and have not followed these laws and policies.

What is the main law that DCJ needs to follow in child protection matters?

DCJ workers are required to follow the law called the Children and Young Persons (Care and Protection) Act 1998.

Aboriginal and Torres Strait Islander Child and Young Person Placement Principle

The Aboriginal and Torres Strait Islander Child and Young Person Placement Principle (Section 12A of the law) has five sections:

- **Prevention:** A child or young person has the right to be brought up within their own family, community and culture.
- **Partnership:** Community members should participate in making decisions about individual children and young people.
- **Participation:** A child, young person, their parents and family should participate in decisions about the care and protection of the child or young person.
- **Connection:** DCJ are required to support a child or young person to maintain connections to family, community, culture and country.
- **Placement:** Over half of Aboriginal and Torres Strait Islander children are still being placed with a non-Aboriginal carers¹⁴, even though this is meant to be the last placement option. Aboriginal and Torres Strait Islander children should be placed in OOHC, in this order:
 - With Aboriginal and Torres Strait Islander relatives or extended family members, or other relatives and family members.
 - With Aboriginal and Torres Strait Islander members of the child's community.
 - With Aboriginal and Torres Strait Islander family-based carers. If the above preferred options are not available, as a last resort the child may be placed with:
- A non-Indigenous carer or in a residential setting.

Self-determination

Section 11 of the law says "Aboriginal and Torres Strait Islander people are to participate in the care and protection of their children and young persons with as much self-determination as is possible."

Aboriginal Led Decision Making

Aboriginal and Torres Strait Islander families, communities, and representative organisations must be given a chance, through ways approved by the Minister, to be involved in decisions about where their children are placed and other important decisions about their children under Section 12.

Active Efforts

These are the actions taken by DCJ under Section 9A of the law, to support you, that are quick enough, practical, ongoing, culturally appropriate, and in partnership with your family and community. DCJ are legally required to make active efforts so that your child does not go into OOHC, and to return them home if they are taken from you. Active efforts will look different for each family, because every family has different needs and strengths.

What policies should DCJ be following?

“They make you believe that they can do whatever they want, and you’ve got no rights. I still to this day don’t even know my rights. No one actually has ever told me what my rights were at that time and what should have happened.”

Aboriginal Case Management Policy (ACMP)

This tells DCJ how they need to be led by your family in assessments and decision making, by:

- Aboriginal Family Led Decision Making (AFLDM): Workers should make sure that your family and community is participating in decisions and actions affecting them. Ways this can happen include having an Aboriginal Community facilitator, making sure family are key decision-making partners, there are family made ‘family plans’ and follow up efforts. This should happen early on in your involvement with DCJ.
- Aboriginal Family Led Assessments (AFLA): DCJ workers should prioritise culturally valid assessment tools to identify and clarify the concerns related to the risk assessment that DCJ does. They should work through a cultural lens and be supported by Aboriginal practitioners where possible.

Model litigant

Litigation is the formal process of taking legal action through the Courts. The Government and its agencies (DCJ) are required to act as a ‘model litigant’; acting to the highest professional standards. DCJ should **act honestly and fairly in litigation (in court), not hold up the case, and avoid litigation when they can**. If litigation has to happen, DCJ shouldn’t take advantage of someone who doesn’t have the resources (such as money) to go to Court. They should not be unnecessarily causing delay in Court either. DCJ is required to apologise if they acted inappropriately.

DCJ Practice Framework Standards

DCJ is required to follow the Practice Framework Standards. This is a set of principles DCJ must follow when working with you and your family. The principles say DCJ must be **culturally safe, respectful, and focus on your strengths. They must also support self-determination, family-led decision-making, and the preservation of children’s connections to their culture, community, and Country**. ‘Dignity giving’ means that they cannot blame victims of violence or blame mothers for the violence perpetrated against them and their children.

- In the DCJ Practice Framework standards document, there is a list of questions you can ask your DCJ caseworker to ask you. Questions like “...have I helped you understand what your rights are and made sure that your rights and needs are met, on your terms?” and “...do you think I have a good understanding of who is in your family and who is important to you?”¹⁵. Write down this conversation and give it to your lawyer for evidence.

DCJ say that they are responsible for upholding these Standards when they work with you and if you have questions or feedback about your experience, to talk to your caseworker, or ask to talk to the casework manager. You can contact the Enquiry, Feedback and Complaints Unit on 1800 000 164, or email complaints@dcj.nsw.gov.au.

¹⁵ <https://dcj.nsw.gov.au/documents/service-providers/deliver-services-to-children-and-families/child-protection-services/practice-framework-standards.pdf> p.44.

References

Bring Them Home, Keep Them Home research	unsw.edu.au/staff/bj-newton
Playing the game paper	onlinelibrary.wiley.com/doi/full/10.1002/ajs4.70027
Model litigant policy	arp.nsw.gov.au/m2016-03-model-litigant-policy-civil-litigation-and-guiding-principles-civil-claims-child-abuse
Aboriginal Case Management Policy	absec.org.au/aboriginal-case-management-policy/
Working With Children's Check	service.nsw.gov.au/transaction/apply-for-a-working-with-children-check
Child Placement Principles	snaicc.org.au/our-work/child-and-family-wellbeing/child-placement-principle/
Children and Young Persons (Care and Protection) Act 1998	legislation.nsw.gov.au/view/whole/html/inforce/current/act-1998-157#sec.64
DCJ Guide for Families	dcj.nsw.gov.au/children-and-families/nsw-child-protection-guide-for-families.html
DCJ Practice Framework Standards	dcj.nsw.gov.au/children-and-families/caseworker-visits/practice-framework-standards.html
Aboriginal Child Protection Statistics	aihw.gov.au/reports/child-protection/child-protection-australia-2022-23/contents/aboriginal-and-torres-strait-islander-children/out-of-home-care

Know Your Rights.

Aboriginal Families Navigating the NSW Child Protection System & Finding Supports

A trusted and accessible online resource built by mob in NSW to stand up for our rights and keep our kids strong, safe and connected to family.

