SUBMISSIONS ON

STRENGTHENING THE FAMILY JUSTICE SYSTEM – A CONSULTATION DOCUMENT

1 March 2019

Waitematā Community Law Centre
Te Korowai Ture ō Waitematā
1 Trading Place │PO Box 121104, Henderson 0650
Ph: (09) 835 2130 │ Fax: (09) 835 2133
info@waitematalaw.org.nz
www.waitematalaw.org.nz

BACKGROUND

The Waitematā Community Law Centre offers free legal help to people who are most in need in Waitākere, North Shore and Rodney. We are a walk-in service and also provide advice by phone and email. We regularly support people living in poverty; those in insecure housing; and those experiencing family violence.

We appreciate the Independent Panel taking the time to consult with Community Law and welcome the opportunity to make written submissions on the Panel's review of the 2014 family justice reforms.

OVERVIEW OF SUBMISSIONS

This document includes our written submissions in response to the specific questions raised in the January 2019 Consultation Document; as well as our submissions on the points discussed with the Panel at the consultation meeting in Auckland on 14 February 2019. Where our submission is in support of points raised by other Community Law Centres, we have indicated this.

SUBMISSIONS

FOCUS ON CHILDREN

Question 1: ***What should be included in a comprehensive safety checklist?***

Our submission: We submit that the factors in the former section 61 COCA should be part of the safety assessment process, to be considered together with the child's views under section 5(a). We submit that section 61 should be consolidated with section 5A (domestic violence to be taken into account) of the current Act, both to simplify the legal test and to make it clear that the Court is required to expressly take both factors into account.

Question 2: ***What information should be available to the court to assess children's safety and in what circumstances?***

Our submission: We agree that information from criminal courts and Police (as well as further information required by the Court to make an assessment under s61) should be available at an early stage when the Court is considering safety issues.

Question 3: ***What role should specialist family violence workers have in the Family Court? Should there be separate support workers for adults and children?***

Our submission: We support the proposal that there should be separate support workers for adults and children. Given the prevalence of family violence in NZ, these support workers should have a sound understanding of the power and control dynamics of family violence. Support workers for children would need to be especially trained in this area. If the current situation continues (e.g. no legal representation available at early stages of process; no counselling available), or even if counselling is introduced but is not available to children, these specialists could have an important role to play in terms of offering support through the FC process. With respect, we envisage that their presence may also put judges "on notice" as to the situation at hand, where this is not clear from the proceedings.

Question 4: ***Do you have any other suggestions for more child-responsive court processes or services?***

Our submission: We support the submissions of YouthLaw Aotearoa, namely:

- We agree with the report's focus on children's participation and safety in the Family Justice system.
- We are also concerned about the delay caused by section 132 and 133 reports in relation to child safety assessments, because children have a different sense of time, and delay could re-traumatise children.

- We agree that more research needs to be done about children's participation in the family justice system in New Zealand and advocate for a child inclusive model. We believe that the current family justice system is adult-centric and children's UNCROC right to participation is not being upheld.
- Overall, we are concerned about the emphasis on a welfarist approach to children and what appears to be a lack of attention to children's rights.

We take this opportunity to submit on the issue of child uplift, as specifically requested by the Panel in the meeting on 14.2.2019:

- As a starting point, we do not dispute the need for uplift of a child to be an available option in situations where it has been established that a child will be at risk of significant harm.
- However, practically speaking, it is our experience that, on certain occasions, child uplift is taking place without the agencies involved following the prescribed statutory process; or even in situations where there may be other options available for placement of the child, but these have not been thoroughly explored (e.g. with whānau members).
- This disproportionately affects tamariki Maori and has a distressing effect both in terms of the family involved and in a wider social context.
- We submit that the proposed "no wrong door" approach has a role to play in terms of addressing child uplift issues for the families involved, in the sense that they can access support within the korowai of the Family Justice Service without being turned away or becoming further entangled by bureaucracy or technicalities.
- It is very difficult for anyone involved in matters with Oranga Tamariki to effectively advocate for themselves or their families. At present it is almost impossible for people to find legal aid representation on these matters, as outlined further on page 11 of these submissions.
- In this context we submit that a family justice service which is accessible, responsible, flexible and cohesive would have a significant role to play in addressing the issues that arise through incorrectly or inappropriately handled child uplift scenarios.

TE AO MĀORI IN THE FAMILY COURT

Question 5: ***Should obligations be placed on the Ministry and/ or the Government to improve family justice outcomes for Māori? What would these obligations be?***

Our submission:

As an overall comment, we support the Ministry's proposals and note they are in keeping with the NZ Law Commission's 2003 recommendations on Maori participation in the Family Court as detailed in Dispute Resolution in the Family Court.

As a specific comment, we submit that there should be strategic framework obligations placed on the Ministry and/ or the Government to:

1. strengthen awareness and application of Maori values to Family Court decision making and remove barriers to Maori participation in the Family Justice system; and
2. develop relationships with Marae and iwi.

Targets for **obligation 1** to include:

a. Family Court bench training in Te Tiriti o Waitangi, Maori pronunciation, tikanga Maori and Maori family values such as whanaungatanga, manaakitanga and whakapapa. The Treaty training should include the impacts of colonisation in creating the intergenerational poverty, social deprivation and family dysfunction that is experienced in many Maori communities today. Knowledge of this context provides a useful antidote to any unconscious bias or Maori stereotyping that may affect Family Court decision making in relation to Maori participants and children.

b. Target and implementation plan to increase the number of qualified Maori family lawyers or family lawyers conversant in Maori values.

Targets for **obligation 2** to include:

a. Identify and fund Marae / iwi to pilot delivery of Maori Family Dispute Resolution Services. Funding to include operational costs (for the marae and participants) and costs for qualified family dispute resolution providers / lawyers who are versed in the tikanga Maori and Maori values and family violence. Marae / iwi do not have capacity to fund the programmes and often whanau find transport and childcare costs / or lack of support a barrier to participation in mediation.

Question 6: ***How could the Ministry of Justice or the Government partner with hapū, iwi or Māori organisations to deliver services?***

Our submission: See our responses to Question 5, target 2a above and Question 8 below.

Question 7: ***How would you incorporate tikanga Māori into the Family Court?***

Our submission:

- Allow whanau support people to attend the hearings (provided the parties consent).
- Judges to open with Maori greeting and prayer.
- All Family Court staff, judges, lawyers to pronounce Maori names and words correctly.

Question 8: ***Do you have any other suggestions to improve the Family Justice Service for Māori, including any comment on the examples provided above?***

Our submission:

Treaty principles in Hague decision making

- We request the Ministry explore the need for, and options to, apply Treaty principles to Hague convention decision making under the Care of Children Act.
- There is a strong argument from a Treaty perspective that whakapapa, whanaungatanga and tangata whenua values are just as material to determining jurisdiction for custody disputes as habitual residence and custodial rights.
- Often, Maori parents who have emigrated retain strong links to whanau support and iwi in New Zealand and it's to this support they return with their children when family breakdown occurs.
- While we accept this is a political matter, the end result is that NZ Family Courts are making Hague decisions that affect Maori children, absent Treaty considerations and the issue should be addressed.

Pilot Family Court at the marae

- The Youth Court has a very successful model of delivering youth court form the marae.
- The marae setting immediately creates a sense of respect in all participants (including lawyers and social workers) for Maori values by virtue of the setting itself and the protocols that Marae Kaumaatua apply to the proceedings.
- More importantly, the marae setting can ease the sense of alienation Maori may otherwise feel in a mainstream court setting.

Tikanga Maori based Family Justice system

- We acknowledge from a rangatira perspective that Maori claim the right to make decisions for Maori about family matters affecting whanau. It is a difficult experience to have Pakeha values as to family imposed on Maori whanau and result in discounting for example, the role of grandparents in mokopuna lives.
- How whanau are viewed, made up and nurtured is fundamental to Maori society including how land and natural resource rights are determined.
- We support calls by academics like Leonie Pihama to take a deeper look at the Family Justice System so that it enables whanau, hapu and iwi, to be able to be collectively responsible and accountable and supportive of our people in a context where that is actively resourced and supported. (*Family court problems run deep for whanau - Maori lawyers*, 02/07/2019, RNZ News.)

QUALITY, ACCESSIBLE INFORMATION

Question 9: ***What information do you think would help service providers, community organisations, lawyers and family justice professionals to achieve a joined-up approach to the Family Justice Service?***

Our submission:

We suggest the following:

- In-depth, plain language information about how PTS, FDR processes etc work (e.g. handbooks)
- Centralised portal through MOJ website to enable users to find up-to-date, local details for the various providers (e.g. for PTS, FDR, FLAS, supervised contact)
- Online "quiz" format to help people determine next steps (similar to what is available at smartstart.govt.nz)
- Online glossary of terms/explanatory videos/plain language description of what each form should be used for
- Simplify format of forms and enable these to be completed online

We strongly support the modernisation/simplification of FCR 2002, and the reworking of standard forms for accessibility to people with language and literacy barriers.

We also support the submissions of YouthLaw Aotearoa, namely:

- The Ministry of Justice needs to create resources designed specifically for children and young people about their rights in the family justice system. These resources are necessary to facilitate the child's right to participate in proceedings that affect them because children cannot effectively participate if they do not understand the family justice process, and what their rights are in those processes.
- These resources should be developed through a co-design process involving children and young people at all stages.

The resources should be accessible to children and young people of all ages, gender, ability and ethnicity. This may mean a range of resources and translation of resources into different languages, using visual / audio communication tools and/or video etc.

We further support the comments made by Community Legal Services South Trust in respect of language accessibility:

- Language is a real problem for many of our clients, some of whom cannot read English or fill out the necessary forms, but are still expected to represent themselves in the family justice system.

- This has wider implications in terms of cultural issues for Pacific Island or migrant women, who are raised in a tradition in which they are not expected to speak up or advocate for themselves.

COUNSELLING AND THERAPEUTIC INTERVENTION

Question 10: ***Would the three proposed types of counselling meet parties' needs, or are there gaps in the counselling services that need to be filled? For example, should there be counselling available to children?***

Our submission: We agree that counselling should be made available to children where appropriate. However the concern in this regard is to ensure the safety of children first and foremost. Any counselling would need to be designed specifically for children and be completely confidential.

Question 11: ***Are Parenting Through Separation/Family Dispute Resolution suppliers, Family Justice Service Coordinators and Judges best placed to refer people to counselling? Are there any other service providers who should be able to refer to counselling or should people able to refer themselves?***

Our submission: We submit that lawyers and family violence support workers should also be able to refer people to counselling. Lawyers are often the first "third party" that clients have met with (particularly in a community law context) and can support a client in deciding that they may benefit from counselling. We also submit that people should be able to refer themselves as this has the potential to give them a sense of ownership or autonomy in the process.

Question 12: ***Should confidentiality be waived when parties are directed by the court to therapeutic intervention, in what circumstances and regarding what matters?***

Our submission: We do not support confidentiality being waived in any circumstances, for the following reasons:

- It is unlikely that counselling will be effective/beneficial if parties are aware that what they discuss may not be confidential (or they may be required to disclose it at a later date);
- There is a risk that parties will either say what they think the Court wants to hear, or say nothing for fear of having it used against them;
- In this sense there is the potential for counselling to become/be seen as another "box-ticking" exercise on the way to a Court hearing.

We respectfully submit that this point requires further serious consideration from the Independent Panel, as it raises potentially very serious concerns.

PARENTING THROUGH SEPARATION

Question 13: ***Do you agree that there should be an expectation on parties to attend Parenting Through Separation, rather than having it as a compulsory step for everyone?***

Our submission: We submit that if PTS attendance is not compulsory, it could be difficult to manage.

We submit that:

- PTS should be compulsory, but there should be different styles on offer (e.g. depending on stage of separation; grandparents/whānau members as caregivers etc)
- The Panel may consider whether PTS options on offer should take into account/be informed by those who have attended counselling before starting the course and those who haven't?
- There should also be the ability for clients to explain to the Court why it is not suitable for them to attend.
- If parties are referred by the Court, this will make it a compulsory step in any case?
- There will be delays if one party has voluntarily attended and the other hasn't, and is then referred back to PTS by the Court before a hearing can go ahead.

We support attendance in person, but where this is not possible a secondary option could be attendance by streaming, with expectations set as to participation.

Question 14: ***If PTS is not mandatory, how should this expectation of attendance be managed and achieved?***

Our submission: See above

FAMILY DISPUTE RESOLUTION

Question 15: ***Do you agree with the idea of a rebuttable presumption? If so, how might it be worded to make sure that parties take part in Family Dispute Resolution unless there are compelling reasons not to?***

Our submission:

- It should be made very clear that violence is a grounds for rebuttal (including emotional and psychological abuse – not always visible but a high risk factor in quasi-compulsory FDR). Otherwise the FC system is not moving away from the potential to retraumatise survivors of violence.
- If there is a rebuttable presumption, we submit that it could be modelled on s 60I(9) of the Australian Family Law Act 1975 to encompass the usual safety factors, parties who

are unable to participate effectively due to distance, etc., and also those cases where it is clear that the respondent will not engage in FDR in good faith because he/she has demonstrated "serious disregard" for existing parenting orders or arrangements. In these cases having to wait for the FDR provider to attempt to contact the other party, grant exemptions, etc. causes unnecessary delay (which ultimately causes hardship to the children).

Question 16: ***Do we need stronger obligations on family justice professionals to promote FDR and conciliatory processes generally?***

Our submission: No – in practise it appears that most family lawyers take a reasonably conciliatory approach, and encourage clients to pursue mediation as a way to resolve their matter in the first instance.

Question 17: ***What could a streamlined process for court referrals to FDR look like?***

Our submission: We submit that "positive outcomes" at FDR proceedings should result in Consent Orders to give both parties certainty and a conclusion to the process. Many people do not know about the need to seek consent orders if they wish a decision to be binding, and do not seem to be advised in this regard.

We also support the submissions of YouthLaw Aotearoa, namely:

- We support the recommendation of the United Nations Committee on the Rights of the Child that the Family Disputes Resolution Act 2013 be amended to expressly provide for the right of the child to be heard.
- We support a review of child participation practices in FDR because we are concerned about the ad-hoc nature of child-inclusive mediation. We are also concerned about the suggestion in the FDR Ministry of Justice guidelines that parents asking for, and then providing their children views in mediation satisfies the right of the child to be heard.
- We believe that there needs to be comprehensive guidelines on how and when child inclusive mediation should be undertaken.

LEGAL ADVICE AND REPRESENTATION

Question 18: ***Is there a place for more accessible provision of funded legal advice for resolution of parenting disputes outside of court proceedings? What would the key elements of this service be and how could it be achieved? For example:***

• Should it be part of a legal aid grant, or

• could there be an enhanced role of FLAS 1 (giving a person initial information and advice on the out-of-court processes), including the creation of a solicitor-client relationship?

Our submission:

- We support the implementation of a workforce strategy to address the lack of legal aid family lawyers who have capacity to represent parties.
- We support legal advice and representation being available at all stages in the family justice system to facilitate early resolution of disputes. Early resolution of disputes is particularly beneficial to children (as well as adults) because it better reflects their sense of time and minimises the distress and trauma resulting from disputes. In our experience, self-representation causes unnecessary delays and clogs up the court system.
- We support enhancement of FLAS to allow lawyers to a) contact the other party; and b) participate in roundtable discussions at which care/guardianship matters can be negotiated outside of court.
- Contact with the other party via a letter can impress upon the other parent the seriousness of complying with existing mediated agreements/orders when this parent has disregarded communication from the other parent. This is a useful tool which low income parties currently can't access due to the limitations of FLAS/restriction on representation for on notice proceedings.
- Roundtable discussions/negotiations can be a further effective out-of-court step for parties who have attempted FDR without success and have filed/are about to file applications for parenting orders. Lawyers are able to advise parties about the likely outcome of a hearing more accurately than some FDR mediators might. This form of FLAS could also cover drafting and filing any consent order which results from a roundtable discussion. This form of FLAS could avoid time-consuming long-cause hearings and their cost/time burden on the court system. It could take the form of a discrete legal aid grant for unbundled non-court representation. Parties would need to reapply for legal aid if they wish to proceed to court.
- We suggest that experienced family lawyers should be incentivised to supervise junior family lawyers (beyond claiming legal aid) to build an in-depth professional body for the purposes of FC representation – clients find it hard to get a qualified family lawyer (particularly on a legal aid basis) due to demand.
- Community law centres act as a quasi-FLAS service most of the time (although refer clients where necessary)

- Further resources (in the form of training/funding etc) to be made available to community law to support clients in completing forms and advising re: on-notice/without notice tracks.

We take this opportunity to submit on issues associated with legal aid more broadly, further to the discussion in the consultation meeting on 14 February 2019:

As discussed, legal aid in its current form does not meet the needs of our community:

- The income thresholds are set very low, and exclude even those earning minimum wage. Needless to say, these same people cannot afford private lawyers' fees, so there is a very real gap in terms of access to justice for the working poor.
- Those who are eligible face the longer-term issues of a significant debt, with interest payments at a rate of 8%.

Further, there are significant accessibility issues in terms of the current legal aid model, for example:

- Disabled clients find it very difficult to access legal aid providers, as the time and effort involved in bringing their case means that legal-aid funded lawyers tend to treat these matters as not worthwhile.
- The one-off payment of $150 designed to compensate legal aid lawyers for the time needed to accommodate disabled clients is woefully inadequate.
- In cases involving Oranga Tamariki, clients also experience significant difficulty finding anyone to take their case. These matters can be very lengthy and complex and lawyers know they will end up carrying the cost of the case.
- Access to representation needs to be immediate, particularly in situations where there is a risk to safety. However, our clients are too often in a position where we, and they, are trying to find legal representation that they will be eligible for or can afford.
- In each of these instances, clients are denied access to justice because they cannot find legal representation to help them navigate the system.

CASE TRACKS AND CONFERENCES

Question 19: *How do you think we could improve the efficiency of court processes?*

Our submission:

- We support the simplification of tracks and reduction in conferences. Parties should be able to give a preference for video/telephone/in person conferences. Disability/accessibility issues, access to IT, and factors such as family violence may mean some people are more comfortable with remote conferences than others.

- We note that many laypeople don't understand the meaning or purpose of directions and issues conferences. They find it difficult to access representation and so the conferences themselves often do not progress matters as hoped. This does not help the overall process.
- Settlement conferences in particular are largely unnecessary if parties cannot reach agreement and have made this clear to their counsel; and both parties are represented by counsel.

WITHOUT NOTICE APPLICATIONS

Question 20: ***Will reinstating legal representation be enough to reduce the number of without notice applications? Or would other interventions be required? For example, are sanctions required for unnecessary without notice applications? If so, what sanctions would be appropriate?***

Our submission: We submit that reinstating legal representation will be enough to reduce the number of without notice applications, given that 80% of the applicants surveyed cited "being able to have a lawyer" as the reason for applying without notice.

We understand from our meeting with the Panel on 14 February 2019 that sanctions are proposed as part of a "suite of options" in respect of parties who are found to have deliberately omitted information and/or misled the Court in making their application.

However, we strongly oppose the introduction of sanctions on the following grounds:

- They may penalise parties who genuinely feel their matter is urgent but are mistaken;
- They have the potential to dissuade parties who should be making without notice applications from doing so out of fear of financial sanctions. This will disproportionately affect those people on lower incomes, or experiencing poverty, who are subject to violence and facing significant risks to their safety;
- For a layperson, the potential for misunderstanding is very high (and this risk is further increased for disabled clients). In our experience there is also very little understanding of matters such as "relevance", further exacerbating the issues which may arise.
- Many clients are subject to economic abuse and significant power imbalances in their relationships, and the imposition of sanctions will only aggravate this.

Given the prevalence of family violence in New Zealand, and the significant safety risks many of our clients experience, we submit that there needs to be some scope for people to act under urgency without fear of being penalised. A more appropriate measure could be to make the

criteria/considerations for without notice applications very clear and express, and family lawyers will be required to advise in line with these criteria. This is further supported by lawyers' duty to the Court to make appropriate applications (i.e. not to misuse the Court process).

If sanctions are insisted upon, we submit that there should be a financial threshold for these to be imposed, to ensure that low-income earners are not further discriminated against and "pushed out of" the family justice system.

Question 21: ***Do you think there is value in clarifying that parenting orders made without notice can be rescinded?***

Our submission: We query whether this is necessary given that parties are given an opportunity to respond to interim parenting orders made on a without notice basis, before they become permanent.

TRIAGING

Question 22: ***How best should integrated assessment, screening and triaging be implemented? What other measures would you like to see implemented in order to improve the interconnection of the Family Justice Service?***

Our submission: No comments on this.

COMPLEX CASES

Question 23: ***What other powers do you think might be helpful to enable judges to better manage complex cases?***

Our submission: We support the allocation of individual judges to particular cases so that the Court has familiarity with the parties, past proceedings and historic issues with the family with each new application to the Court.

Question 24: ***What types of therapeutic intervention would be useful in complex cases? For example, should a judge have the power to direct a party for psychological or psychiatric assessment or alcohol and other drug assessment?***

Our submission: It is unclear at this stage how it is envisioned that this would help the management of a complex case.

While we may support directions to attend psychiatric and alcohol/drug assessments, we ask the panel to consider that this could also pose the potential for serious risk in situations where one party has a history of mental health or drug use (but is still a fit parent) and the other party knows how to "play the game" in terms of the Court system.

Our concern is that the power to direct these kinds of assessments will have the unintended consequence of keeping the most vulnerable people away from accessing the family justice system, thereby giving rise to further social/familial issues.

CULTURAL INFORMATION IN COURT

Question 25: ***What could be done to encourage lawyers and judges to make better use of s133 cultural reports? For example, should there be a different threshold for cultural reports? If yes, what would be an appropriate threshold?***

Our submission: See Question 27 below.

Question 26: ***Do you think greater use of section 136 of the Care of Children Act 2004 would prove more valuable than presenting cultural information in a report format? If so, what type of information and guidance would be needed to support parties to use section 136? What barriers are there for parties to use section 136 of the Care of Children Act 2004?***

Our submission: We support the submissions of YouthLaw Aotearoa, namely:

Section 136 should be amended to allow the lawyer for child and report writer to request that the report writer speak to the court. This amendment better facilitates the child's right to be heard by the court and to have their cultural, religious and/or ethnic background considered.

Question 27: ***Do you have any other proposals for improving the quantity and quality of cultural information available to the court?***

Our submission:
We support the concerns of YouthLaw Aotearoa and Community Legal Services South Trust in regards to cultural reports:

- Generally speaking, the Court does not have the information it needs about the families and whanau about whom they are making decisions.

- Even where cultural reports are made, there is still a lack of cultural competency within the system which can give rise to a misinterpretation of the facts, and this needs to be addressed.

- The legislation could be strengthened to make it mandatory for a judge to consider the need to obtain information about a child's cultural, religious and/or ethnic background in determining COCA matters.

Funding, training and the creation of guidelines and a registered body of cultural report writers are necessary to increase the number of people who are able to prepare these reports or make s136 appearances in the court.

Where parties are self-represented, they will not be aware of sections 133 and 136 in respect of their proceedings. Even if they were able to arrange for someone to speak to the Court, members of different cultural communities who could speak and write effectively on cultural issues may not currently feel they have the experience or support to be able to do so. We submit that Community Law could be funded to support communities to establish advocacy groups and provide training in this area.

FAMILY JUSTICE SERVICE COORDINATOR

Question 28: ***What do you think of our proposal to create a new role; the Family Justice Services Coordinator (FJSC)?***

Our submission: We support the creation of this role, particularly if there can be a genuine working relationship/regular communication with community services.

We also support the suggestion from Auckland Disability Law for the creation of a Disability Support Coordinator Role.

SENIOR FAMILY COURT REGISTRAR

Question 29: ***What do you think of our proposal to establish a Senior Family Court Registrar position?***

Our submission: We support the creation of this role if practically speaking it will in fact make the process more efficient and easier to access for users of the Court system.

Question 30: ***What powers do you think Senior Family Court Registrars should have in order to free up judicial time?***

Our submission: Confirmation/sealing of overseas orders and consent orders, applications for leave. Concerns about delegating without notice applications to SFCRs – these may be better left to Judges.

Question 31: ***What sorts of competencies should Senior Family Court Registrars have?***

Our submission: Sound judgment and decision-making; cultural competency; comprehensive knowledge of relevant legislation and its practical application; understanding of the dynamics of family violence and intimate partner violence; understanding of the community they are working in.

LAWYER FOR CHILD

Question 32: ***Do you agree with our proposal to introduce new criteria for appointment of lawyer for the child to make sure of the best fit?***

Our submission:

We support the use of OT 1989 criteria in COCA 2004 appointments, that is, that the statutory criteria for the appointment to be inclusive of the lawyer's personality, cultural background, training and experience.

We support the submissions of YouthLaw Aotearoa, namely:

- We advocate for the former appointment criteria of lawyer for child to be reinstated, namely, that a lawyer for child should always be appointed unless it serves no useful purpose. Children have the right to be heard in any administrative or judicial proceedings that affect them, and lawyer for child can help to ensure that a child's voice is heard and considered in Family Court proceedings.
- We agree with the recommendation that the statutory criteria for the appointment to be inclusive of the lawyer's personality, cultural background, training and experience.
- We are supportive of research being conducted into the practices of lawyer for child such as:
    - how often lawyer for child meets with the child, and;
    - how well children feel that the lawyer for child represented their views.

Lawyers for the Child should not be censured for showing their memoranda to the child in question. This is necessary to ensuring that the child's voice has been accurately recorded and should be standard practice. If there are aspects of the memo that should be withheld this can be dealt with through the lawyer's discretion. Similarly, parties (e.g. caregivers) should not be censured for showing Lawyer for Child's memoranda to the child in question, as it is information relating to that child and the child has a right to see this information, and ask for it to be corrected if it does not accurately reflect the child's views.

Question 33: What are the core skills for the role of lawyer for the child, and what training and ongoing professional development do you see as necessary to develop those skills?

Our submission: We support comprehensive professional development for new Lawyers for Child (similar to duty lawyer training programmes) and regular professional development refreshers/updates – i.e. every 1-2 years (see further comments below).

We submit that Lawyers for Child should have some knowledge/training in the areas of child advocacy; child development/psychology; children and trauma.

<u>Lawyer for Child and Disability</u>

We support the comments from Auckland Disability Law made in the meeting of 14 February 2019, that targeted disability awareness is required among Lawyers for Child:

- In any case involving a child there will be all sorts of things going on. For disabled children or young people, they are dealing with a system that is not set up to support them; they are not able to access the time they need; and there is no possibility for them to find a lawyer who has any expertise in (or even knowledge of) their disability.

- Lawyers for Child have not had to do any professional development in respect of disability awareness, but will often be working with a deaf child, a non-verbal child, or a child who has learning difficulties or difficult behaviours, without any ability or expertise in these areas.

Lawyer for Child and cultural competency

We also support the comments from Community Legal Services South Trust in that meeting, namely that there is a significant lack of cultural competency among Lawyers for Child. Completing cultural competency training is not enough to address this, as many Lawyers for Child still do not understand the cultural conflict taking place in some instances. In the end, what is determined to be in the best interests of the child completely overlooks relevant cultural factors. For this reason we submit that more Māori and Pacific Island lawyers should be supported to become Lawyer for Child.

Question 34: ***Do you see a role for an additional advocate with child development expertise to work together with the lawyer for the child, to support the child to express their views and make sure they're communicated to the judge?***

Our submission: Yes.

PSYCHOLOGICAL REPORTS

Question 35: ***Does the definition of 'second opinion' reports need clarifying?***

Question 36: ***What improvement do you think could be made to the process for obtaining critique reports?***

Our submission:

The process needs to include strict timeframes for obtaining a critique/second opinion report, to avoid a party delaying proceedings.

We support the submissions of YouthLaw Aotearoa, namely:

- We are concerned about the delay caused by obtaining psychologist reports because delay in family court proceedings can be detrimental to children.

- We support the creation of a list of psychologists who can write reports and who are approved report writers as a delay reducing mechanism.

Question 37: ***At what stage in the court process would psychological reports be most helpful?***

Our submission: As close to the substantive hearing as possible, as otherwise s 133 reports require updates and this further prolongs proceedings.

Question 38: ***Do you have any other comments about section 133, for example the threshold test for obtaining a report?***

Our submission: Please see our comments in respect of cultural competency at Question 27 above, as this applies equally to psychological reports.

COSTS

Question 39: ***Do you agree with the Panel's proposal that cost contribution orders are modified? For example, do you think a judge should order a party to contribute to the cost of professionals when making final orders based on the party's behaviour during proceedings?***

Our submission: We support judicial discretion for CCOs but suggest they should be used only in limited circumstances where a party's conduct is seriously egregious. Financial sanctions ultimately harm the children of the relationship.

Question 40: ***Should FDR be fully funded by the Government for everybody, or should FDR be free for both parties where one party is eligible for Government funding? Should the eligibility threshold be raised?***

Our submission: Free funding for both parties where one is eligible would mean both parties begin FDR with a more conciliatory state of mind, rather than one party already feeling aggrieved over the cost. This may increase the effectiveness of FDR overall. The eligibility threshold should be raised.

Parties should also be advised at PTS/FDR stage that there is the potential for significant CCOs to be made, so that they are aware that non-participation or unreasonableness at this stage may have a financial impact at a later stage in the process.