

**Hon Andrew Little**  
Minister of Justice

**Proactive release – Strengthening the Family Court: Enhancing child and whānau wellbeing in care of children matters**

Date of issue: 21 July 2020

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	<b>Strengthening the Family Court: Enhancing child and whānau wellbeing in care of children matters</b> <i>Cabinet paper</i> Office of the Minister of Justice Lodged: 13 February 2020	Some information has been withheld in accordance with the following sections of the OIA: <ul style="list-style-type: none"><li>• 9(2)(b) to protect information which is subject to an obligation of confidence.</li><li>• 9(2)(f)(ii) to maintain the constitutional conventions for the time being which protect collective and individual ministerial responsibility.</li><li>• 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.</li></ul>
2	<b>Minute of decision: Strengthening the Family Court: Enhancing child and whānau wellbeing in care of children matters</b> <i>Cabinet minute</i> Cabinet Office Meeting date: 19 February 2020	Some information has been withheld in accordance with the following section of the OIA: <ul style="list-style-type: none"><li>• 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials.</li></ul>

In Confidence  
Office of the Minister of Justice

Chair  
Cabinet Social Wellbeing Committee

## **Strengthening the Family Court: Enhancing child and whānau wellbeing in care of children matters**

### **Proposal**

1. This paper seeks approval to a package of legislative proposals to strengthen the Family Court so that:
  - 1.1. a Family Court (Reinstatement of Lawyers) Bill can be introduced on Budget-night to reinstate legal representation in the early stages of Care of Children Act 2004 (CoCA) proceedings with legal aid for eligible parties; and
  - 1.2. a Strengthening the Family Court Bill can be introduced in June 2020 to progress further changes.

### **Executive summary**

2. I seek your agreement to a package of legislative proposals that focus on strengthening the Family Court in care of children matters. The proposals promote my vision of a Family Court that is at the centre of, and is the key entry point to, a family justice system that continues to place child wellbeing at its heart.
3. Alongside additional measures submitted for Budget 2020, these changes will ensure that families and whānau are well-supported with early legal advice and information, children's participation is enhanced, and lawyers' duties are expanded in care of children proceedings. They also aim to reduce the level of delay in resolving issues in the Family Court.
4. I seek agreement to develop a Family Court (Reinstatement of Lawyers) Bill to progress one key change that will amend CoCA and the Legal Services Act 2011, for introduction on Budget-night. That change is:
  - 4.1. reinstatement of legal representation in the early stages of CoCA proceedings with legal aid for eligible parties.
5. I also seek agreement to develop a Strengthening the Family Court Bill to progress seven further changes that will amend CoCA, the Family Dispute Resolution Act 2013 and s9(2)(f)(iv) [REDACTED], for introduction in June 2020. Those changes are:
  - 5.1. s9(2)(f)(iv) [REDACTED]
  - 5.2. establishment of a children's participation principle;
  - 5.3. establishment of an expectation that parents will consult, where appropriate, with children on important matters that affect them;
  - 5.4. establishment of lawyer for child criteria for appointment;

- 5.5. requirement that a lawyer for child explain proceedings to the child;
- 5.6. obligation on lawyers to promote timely and cost-effective resolution; and
- 5.7. a cross reference to the principles in section 4 of the Family Violence Act 2018 to guide decision making.

6. s9(2)(f)(iv)  
[REDACTED]

7. Together, these proposed initiatives seek to enhance child wellbeing in care of children proceedings, both directly and by assisting parents to resolve parenting disputes. The Ministry of Justice will work with Oranga Tamariki and the Department of Prime Minister and Cabinet (DPMC) to ensure a joined-up approach for children whose parents and whānau are in dispute, in alignment with the Government's Child and Youth Wellbeing Strategy.
8. Strengthening the family justice system and addressing the current underlying cultural and systemic issues will take time. These proposals form the first phase in a long-term programme of work in the family justice system and set the direction for further reform. I will return to Cabinet with detail on proposed further reform in due course.

**2014 reforms to the Family Court have had a negative impact on children, parents and their whānau**

9. Established in 1981, the Family Court was designed with child wellbeing at its heart, seeking the timely and sustainable resolution of conflict and disagreement. CoCA, previously the Guardianship Act 1968, is the central piece of legislation that helps to ensure that appropriate arrangements are in place for children's guardianship and care. It encourages agreed arrangements for, and provides for the resolution of disputes about, the care of children.
10. Extensive reforms of the care of children regime took effect in 2014. These reforms intended to encourage individual responsibility and shift the focus from in-court resolution, to encouraging parents to reach agreement themselves through out-of-court processes. The reforms aimed to enable the Family Court to focus its resources on serious and urgent applications that were not suitable for out-of-court resolution. One of the most significant changes was the removal, for fiscal reasons, of legal representation and legal aid in the early stages of on-notice CoCA proceedings.
11. The removal of legal representation has created a perverse incentive for parties to file applications without-notice to obtain a lawyer. Without-notice applications are intended to provide a faster response in cases where advising the other party of the proceedings risks the safety of the applicant or their children.
12. Since the 2014 reforms, without-notice applications have risen from 30% to 70% of CoCA applications. This has placed extra pressure on the Family Court and resulted in delay and unresolved conflict. It has also meant that those on-notice applications that require urgent resolution by the Family Court, such as ones

involving unidentified family violence, are delayed and impact on parties' personal safety.

13. In May 2018, the Government agreed to a rewrite of the 2014 reforms, starting with the establishment of an independent three-person panel (the Panel) reporting directly to the Minister of Justice [CAB-18-MIN-0190 refers].
14. Extensive consultation by the Panel, supported by independent research, found that experiences of the family justice system were generally negative. The Panel reported that delay is pervasive at every stage, information to assist children, parents and whānau to understand and navigate family justice services is often inaccessible and of poor quality, there is limited access to state-funded legal advice for those who are unable to afford a lawyer, and there is limited participation by children.
15. There are currently around 16,000 children subject to CoCA proceedings in the Family Court each year. The issues identified by the Panel result in emotional harm to children, and stress and anxiety to their parents and whānau. Children exposed to ongoing inter-parental conflict are four times more likely to have social and emotional problems than the general population. Research suggests it is the related conflict that is more emotionally harmful to children than the actual breakup of the relationship.
16. Effects on children include: fear of an uncertain future; uncertainty about where they will live and go to school; loss of continuity of healthcare provider; loss of social connection with peers and established friendships; shame and/or embarrassment about their family situation resulting in social isolation and withdrawal; and increased risk to mental health and wellbeing.
17. The Panel released its final report in June 2019. The Panel adopted a child-focused approach that aligns with the Government's Child and Youth Wellbeing Strategy. The report contains 69 wide-ranging recommendations on the law, policy and practices that currently govern care of children matters. The initiatives I propose including in this package are drawn from and are consistent with the Panel's report.

**The proposed reforms are the first phase of a long-term programme of work to strengthen the family justice system**

18. Strengthening the Family Court and wider family justice system will take time. I intend to use the Panel's report as the foundation for an extensive, long-term programme of change. Further work is needed to address the impacts of the 2014 reforms and broader underlying systemic barriers to access to justice. This work includes enhancing safety and strengthening the family justice system response to allegations of violence, recognising te ao Māori, better responding to diversity, and accommodating disability. I will return to Cabinet with further proposals on these reforms in due course.
19. I propose the first phase of change focuses on strengthening the Family Court by progressing 12 initiatives consistent with the Panel's recommendations. I seek approval for the eight initiatives that require legislative change. The other four initiatives require funding from Budget 2020 to be progressed.

20. The four non-legislative initiatives subject to Budget 2020 funding are:
- 20.1. s9(2)(f)(iv) [REDACTED]
  - 20.2. Developing quality, accessible information, under the auspices of the Family Court, for children, parents and whānau.
  - 20.3. Establishing Family Justice Liaison Officers to help parents and whānau navigate the system, provide information on process and engage with family justice providers.
  - 20.4. Increasing the remuneration for lawyer for child s9(2)(f) each year for four years.
21. The proposals promote my vision of a Family Court that is at the centre of, and is the key entry point to, a family justice system that continues to place child wellbeing at its heart. Collectively, the 12 initiatives will ensure that families and whānau are well-supported with early legal advice and information, enhance children's participation and expand lawyers' duties. They also aim to reduce the level of delay in the Family Court.

**Cabinet approval is sought for eight legislative proposals**

22. I seek agreement to develop a Family Court (Reinstatement of Legal Representation) Bill to progress one key change that will amend one section each in CoCA and the Legal Services Act, for introduction on Budget-night. I have submitted this Bill as a category three priority (to be passed if possible in the year) for inclusion in the 2020 Legislation Programme. Implementation of this change would begin as soon as the legislation is passed, noting that it is subject to Budget 2020 funding.
23. That legislative change is the reinstatement of legal representation in the early stages of CoCA proceedings with legal aid for eligible parties.
24. Of all the changes I recommend in this first phase, reinstating lawyers in the early stages of proceedings is likely to have the most significant impact on reducing the number of without notice applications. Given that access to justice issue was a key concern identified by the Panel and those they consulted with, it is desirable that there is a timely response on this.
25. I also seek agreement to develop a Strengthening the Family Court Bill to progress seven further legislative changes, for introduction in June 2020. Amendments would need to be made to CoCA, the Family Dispute Resolution Act and the Family Court Act. I have submitted this Bill as a category four priority (to be referred to Select Committee in 2020) for inclusion in the 2020 Legislation Programme. Implementation of these changes would begin as soon as the legislation is passed, noting that one amendment is subject to Budget 2020 funding.

26. The seven legislative changes are:
- 26.1. s9(2)(f)(iv)
  - 26.2. establishment of a children's participation principle;
  - 26.3. establishment of an expectation that parents will consult, where appropriate, with children on important matters that affect them;
  - 26.4. establishment of lawyer for child criteria for appointment;
  - 26.5. requirement that a lawyer for child explain proceedings to the child;
  - 26.6. obligation on lawyers to promote timely and cost-effective resolution; and
  - 26.7. a cross reference to the principles in section 4 of the Family Violence Act 2018.
27. The exact wording of the legislative changes will be refined during the drafting process, in consultation with the Parliamentary Counsel Office.

***Reinstatement of lawyers in the early stages of proceedings***

28. For many people, a lawyer is the main source of advice and assistance when navigating care of children issues. The 2014 reforms amended CoCA and the Legal Services Act to prevent parties from accessing lawyers in the early stages of CoCA proceedings.
29. I propose reversing these amendments to allow parties to have legal representation and, where eligible, legal aid, at all stages of CoCA proceedings. The Panel's review showed that parties want legal representation in CoCA proceedings and this change will ensure parties are better advised on their options throughout the process. This change is expected to initially reduce the disproportionate number of without-notice applications being made (70% of all applications) by approximately 15%.
30. I have sought funding of \$24 million over four years for these changes as part of Budget 2020 to meet legal aid costs associated with an extension of legal representation to early CoCA proceedings.

s9(2)(f)(iv)

31. s9(2)(f)(iv)
- 32.
- 33.

34.

***Enhancing children's participation***

35. The Panel considered that a child-focused approach is central to proceedings in the Family Court. I agree and consider it beneficial to involve children earlier and more effectively in proceedings about their care. Studies show that providing children with an opportunity to express their views can help parents focus on the needs of their children rather than their own conflict, help children adjust to their parent's separation, including improved mental health outcomes and contribute to more durable care arrangements.
36. I seek your agreement to four proposals (discussed further below) to enhance children's participation in CoCA proceedings:
- 31.1. establishment of a children's participation principle;
  - 31.2. establishment of an expectation that parents will consult, where appropriate, with children on important matters that affect them;
  - 31.3. establishment of lawyer for child criteria for appointment; and
  - 31.4. requirement that lawyer for child explain proceedings to the child.
37. These four proposed amendments emphasise to lawyers and parents the importance of children being engaged appropriately in processes that affect their care. They emphasise children's rights and child-focused proceedings, which would set the tone for the long-term programme of change I propose will follow these amendments. These changes also emphasise the need for the family justice system to be responsive to the needs of those that are using it.

***Establishment of a children's participation principle***

38. I propose amending CoCA and the Family Dispute Resolution Act to include children's participation as a guiding principle, modelled on recent amendments to the Oranga Tamariki Act 1989. This requires a child or young person to be encouraged and assisted, wherever practicable, to participate in and express their views about any proceeding, process, or decision affecting them, and their views should be taken into account.
39. Reflecting international best practice and aligning with the Government's Child and Youth Wellbeing Strategy, I propose that the provision expressly reference the United Nations Convention on the Rights of the Child.

*Expectation that parents will consult, where appropriate, with children on important matters that affect them, taking account of age and maturity*

40. I propose amending CoCA to introduce an expectation that parents and guardians will consult, where appropriate, with children on important matters that affect them, taking account of the child's age and maturity. This is a signal to parents and guardians who may avoid these conversations, that in many instances there is merit in keeping children informed and seeking their views and it is in the child's best interests to be involved.
41. This change makes explicit the underlying obligations that already exist in CoCA which require a child be given reasonable opportunities to express views on matters affecting them. It would enhance section 16(1)(c) of CoCA which requires in the exercise of guardianship, determining for or with the child, or helping the child to determine, questions about important matters affecting the child.
42. This change also supports the proposal to include children's participation as a guiding principle as it sets an expectation that parents will encourage their children to participate more fully in their day-to-day care.
43. I acknowledge that there are times where it may not be in the best interests of children to be directly involved by their parents and guardians in making decisions on matters that affect them. For example, where there is family violence, where a child does not wish to participate (as is their right) or where it would place a child in the middle of adult conflict. The non-legislative proposal to develop better information under the auspices of the Family Court will provide a platform to inform parents and their children about circumstances in which consultation may or may not be appropriate. I also see the lawyer for child playing a role in this.

*Establishment of lawyer for child criteria for appointment*

44. I propose amending the s9(2)(f)(iv) to establish criteria for the court to consider when appointing a lawyer for child. This would model the Oranga Tamariki Act, which requires the court to, so far as practicable, appoint a lawyer who is, by reason of personality, cultural background, training, and experience, suitably qualified to represent the child or young person.
45. Like the Panel, I consider it vital that the right lawyer for child is appointed. An understanding of a child's culture, religion, family context and wider community will enable more effective representation for the child. This change will strengthen the Family Court and enhance child wellbeing by helping to ensure that children are represented by a professional that they can relate to, that they feel understands and respects them, and provides them with a greater sense of safety.

*Requirement that lawyer for child explain proceedings to child*

46. I propose amending the Family Court Act, modelled on the Oranga Tamariki Act, to require a lawyer for child to explain CoCA proceedings to their clients, taking into account the child's age and maturity. This requires the lawyer to explain the nature of the proceedings, in a manner and in language that can be understood by the child. It also requires the lawyer for child to satisfy themselves that the child they represent understands the proceedings.



47. Helping children understand proceedings is key to ensuring they are able to participate in proceedings affecting them. While lawyers for children have existing obligations to explain parts of proceedings, these obligations are fragmented across the Family Court Act, CoCA and the Lawyer for the Child Best Practice Guidelines. There is currently no explicit duty in legislation to explain what "proceedings" are. This change will consolidate the obligations and help to ensure that children feel supported and informed as they move through the Family Court process.

***Obligation on lawyers to promote timely and cost-effective resolution***

48. I propose amending CoCA to introduce an obligation on lawyers to facilitate the just resolution of disputes according to the law, as quickly, inexpensively and efficiently as possible, and with the least acrimony in order to minimise harm to children and whānau. This recommendation strengthens the obligations imposed on lawyers by the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

Like the Panel, I consider that a positive obligation on lawyers to facilitate the just resolution of disputes in care of children proceedings is important. It will signal that lawyers have a role in minimising harm, promoting early and lasting conciliation and ensuring clients are aware of all options, including alternatives to litigation to resolve their disputes.

**Connections with the Family Violence Act 2018 and operational initiatives**

49. One of the priority areas of focus for this government in the family justice system is enhancing safety and strengthening responses to children at risk of family violence. This priority area was demonstrated in the passing of the Family Violence Act 2018. Among other matters, the Act provides for children's safety from family violence by establishing child-focussed principles and empowering judges to make a temporary protection order when consider applications under CoCA. This means if a Judge considering care of children arrangements has concerns about the safety of child or an adult, they can issue a Temporary Protection Order to keep them safe.
50. I propose signalling our continued focus by amending CoCA to cross reference the principles in section 4 of the Family Violence Act.
51. The 15 principles set out in section 4 of the Family Violence Act are guiding principles for decision-makers under the Act. They give priority to victim safety and stability, in particular recognising the long-term impacts on children when violence is happening around them.
52. A cross-reference to section 4 would mean that judges considering applications under CoCA would, where relevant, turn their minds to those principles in the Family Violence Act, in addition to the existing CoCA principles. This reinforces expectations that people should be protected from family violence, acknowledges the serious impact family violence has on children's wellbeing, and will promote more consistent decision-making.

### These proposals align with related work programmes

53. Child wellbeing underpins the outcomes sought for children in this package. The Ministry of Justice will work with Oranga Tamariki and DPMC to ensure a joined-up approach for children whose parents and whānau are in conflict, in alignment with the Government's Child and Youth Wellbeing Strategy.

54. s9(2)(f)(iv)  
[Redacted]

55. s9(2)(f)(iv)  
[Redacted]

### Further reforms proposed

56. The proposals in this paper set a platform for further reforms in the family justice system. I propose commencing a second phase of work once the changes of the first phase are underway. The second phase would focus on developing a holistic package of proposals for reform to strengthen the family justice system more broadly in five key areas:

- 56.1. safety – strengthening the family justice system response to allegations of violence
- 56.2. access to services and the Family Court – ensuring people can access the right family justice service at the right time for them
- 56.3. child-centred processes – safeguarding the wellbeing of children by further enhancing children's participation and ensuring children are supported in the family justice system
- 56.4. inclusivity and responsiveness to culture and diversity – acknowledging te ao Māori, providing culturally responsive services, and better accommodating disability
- 56.5. delay and without-notice – further addressing the delays that are undermining the Family Court's ability to make timely decisions and compromising children's safety and wellbeing.

57. Within these key areas, I will instruct officials to explore options that would improve the experiences and outcomes for those who enter the family justice system. I will come back to Cabinet in due course with recommendations for further changes.

## Consultation

58. The following agencies have been consulted on this paper: Crown Law; Police; Te Arawhiti; Te Puni Kōkiri; the Ministries of/for Social Development, Health, Pacific Peoples, Women, and Business, Innovation and Employment; Oranga Tamariki; Department of Corrections; Department of Internal Affairs; Office for Disability Issues; Office of Ethnic Communities; the Treasury; the Family Violence and Sexual Violence Joint Venture Business Unit; and DPMC.
59. s9(2)(ba)  
[REDACTED]
60. In completing its report, the Panel undertook significant public consultation, holding more than 110 meetings and receiving more than 500 submissions. Those most intimately affected by the 2014 reforms – children and young people, parents, caregivers, guardians, grandparents and other whānau members – were extensively surveyed. The Panel's engagement also included practitioners, providers, academics, government agencies, the judiciary, and community groups.

## Financial implications

61. The fiscal cost of the two amendments that require legislative change (reinstatement of legal representation in the early stages of CoCA proceedings with legal aid for eligible parties, s9(2)(f)(iv))  
[REDACTED]
62. Decisions on the Family Court (Reinstatement of Legal Representation) Bill and the Strengthening the Family Court Bill will be subject to any required funding being agreed as part of the usual Budget process. If the Budget 2020 bid is unsuccessful, or only partially successful, I will reconsider whether to proceed with the remainder of the legislative proposals in this paper.
63. There are no financial implications from the remaining recommendations.
64. s9(2)(f)(iv)  
[REDACTED]

## Legislative implications

65. The proposals will be incorporated into two Bills. The first, a Family Court (Reinstatement of Legal Representation) Bill will progress one key change that will amend one section each in CoCA and the Legal Services Act, for introduction and passage on Budget night. This has been submitted as a category three priority (to be passed if possible in the year) for inclusion in the 2020 Legislation Programme. Implementation of this change would begin as soon as the legislation is passed, noting that it is subject to Budget 2020 funding.
66. s9(2)(f)(ii)  
[REDACTED]

67. I do not expect either of these Bills will be referred to the Legislation Design and Advisory Committee. I also do not intend to release any exposure drafts given the engagement process the Panel undertook as part of their review.
68. I seek authorisation to resolve any outstanding policy issues arising from or associated with decisions made in the recommendations of this paper, in consultation with relevant Ministers as appropriate.
69. I seek authorisation to issue drafting instructions to Parliamentary Counsel Office to give effect to the legislative changes in this paper and to approve minor, technical and transitional amendments identified during development of the Bills.
70. I also seek authorisation to issue drafting instructions to Parliamentary Counsel Office for the purpose of drafting subordinate legislation to support those legislative changes.

### **Impact analysis**

71. The Regulatory Impact Analysis (RIA) requirements apply to the proposals in this paper. A Regulatory Impact Statement (RIS) is attached.
72. The Ministry of Justice's RIA QA panel has reviewed the RIA: Strengthening the Family Court – First stage initiatives to enhance child and whānau wellbeing prepared by the Ministry of Justice and considers that the information and analysis summarised in the RIA partially meets the QA criteria.
73. In reaching this conclusion, the QA panel notes the constraints posed by the limited focus of the RIA on progressing only those options to strengthen the Family Court identified by the Independent Panel and implementable in the next fiscal year, and the limited availability of data to support the analysis in certain areas. Due to these constraints the Panel considers the analysis only partially meets the quality assurance criteria. This is primarily because it is not possible to be confident that the stated objectives are being met in the best possible way as alternative options have not been able to be considered. The time frames set for the introduction of legislation have also limited the ability to conduct further analysis and consultation on the preferred options. However, the RIA's extensive use of evidence and submissions to the Independent Panel ensure a range of perspectives are available, which helps to make the qualitative analysis that has been conducted robust and reliable. Implementation risks have also been identified and mitigated to the extent possible.

### **Human rights**

74. The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### **Te Tiriti o Waitangi**

75. The Panel consulted widely in developing their report and recommendations, including with Māori. In addition to consulting with Māori generally, the Crown also

has specific relationship arrangements with iwi established through Treaty settlements that are relevant to this work (for example the Crown - Te Hiku o te Ika Social Development and Wellbeing Accord).

76. The Panel identified that the family justice system fails to recognise te ao Māori or incorporate tikanga Māori in care of children matters. CoCA does not provide for explicit recognition of Te Tiriti o Waitangi. The Panel expressed concern that there is an absence of a Māori family justice workforce and concepts such as whānau are poorly recognised.

77. s9(2)(f)(iv)  
[Redacted]

78. Delay in the Family Court can lead to long term separation of family members. This may damage the strong connections that tamariki Māori have with their whānau, hapū and iwi. Being able to build knowledge of their whakapapa is vital to identity and well-being. This package of reforms aims to reduce delay by s9(2)(f)(iv) [Redacted] and decreasing the volume of without-notice applications. The establishment of lawyer for child criteria for appointment means that it is more likely that tamariki Māori will benefit from counsel who understand their whakapapa.

79. The second phase of the long-term programme of change in the family justice system is likely to enhance the focus on te ao Māori and tikanga Māori, addressing broader underlying systemic barriers to access to justice. I am committed to ensuring this work reflects our obligations under te Tiriti o Waitangi to work with and protect Māori interests.

**Gender implications**

80. Women may face additional barriers accessing the family justice system and these can be more pronounced for Māori, immigrant, ethnic minority, rural and disabled women.

81. Women have, on average, less income and wealth than men, and this inequality increases after separation. The Panel recommended that care is needed to ensure people with low incomes have equal access to justice and are not discriminated against. Increasing disparity between parties may mean that, for example one party is able to pay for a lawyer but the other is not.

82. The pressure from an increase in without-notice applications and resulting delays mean that on-notice applications that require urgent resolution by the Family Court, such as ones involving unidentified family violence, are delayed and impact on parties' personal safety. Sexual violence and family violence are heavily gendered. The Panel expressed concern that knowledge of family violence in all its forms is still not widespread. The Panel heard that the family justice workforce lacks an

understanding of the effects of trauma in the aftermath of violence, and its impact on how people engage in CoCA disputes.

83. The implementation of the policy and legislative proposals in this paper will complement existing measures and further consider how the family justice system can address some of the barriers to justice women may face. The reinstatement of legal representation in the early stages of CoCA proceedings with legal aid for eligible parties, and an obligation on lawyers to promote timely and cost-effective resolution, will help to ensure women are well-supported with early legal advice and information.
84. The implementation of the policy and legislative proposals in this paper will also address in part, some of the issues raised in the Concluding Observations of the United Nations Committee on the Elimination of Discrimination against Women, in response to New Zealand's eighth periodic report.

### **Disability perspective**

85. Disabled children and adults face additional barriers accessing the family justice system. I asked the Panel to consider what works best for children with disabilities and disabled parents.
86. The Panel concluded that family justice services lack systemic accommodation of people with disabilities. The Panel heard that people with disabilities find it difficult to access information and appropriate support to participate fully in family justice processes, are disadvantaged by the way funding for legal services is provided, and at times experience discrimination from family justice system professionals.
87. The implementation of the policy and legislative proposals in this paper will begin to consider how the family justice system can build capability and capacity to accommodate disability. This might include the development of alternative methods of child participation and consultation, and ensuring information is provided and stored in fully accessible formats.

88. s9(2)(f)(iv)  
[Redacted text]

### **Child impact assessment**

89. The proposals in this paper aim to enhance the quality and extent of children's participation in care of children disputes. They promote children's right to have their views heard and considered in matters affecting them consistent with Article 12 of the United Nations Convention on the Rights of the Child. There is still work to do to ensure that these proposals include a transparent and accessible set of obligations on those working with children to assist their participation in decision making which affects them. For example, the proposals could be better aligned with similar new provisions in the Oranga Tamariki Act, which set out how practical effect is to be given to children's right to participate in decision-making which affects them.

90. As the policy and legislative proposals in this paper are implemented, I will consider how to achieve better alignment with similar provisions in the Oranga Tamariki Act to ensure that there is consistency in approach to children's participation across family law legislation, including the appointment of lawyer for child.

### Publicity and proactive release

91. My office will co-ordinate publicity following Budget decisions and in accordance with Cabinet decisions. At that time, I propose to proactively release this Cabinet paper and the attached regulatory impact statement, subject to any redactions as appropriate under the Official Information Act 1982.

### Recommendations

I recommend that the Cabinet Social Wellbeing Committee:

1. **Note** that reforms were made in 2014 to the family justice system and some of the reforms have had a negative impact on children, parents and their whānau;
2. **Note** that the Independent Panel released its final report examining the 2014 family justice system reforms in June 2019, making 69 wide-ranging recommendations for reform on the law, policy, and practices that currently govern care of children matters;
3. **Agree**, that the following legislative change be included in a Family Court (Reinstatement of Legal Representation) Bill to be introduced, subject to Budget 2020 funding being approved s9(2)(f)(ii)
  - 3.1. amend the Care of Children Act 2004 and the Legal Services Act 2011 to allow parties to have legal representation, and where eligible, legal aid, at all stages of Care of Children Act proceedings;
4. **Agree**, that the following legislative changes be included in a Strengthening the Family Court Bill to be introduced, subject to Budget 2020 funding being approved, in June 2020:
  - 4.1. s9(2)(f)(iv)  
[REDACTED]
  - 4.2. amend the Care of Children Act 2004 and the Family Dispute Resolution Act 2013 to establish children's participation as a guiding principle, with express reference to the United Nations Convention on the Rights of the Child;
  - 4.3. amend the Care of Children Act 2004 to establish an expectation that parents and guardians will consult, where appropriate, with children on important matters that affect those children, taking account of the children's age and maturity;
  - 4.4. amend the Family Court Act 1980 to establish appointment criteria for lawyer for child to ensure that they are suitably qualified by reasons such as personality, cultural background, training, and experience, to represent the child or young person;

- 4.5. amend the Family Court Act 1980 to require a lawyer for child to explain proceedings to their clients;
- 4.6. amend the Care of Children Act 2004 to establish an obligation on lawyers to facilitate the just resolution of disputes according to the law, as quickly, inexpensively and efficiently as possible, and with the least acrimony in order to minimise harm to children and whānau;
- 4.7. amend the Care of Children Act 2004 to establish a cross reference to the principles in section 4 of the Family Violence Act 2018;
5. **Note** that I have also sought Budget 2020 funding for other key components that do not require legislative change. They are:
  - 5.1. s9(2)(f)(iv) [REDACTED]
  - 5.2. establishing Family Justice Liaison Officers;
  - 5.3. developing quality, accessible information for children, parents and whānau;
  - 5.4. increasing lawyer for child remuneration s9(2) [REDACTED] every year for four years;
6. **Note** that if the Budget 2020 bid is unsuccessful, or only partially successful, I will reconsider whether to proceed with the remainder of the legislative proposals in this paper;
7. s9(2)(f)(iv) [REDACTED]
8. **Invite** the Minister of Justice to issue drafting instructions to Parliamentary Counsel Office to give effect to the legislative changes in this paper;
9. **Invite** the Minister of Justice to issue drafting instructions to Parliamentary Counsel Office for the purpose of drafting subordinate legislation to support legislative change;
10. **Authorise** the Minister of Justice, in consultation with other Ministers as appropriate, to resolve any outstanding policy issues arising from or associated with decisions made in the recommendations in this paper;
11. **Authorise** the Minister of Justice to approve minor, technical and transitional amendments that are identified during development of these Bills;
12. **Note** that the timing of the implementation of these Bills will be subject to any required funding being agreed as part of the usual Budget process;
13. **Note** that the proposals in this paper set the platform for further change and that I will return to Cabinet in due course.



Authorised for lodgement

Hon Andrew Little

Minister of Justice

RELEASED BY THE MINISTER OF JUSTICE



# Cabinet Social Wellbeing Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Strengthening the Family Court: Enhancing Child and Whānau Wellbeing in Care of Children Matters

Portfolio Justice

On 19 February 2020, the Cabinet Social Wellbeing Committee:

- 1 **noted** that reforms were made in 2014 to the family justice system and some of the reforms have had a negative impact on children, parents and their whānau;
- 2 **noted** that the Independent Panel reporting directly to the Minister of Justice released its final report examining the 2014 family justice system reforms in June 2019, making 69 wide-ranging recommendations for reform on the law, policy, and practices that currently govern care of children matters;
- 3 **agreed** to amend the Care of Children Act 2004 and the Legal Services Act 2011 to allow parties to have legal representation, and where eligible, legal aid, at all stages of Care of Children Act 2004 proceedings;
- 4 **agreed** that the above legislative change be included in a Family Court (Reinstatement of Legal Representation) Bill to be introduced, subject to Budget 2020 funding being approved, on Budget-night;
- 5 **agreed** that the following legislative changes be included in a Strengthening the Family Court Bill to be introduced, subject to Budget 2020 funding being approved, in June 2020:
  - 5.1 s9(2)(f)(iv) [REDACTED]
  - 5.2 amend the Care of Children Act 2004 and the Family Dispute Resolution Act 2013 to establish children's participation as a guiding principle, with express reference to the United Nations Convention on the Rights of the Child;
  - 5.3 amend the Care of Children Act 2004 to establish an expectation that parents and guardians will consult, where appropriate, with children on important matters that affect those children, taking account of the children's age and maturity;
  - 5.4 amend the Family Court Act 1980 to establish appointment criteria for lawyer for child to ensure that they are suitably qualified by reasons such as personality, cultural background, training, and experience, to represent the child or young person;
  - 5.5 amend the Family Court Act 1980 to require a lawyer for child to explain proceedings to their clients;

- 5.6 amend the Care of Children Act 2004 to establish an obligation on lawyers to facilitate the just resolution of disputes according to the law, as quickly, inexpensively and efficiently as possible, and with the least acrimony in order to minimise harm to children and whānau;
- 5.7 amend the Care of Children Act 2004 to establish a cross reference to the principles in section 4 of the Family Violence Act 2018;
- 6 **noted** that the Minister of Justice has also sought Budget 2020 funding for other key components that do not require legislative change:
- 6.1 s9(2)(f)(iv) [REDACTED]
- 6.2 establishing Family Justice Liaison Officers;
- 6.3 developing quality, accessible information for children, parents and whānau;
- 6.4 increasing lawyer for child remuneration by s9(2)(f)(iv) [REDACTED] every year for four years;
- 7 **noted** that if the Budget 2020 bid is unsuccessful, or only partially successful, the Minister of Justice will reconsider whether to proceed with the remainder of the legislative proposals in the paper attached under SWC-20-SUB-0003;
- 8 **noted** that the Minister of Justice has separately sought Budget 2020 funding for a Caseload Management System to enhance technology in the Family Court;
- 9 **invited** the Minister of Justice to issue drafting instructions to Parliamentary Counsel Office:
- 9.1 to give effect to the legislative changes in the paper attached under SWC-20-SUB-0003;
- 9.2 for the purpose of drafting subordinate legislation to support legislative change;
- 10 **authorised** the Minister of Justice to approve minor, technical and transitional amendments that are identified during development of the Bills referred to above;
- 11 **noted** that the timing of the implementation of these Bills will be subject to any required funding being agreed as part of the usual Budget process;
- 12 **noted** that the proposals in the paper attached under SWC-20-SUB-0003 set the platform for further change and that the Minister of Justice will return to Cabinet in due course.

Vivien Meek  
Committee Secretary

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**Hard-copy distribution (see over)**

**Present:**

Rt Hon Jacinda Ardern  
Rt Hon Winston Peters  
Hon Kelvin Davis  
Hon Grant Robertson  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon Andrew Little  
Hon Carmel Sepuloni (Chair)  
Hon Dr David Clark (part item)  
Hon Nanaia Mahuta  
Hon Stuart Nash  
Hon Jenny Salesa  
Hon Kris Faafoi  
Hon Tracey Martin  
Hon Willie Jackson (part item)  
Hon Aupito William Sio  
Hon Poto Williams  
Hon Julie Anne Genter  
Jan Logie, MP

**Officials present from:**

Office of the Prime Minister  
Officials Committee for SWC  
Office of the Chair of SWC

**Hard-copy distribution:**

Minister of Justice

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