



# **Te Korowai Ture ā-Whānau:**

**Summary of submissions on the Panel's  
second consultation paper**

**Independent Panel examining the 2014 family justice reforms**

**May 2019**

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# Overview

This document summarises the submissions received by the Independent Panel examining the 2014 family justice reforms (the Panel) in response to its second consultation paper, *Strengthening the Family Justice System*. The consultation paper asked for feedback on the Panel's early proposals for change.

The Panel wishes to thank each person and organisation that contributed to their work through either a written submission or a face-to-face meeting. The Panel appreciates that sharing your personal experiences of the family justice system can be challenging and time consuming. However, it is only through hearing your stories, thoughts and ideas that the Panel can truly understand the impact of the 2014 reforms and recommend improvements to the family justice system for children and their families.

## The Panel's work and earlier consultation

In August 2018, the Minister of Justice appointed the Panel to consider changes that were made to the family justice system in 2014. The Panel was asked to examine the:

- effectiveness of out-of-court processes
- effectiveness of in-court processes
- appropriate role and use of professionals
- extent to which out-of-court and in-court processes enable decisions that are consistent with the welfare and best interests of the child.

On 5 September 2018, the Panel released its first consultation paper, *Have Your Say on the Family Justice System*. Submissions could be made online or in-person and closed on 9 November 2018. The Panel received 510 submissions from individuals, groups and organisations. Those submissions are summarised in the document *Submissions Summary* (January 2019)<sup>1</sup>.

## The second round of consultation

The Panel's second round of consultation opened on 23 January 2019. The consultation paper *Strengthening the Family Justice System* sought feedback on the Panel's early proposals for change. Submissions could be made online, by email or by post.

<sup>1</sup> <https://www.justice.govt.nz/assets/Documents/Publications/Family-Court-Rewrite-Summary-of-Submissions.pdf>

The Panel also held meetings with groups of key stakeholders in Kaitaia, Auckland, Wellington and Christchurch to get feedback on the proposals. In total, the Panel met with around 100 individuals.

Submissions closed on 1 March 2019.

The submissions received across both rounds of consultation have helped inform the Panel’s recommendations to the Minister of Justice. The Panel’s final report, *Te Korowai Ture-ā Whānau*, was submitted to the Minister of Justice in May 2019.

## Profile of submissions

The Panel received 138 submissions. Most were received by email or through the online submission form. Each meeting the Panel held was counted as one submission, regardless of the number of attendees.

Submission format	
Email	68
Online	45
In-person	22
Post/hard copy	3
<b>Total</b>	<b>138</b>

The consultation paper asked submitters to indicate whether they were an individual or an organisation. Not everyone answered this question, but the content of each submission usually made it clear whether it was from an individual or organisation. The Panel received approximately 80 submissions from individuals, and around 50 from groups or organisations.

Individuals were asked to indicate whether they were a parent, grandparent or other whānau member, while professionals were asked to indicate their role in the family justice system. Groups and organisations were categorised according to their main activity or interest area.

The table on the following page sets out the type of submitter for those submissions where the submitter type *could* be identified.

Type of submitter			
Group or organisation		Individuals	
Law firms, community law centres or legal professional bodies	10	Parent – Mother	16
Family Dispute Resolution suppliers, professional bodies or mediators	9	Parent – Father	7
Children’s advocacy groups	7	Grandparent	8
Family Court staff	5	Other whānau or support people	5
Family violence or sexual violence advocacy groups	5	Mediator	10
Mental health professionals or professional bodies	4	Family Court staff	7
Parent/whānau support or advocacy groups	3	Lawyer	5
Judiciary	1	Counsellor	2
Retired Family Court judge	1	Psychologist	1
Health/whānau ora organisations	2	Academic	1
Government organisation	1	Judiciary	1
Ethnic/migrant advocacy	1		
Social service providers	1		
Iwi-based organisation	1		
Union delegates	1		

# Focus on Children

## Background

The Panel sought feedback on how the family justice system could be more child-focused and responsive to issues affecting children's safety. People were asked to respond to the following questions:

- Q1** *What should be included in a comprehensive safety checklist?*
- Q2** *What information should be available to the court to assess children's safety and in what circumstances?*
- Q3** *What role should specialist family violence workers have in the Family Court? Should there be separate support workers for adults and children?*
- Q4** *Do you have any other suggestions for more child-responsive court processes or services?*

## Summary

Fifty-nine submitters responded to question 1. The most common suggestions for inclusion in the comprehensive safety checklist were criminal background checks, details of emotional abuse as well information about physical and mental health.

Fifty-three submitters responded to question 2. Many submitters (43%) suggested that evidence of abuse of any kind is pertinent information for the Family Court. Many submitters (42%) said that relevant information held by justice sector and social agencies should be available at an early stage.

Fifty-four submitters responded to question 3. There was a range of suggestions for the type of role specialist family violence workers could have in the Family Court.

Many submitters thought there should be separate specialist family violence workers for adults and children. A few professionals and organisations did not believe separate workers were necessary for adults and children if those workers were well trained.

## What submissions said

### Q1 What should be included in a comprehensive safety checklist?

Fifty-nine submitters responded to question 1. Submitters were generally supportive of including the old section 61 checklist in some way. The now-repealed section 61 of the Care of Children Act set out a range of matters to be considered when assessing children's safety including the nature, seriousness and frequency of violence. Some submitters (19%) suggested the Court should be required to consider not only physical violence but also other forms of abuse. There were also suggestions for other issues affecting the child's welfare.

*- all forms of violence/abuse: neglect; psychological; emotional; physical; verbal;  
- what forms of abuse has the child been a victim of?  
- what forms of abuse has the child witnessed?  
- issues affecting the guardians/parent's ability to care for child (mental health - untreated; drug/alcohol/gambling addiction or overuse) or to prioritise the children's needs in a practical way.*

**FDR Provider**

The Specialist Psychologists suggested looking at existing risk assessment models.

*The Specialist Psychologists believe that the use of a safety screen or checklist is an excellent resumption of 'good practice'. We believe that all professionals working within the Family Court should demonstrate 'best practice' which is to use screening processes for a range of the issues which are central to Family Court proceedings. As experts we are aware of a number of excellent models for assessing 'risk'. We believe that a consultation process which included specialist report writers would easily identify a best practice model. We note however that such suggestions (assessing risk) are often focused on adult parties and immediate and more easily identifiable areas of risk and not on the more complex issues of 'risk' for children in these situations.*

**New Zealand Family Court Specialist Psychological Group**

Some submitters (15%) advocated for the child's voice to be heard without fear of repercussions from either parent or the Court, and for their views to be taken into account.

The New Zealand Law Society (the Law Society) was supportive of including a safety checklist in the legislation, but they felt it should provide guidance only and retain the flexibility to respond to the circumstances of each case.

The Family Court Judges did not support reinstating section 61 and did not believe there should be an equivalent safety checklist.

*Judges routinely undertake risk assessments in COCA proceedings without having recourse to checklists... the reintroduction of s 61 of COCA, or the provision of a similar checklist, will inevitably lead to greater delays in proceedings being determined and*



*detract from consideration of the unique situation of each child and their family. Section 61 required Judges to consider the statutory safety 'checklist' in a strictly formulaic manner...The Judges are also mindful that a statutory checklist does not reflect the fact that issues of safety often evolve and are dynamic.*

**Family Court Judges**

## **Q2 Availability of information for assessment of children's safety**

Fifty-three submitters responded to question 2. Many submitters (43%) suggested that evidence of abuse of any kind is important information for the Family Court. A few parents and whānau submitters (8%) suggested that all relevant information should be released to improve transparency.

*All, hospital records, police records, social media posts, child safety overrides privacy.*

**Submitter**

*All information, transparency is a key element.*

**Counsellor**

Some submitters (22%) felt that it was important to speak with and seek information from people who know the children such as doctors, teachers and school counsellors.

*The court needs access to long term information, not just a snapshot on the day. Court needs to be aware of patterns of behaviour and the family history. This needs to come from a wide range of sources in order to get the best picture.*

**Grandparent**

Submitters had other suggestions including obtaining psychological reports or mental health assessments on the parties, and information from health and social service providers or family violence workers.

Most professional submitters agreed that more information on criminal history and family violence records should be available to the Court to help assess children's safety.

Many submitters (42%) said that relevant information held by the justice sector and social agencies should be available at an early stage. Submitters considered that the crossover for many families between the family and criminal jurisdictions meant there should be greater coordination and more sharing of information between those courts. This would provide valuable context for judges and prevent orders being made by different courts that contradict one another.

Submitters provided other suggestions for improving how the family justice system responds to family violence. A few submitters suggested that a 'one judge, one family' approach should be used.

*Having different judges for every hearing is not helpful. That is like someone with a terminal illness seeing a different doctor every visit. No one knows the history or sees the deterioration. Nor are they aware of the overall picture.*

**Grandparent**

### Q3 Specialist family violence workers in the Family Court

Fifty-four submitters responded to question 3. There were a range of suggestions for the role the specialist family violence worker should play in the Family Court, including:

- acting as an advocate for victim-survivors of family violence and their children
- gathering information and reporting to the judge (for example, on the suitability of FDR or counselling)
- screening, risk assessment and triaging functions
- providing advice to victim-survivors about Family Court processes
- providing advice about family justice services and making appropriate referrals.

Some submitters (22%) stressed the importance of family violence workers having specialist training, qualifications or accreditation. Many parent/whānau submitters believed there should be separate specialists to support adults and children.

*There should be separate workers for adult and child, adults have different questions than children. Children should be seen by persons specially trained in children matters only. This also means the child feels safe in the knowledge that what they share with the worker is private and therefore in confidence.*

**Parent**

A few professionals and organisations did not believe separate workers were necessary for adults and children if they were well trained. They felt it may be better, and more efficient, for one person to have overall knowledge of the case and to prevent siloed services.

*The role should not be separated, because to do so would create a silo. Instead it should be contained within one role, to reflect that intimate partner violence and child abuse and neglect are entangled. However, workforce training and competency needs to be lifted to ensure the approach to children alleviates any reluctance to disclose abuse, due to feelings of shame, guilt and anxiety about the experiences and the consequences of disclosure.*

**Family Violence Death Review Committee**

### Q4 Other suggestions for more child-responsive court processes or services

Submitters suggested a number of ways to make court processes and services more child-focused, including:

- Group counselling or peer support groups for children

- Addressing the safety and emotional wellbeing of the primary caregiver as a way of improving the safety and wellbeing of the child
- Better support for people who have to attend court (one submitter gave the example of Louis the Court Dog in Tauranga)
- Improving services available to children to help them better understand court processes and answer any questions they may have.

*There is a desperate need for group counselling available for children of separated parents. These groups (divided into age groups) have proved very helpful, supportive and successful in other countries. It removes the isolation children feel within their school peer groups and gives them somewhere to be with others who have a similar journey and they can be with peers who understand too and normalise everything.*

**FDR Provider**

# Te Ao Māori

## Background

The Panel sought feedback on how Te Ao Māori could be better reflected in the family justice system. People were asked to respond to the following questions:

- Q5** *Should obligations be placed on the Ministry and/ or the Government to improve family justice outcomes for Māori? What would these obligations be?*
- Q6** *How could the Ministry of Justice or the Government partner with hapū, iwi or Māori organisations to deliver services?*
- Q7** *How would you incorporate tikanga Māori into the Family Court?*
- Q8** *Do you have any other suggestions to improve the Family Justice Service for Māori, including any comment on the examples provided above?*

## Summary

Fifty-two submitters responded to question 5. Most submitters (88%) considered that there should be obligations on the Ministry or the Government to improve family justice outcomes for Māori.

Forty-one submitters responded to question 6. Submitters generally supported more partnership with Māori to achieve better outcomes for tamariki Māori. Suggestions to achieve this included: marae-based court models; partnership with iwi and Māori organisations for Family Dispute Resolution (FDR); and a tikanga-Māori based family dispute resolution process.

Thirty-seven submitters responded to question 7, making a number of suggestions about how tikanga Māori or a Māori worldview should be incorporated into Family Court processes. A few submitters (7%) noted that it is ultimately for iwi and Māori to determine how and to what extent tikanga Māori should be incorporated into family justice processes. A few submitters (8%) explained that there is a larger question about the appropriateness of the family justice system for Māori whānau.

Forty-three submitters responded to question 8. Suggestions included upskilling all family justice professionals in tikanga Māori, considering cultural competencies before judicial appointments are made, and being more inclusive of whānau.

# What submissions said

## Q5 Obligations to improve outcomes for Māori

Fifty-two submitters responded to this question. Of those who responded, most submitters (88%) considered that there should be obligations on the Ministry and/or the Government to improve family justice outcomes for Māori. Many of these submitters acknowledged that the Crown is a Treaty partner and that the family justice system should better reflect that partnership.

The Crown is merely a Treaty partner, and therefore should respect the right of Māori to provide support for their children in a way that is culturally-sensitive.

**Grandparent and support person**

The government/Ministry has more than a statutory obligation to observe the three principles of Te Tiriti O Waitangi. The obligation is ensuring that these strands are woven through every part of the process and those working with families should demonstrate commitment to these principles.

**Mediator**

Improving outcomes for Māori is the collective responsibility of the entire state sector. We need a justice system that delivers for Māori. We believe this requires the Ministry of Justice to formally commit to work to improve their relationship with Māori in order to drive meaningful change.

**PSA Ministry of Justice Rūnanga Delegate Committee**

Most professionals agreed that obligations should be placed on the Ministry and/or the Government. One submitter suggested that the Ministry of Justice may need to be more specific about their objectives in respect to outcomes for Māori.

One submitter said that it was important *‘to make sure cultural considerations are understood and taken into account in decisions’* and that this should apply to all cultures.

6% of submitters said that there should not be obligations to improve family justice outcomes for Māori. Of these, most did not think that family law should apply differently because of culture or ethnicity. One submitter considered that this would be a *‘waste of time and money.’* One submitter was of the view that cultural considerations and cultural values are already sufficiently incorporated into the Care of Children Act.

A few submitters (6%) did not express agreement or disagreement. They commented that justice outcomes should be fair for everyone, and that the Ministry of Justice is already addressing outcomes for Māori through the Ministry’s Māori Strategy.

## Q6 Partnership with iwi or Māori organisations

Forty-one submitters commented on how the government or the Ministry of Justice could partner with hapū, iwi or Māori organisations to deliver family justice services. Submitters generally supported more partnership with Māori to achieve better outcomes for whānau and tamariki Māori.

Children and whānau being respected for and supported in their culture is empowering. It is our view that the Family Court should be culturally inclusive and support Māori whānau and tamariki to practice their culture whilst participating in Family Court processes.

**Save the Children NZ**

Some submitters (15%) suggested that marae-based court models similar to Ngā Rangatahi Kōti could be adopted. Others (5%) suggested an approach similar to the new section 7AA of the Oranga Tamariki Act 1989. This section introduces duties on the Chief Executive of Oranga Tamariki including a commitment to the Treaty of Waitangi and the development of strategic partnerships with iwi and Māori organisations.

A few submitters (10%) suggested that Family Dispute Resolution (FDR) provides an opportunity for partnership with iwi and Māori organisations. One submitter suggested a pilot of a tikanga-Māori based Family Dispute Resolution process run by an iwi or marae using FDR providers or lawyers with appropriate cultural expertise. Fairway Resolution proposed stronger obligations on FDR suppliers to ensure FDR services meet the needs of Māori and their whānau, hapū and iwi. Two submitters suggested that the pathways to become FDR providers should be improved to allow for recruitment of more people with the cultural competency to deliver culturally appropriate services for Māori.

Some submitters (12%) recommended that there should be engagement with iwi and Māori organisations to consider what any partnership could look like. The PSA Ministry of Justice Rūnanga Delegate Committee suggested that this needs to be ongoing engagement at a local or court level. Other submitters also supported a more localised form of engagement led by the registries or Family Justice Service Coordinators.

Māori, hapū and iwi need to be at the table at every level of development. From decision making, legislation and policy design and implementation. Te Ao Māori values and principles cannot be incorporated into writing without people who understand how to implement it.

Partnering requires giving resource to those who understand Te Ao Māori and apply it into their work. It requires MOJ and the govt to go to Māori hapū, iwi and organisations to see what works for them. It is also not possible to access one Māori voice or decision maker, partnership looks different in every community.

**Office of the Children's Commissioner**

The Courts need to make it their business to know the hapu, iwi and Māori services in their rohe. Family Justice Service Coordinators need to be able to maintain relationships and strengthen these links.

**New Zealand Association of Counsellors**

## Q7 Incorporating tikanga Māori into the Family Court

Thirty-seven submitters responded to this question, making a number of suggestions about how tikanga Māori or a Māori worldview should be incorporated into Family Court processes. Suggestions included:

- Greater use of te reo Māori and karakia in the Family Court
- Emphasis on Māori values, for example mana and aroha
- Less focus on adversarial processes and the adoption of a more holistic and collaborative approaches
- Stronger focus on Māori concepts of whānau and Māori views of parenting and child rearing
- Encouraging involvement of wider whānau in resolving disputes
- Better training and ongoing professional development for court staff and judges including in relation to tikanga Māori, unconscious bias and the impacts of colonisation
- Use of different dispute resolution processes
- Involving kaumātua, kuia and marae communities in family justice processes, including holding court events on marae
- A national advisory body with appropriate experts to provide cultural support and advice to the Family Court.

*...we would like to see the full-time employment of cultural advisors across the country to assist the Family Court in practice. Tikanga Māori values of Manaakitanga, Whānaungatanga, Tika, Pono and Aroha should guide the overarching policies and procedures...*

**New Zealand Nurse's Organisation**

A few submitters recommended the development of a Family Court model that draws on Matariki Court, Nga Kōti Rangatahi and the Alcohol and Other Drug Court.

*Why are we not co-designing Te Kōti Whānau? Question should be 'how you incorporate the Court into tikanga,' not how to bring tikanga into the court.*

**Kaitaia NGO**

A few submitters (7%) noted that it is ultimately for iwi and Māori to determine how and to what extent tikanga Māori should be incorporated into family justice processes. A few submitters (8%) explained that there is a larger question about the appropriateness of the family justice system for Māori whānau.

*We don't want to overlay some tikanga concepts into an inherently Western system. Māori have 300+ years of doing it their own way... it feels like we are tinkering with*

*the machine rather than stepping back to consider whether the machine is the right one in the first place.*

**Children's advocacy group**

## **Q8 Other suggestions for improving the Family Justice Service for Māori**

Forty-three submitters responded to this question. Suggestions included:

- Upskilling all family justice professionals in tikanga Māori
- Considering cultural competencies before judicial appointments are made
- Identifying Māori professionals already working in the Family Justice Service (e.g. FDR providers) and train them in section 136 work
- Appointing cultural advisors for Family Court judges
- Establishing an anti-discrimination body
- Changing the name from Family Justice to something like Whānau te Rangimaire Whakawhiti

Several submitters emphasised the importance of the Family Justice Service being inclusive of whānau.

*Barnardos also emphasises that when tamariki Māori are supported to take part in Family Court matters and proceedings in a meaningful way so their voices are heard, this needs to take place in the context of hearing all whānau voices. Tamariki Māori are always part of a whānau and the Family Court must recognise and give effect to this in its operations. Hapu and iwi do not separate individual tamariki when conflict is present, efforts are made to find either whānau support and/or other significant persons to stand beside the child or young person. Barnardos suggests this practice be introduced when the Court is seeking to understand tamariki and rangitahi voice.*

**Barnardos**

One submitter pointed out that the question was one that should be answered by Māori.



# Quality, Accessible Information

## Background

The Panel sought feedback on their proposal to develop an information strategy to establish a cohesive and consistent set of resources in formats that cater to all needs. People were asked to respond to the following question:

**Q9** *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?*

## Summary

Sixty submitters responded to question 9. Most of these were organisations (40%) and parents/whānau members (29%).

Many submitters suggested that there should be better use of online platforms or websites to provide information. Submitters felt that the information should be simple, understandable and accessible, including providing for Easy Read, braille and other languages.

Other suggestions included the use of online 'bot' communication or a live chat mechanism.

## What submissions said

### Q9 Useful information

Sixty submitters responded to question 9. Many submitters suggested that there should be better use of online platforms or websites to provide information. This would improve accessibility of information and would reflect the changing demographic of parties coming to court who may be more familiar and comfortable using technology.

*We also agree that the family justice system should have a stand-alone website where user-friendly information can be easily located, with a section especially for children. Information should be available in a number of languages to cater for New Zealand's multi-cultural society and should include details of the various support services and how people can access those services.*

**The New Zealand Law Society**

Submitters said the information should be simple, understandable and accessible, including providing for Easy Read, braille and other languages. Other suggestions included the use of online 'bot' communication or a live chat mechanism.

*It should utilise technology that has interaction with a person via "live chat" in real time for any questions that people may have. Furthermore, the Ministry should consider investing in on line bot communication, which many organisations are using to answer questions from on-line users, and importantly, this is a communication medium increasingly being accessed by a younger, multi-cultural service user demographic.*

**Family Works Resolution Service (Northern)**

Many submitters said that more information needed to be provided to people so that they are better educated about their options and about court processes. Submitters also said that if people were provided with better information, they could make more informed decisions as to whether the Court is the most appropriate pathway for them and their children, or whether they could resolve their situation out of court.

*We believe that there needs to be a publicity campaign to (a) let people know what facilities exist to assist them in resolving issues arising from separation and to (b) normalise the view that resolving issues between yourselves (rather than having a huge conflictual dispute through the Court) is the norm and not the exception.*

**Law firm**

Some submitters said that the existing information should be kept up to date. An example was given where someone had contacted legal aid or FLAS providers but found that they no longer offered those services.

The Family Violence Death Review Committee suggested that consumer feedback should be used to ensure resources are fit for purpose and that information about local support services is available to judges and professionals.

*Resources need to be easily understood and relatable and using consumer feedback through focus groups would help to create these. The Family Justice system could consider mapping of local service providers and community organisations, so that Judges and Family Justice professionals know what is available locally to support people through the process.*

**Family Violence Death Review Committee**

# Counselling and Therapeutic Intervention

## Background

The Panel sought feedback on the type of counselling that should be available in the family justice system. The Panel suggested three types of fully funded counselling: early counselling to help deal with personal emotions, in-depth therapeutic counselling, and the currently available judge-directed counselling to improve the parenting relationship.

People were asked to respond to the following questions:

- Q10** *Would the three proposed types of counselling meet parties' needs, or are there other gaps in the counselling services that need to be filled? For example, should there be counselling available to children?*
- Q11** *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 be able to refer themselves?*
- Q12** *Should confidentiality be waived when parties are directed by the court to therapeutic intervention, in what circumstances and about what matters?*

## Summary

Seventy-nine submitters responded to question 10. The response to the three proposed types of counselling was mostly supportive. Most submitters (68%) said that counselling should also be available to children.

Fifty-nine submitters responded to question 11. While some submitters (25%) agreed that the professionals suggested by the Panel should be able to provide counselling referrals, most suggested a variety of other people that should be able to refer. Many submitters felt that people should be able to self-refer to counselling.

Forty-nine submitters responded to question 12. Responses were balanced, with 22 submitters saying that confidentiality should be waived when parties are directed by the Court to therapeutic intervention, and 23 submitters saying it should not be waived.

## What submissions said

### Q10 The three proposed types of counselling

Seventy-nine submitters responded to question 10. Some submitters (29%) agreed that the three proposed types of counselling would meet parties' needs or would at least be a good starting point.

*We are pleased to see a recommendation that counselling services be expanded. We believe this is essential in helping to reach effective resolution.*

**Birthright NZ**

Most submitters who answered this question (68%) said that counselling for children was also necessary.

*The three proposed types of counselling are great. In terms of gaps, counselling for children is definitely a gap. Helping children make sense of the world around them (and find safety within this) when the world around them is chaotic, is a key piece of the puzzle in any Family Justice system that focuses on the safety and well-being of children.*

**FDR Provider**

A couple of submitters acknowledged that having counselling for children would be of great benefit but were aware of the realities of budget constraints. A few submitters (6%) considered that counselling may be damaging to children.

A few submitters (5%) felt that counselling was not always appropriate in certain circumstances, particularly in cases of family violence. Some submitters said that counselling should not be compulsory in order to prevent victim-survivors of family violence from feeling pressure to attend and potentially being revictimised.

*Counselling should not be compulsory, and family violence cases should automatically be considered complex cases and managed accordingly. The FVDRC is concerned that victims of family violence could feel pressured to attend counselling to demonstrate to the Family Justice System that they are committed to reaching outcomes. There is a risk that failure to attend could be wrongly interpreted as being obstructive or choosing not to engage in the process.*

**Family Violence Death Review Committee**

### Q11 Referral to counselling

Fifty-nine submitters responded to question 11. Some submitters (25%) agreed that Parenting Through Separation providers, Family Dispute Resolution suppliers, Family Justice Service Coordinators and Judges would be well placed to refer people to counselling.

There were also varied suggestions as to who else should be able to refer. Of the many different recommendations made by submitters, common suggestions were health professionals (such as GPs), lawyers, teachers, social workers and family members.

*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.*

**Waitemata Community Law Centre**

Many submitters (45%) said that people should be able to self-refer. It was thought that this would help provide a sense of ownership over the process.

*People definitely should be able to refer themselves for counselling, it should be offered and framed in such a way that offers an opportunity to learn rather than suggest they need fixing or something is wrong with them.*

**Support Person**

## Q12 Waiving confidentiality

Forty-nine submitters responded to question 12. Responses were finely balanced, with 45% of submitters saying that confidentiality should be waived when parties are directed by the Court to therapeutic intervention, and 47% of submitters saying it should not be.

Some submitters (29%) were concerned that if confidentiality were to be waived there would be a risk that parties would be less willing to engage. People might be selective in what they said during counselling, saying only what they thought the Court wanted to hear. It was also thought that a confidentiality waiver would undermine the relationship between the counsellor and the person receiving the counselling, ultimately undermining the therapy.

*If parties are aware that confidential information may possibly be shared, then they will be unlikely to be free and frank in their discussions. A tenet of counselling is the confidential nature of the discussions and the trust between the counsellor and the party.*

**Fairway Resolution**

*Genuine and open participation will rely on a high level of confidentiality, clear information about what will be conveyed to the Court, and knowing that any allegations etc will not be conveyed so the process cannot be manipulated to get advantage in proceedings...The confidentiality and reporting arrangements in the Family Court counselling prior to 2014 appeared to work well.*

**Psychologist**

*The losses incurred as a result of ineffective therapy will likely be far greater than any gains made from waiving confidentiality.*

**Provider**

The New Zealand Association of Counsellors was not in support of waiving confidentiality and did not believe that waiving confidentiality would be necessary for the counsellor to report back to the Court on outcomes.

*Our members consider that confidentiality should not be waived for Court directed therapeutic intervention. There is already the provision (under the Privacy Act 1993 and NZAC Code of Ethics) to waive confidentiality where a counsellor considers there is a serious risk of harm to a client or others.*

*We think that further consideration is required in order to determine what information and what level of reporting would be relevant to the Court, the purpose of any reporting; and to explore the associated ethical issues. It is not necessary to waive confidentiality in order to report on issues and outcomes. Counsellors currently provide outcome reports in many other areas of counselling.*

**New Zealand Association of Counsellors**

Some submitters that supported waiving confidentiality thought that this should only occur in specific circumstances when it was appropriate, such as when there is a risk to the safety of clients or others.

*Confidentiality should be waived when the (specifically trained) counsellor or other professional hears any threats or other indications of violence, coercion or abuse towards the other party in the dispute.*

**Auckland Coalition for the Safety of Women and Children**

# Parenting Through Separation

## Background

The Panel sought feedback on whether attendance at PTS should be expected or mandatory. People were asked to respond to the following questions:

**Q13** *Do you agree that there should be an expectation on parties to attend PTS, rather than having it as a compulsory step for everyone?*

**Q14** *If PTS is not mandatory, how should this expectation of attendance be managed and achieved?*

## Summary

Sixty-six submitters responded to question 13. Around half said 'yes', there should be an expectation on parties to attend PTS, and half said 'no'. However, there was some confusion around the meaning of 'expectation' - several submitters who responded 'yes' to question 13 also provided comments that supported compulsory PTS.

Forty-two submitters responded to question 14. Several submitters suggested that PTS should be recommended to parents by organisations and professionals working in the family justice system, with the benefits clearly explained. Some thought the judge should be able to take non-attendance at PTS into account when making a decision.

## What submissions said

### Q13 An expectation that parties attend PTS

Sixty-six submitters responded to question 13. Around half said 'yes', agreeing with the Panel's proposal that there should be an expectation on parties to attend PTS, rather than having it as a compulsory step for everyone.

However, a number of submitters who responded 'yes' to question 13 also provided comments that supported compulsory PTS.

*Yes, if attending mediation and compulsory if going to Court as is the situation currently.*

**FDR provider**

*Agree, though parties should not necessarily be made to complete PTS before the commencement of the proceedings however still in the early stages of the proceedings. Both parties should be required to attend.*

**Family Court professional**

Several submitters felt that PTS should not be compulsory because they believe PTS is irrelevant or even harmful for victim-survivors of family violence to attend. However, under the current system, the mandatory requirement for PTS does not apply to applications made without notice, or where an affidavit provides evidence that one of the parties or the child has been subject to family violence.

Two parents commented that PTS had been a waste of time for their family, and therefore should not be compulsory. A few submitters (9%), including professionals, organisations and one whānau member, felt that PTS should be encouraged but that people shouldn't be required to attend.

*ADL believes that encouragement to attend PTS would be more appropriate than the existing compulsion.*

**Auckland Disability Law**

Of the submitters who said that PTS should be a compulsory step for everyone, many felt that the benefits of PTS warranted it being a required step for those who wished to file an application with the Court.

*If it is not compulsory a large range of mātua (parents) will not go. This will disadvantage tamariki.*

**Te Pūtahitanga o Te Waipounamu**

*Even though I did not need to do PTS because of circumstances, it was actually a very helpful course to give tools to help the kids and understand them better.*

**Parent**

*Removing the compulsion to attend PTS is a retrograde step. This is one aspect of the family transition service that provides parents with the opportunity to see through the child's lens. PTS provides the starting point for a collaborative mindset needed for them to take control of their lives.*

**Mediator**

Several submitters considered that both parents should be required to attend PTS, rather than just the applicant. There were several comments made about the importance of resolving issues with accessibility and cultural relevance.



## Q14 If PTS is not mandatory, how should the expectation of attendance be achieved?

Forty-two submitters responded to this question. Some submitters (19%) advocated for mandatory PTS rather than answering the question. Some submitters (11%) suggested that PTS should be recommended to parents by organisations and professionals working in the family justice system, with the benefits clearly explained. One submitter thought that PTS should be encouraged early, before there is any dispute.

*The expectation of parties attending PTS will be encouraged at various check points through the FDR process. A) At the time of opening a case and information is gathered from the party and the process explained B) During the Pre Mediation assessment PTS is prompted again C) During mediation a Mediator may prompt the value of PTS.*

**Family Works Resolution Service (Northern)**

One parent felt that the Court should be able to order parties to attend PTS if they hadn't already. Another suggested that there should be a rebuttable presumption for PTS.

Fairway Resolution said that engagement in PTS could be increased if FDR suppliers were able to register parties for PTS during the screening stage of FDR.

There were two suggestions to incentivise attendance at PTS:

- A points system for good behaviour, rewarding people by moving them up the court list
- Tangible rewards such as vouchers

There were also ideas for penalties for non-attendance. A few submitters (10%) suggested that if someone had not attended PTS, the judge should take it into account when determining the outcome of the case. Another submitter felt that the Court should decline to hear an application if a party had not attended PTS.

# Family Dispute Resolution

## Background

The Panel sought feedback on how greater use of Family Dispute Resolution (FDR) could be encouraged. People were asked to respond to the following questions:

- Q15** *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?*
- Q16** *Do we need stronger obligations on family justice professionals to promote FDR and conciliatory processes generally?*
- Q17** *What could a streamlined process for court referrals to FDR look like?*

## Summary

Forty-six submitters responded to question 15.

- 43% agreed with the proposal. Many thought that a rebuttable presumption would be useful to encourage more people to attempt FDR before going to court.
- 26% disagreed with the proposal. There were several reasons for this, including the impact on vulnerable parties and family violence victim-survivors, the need to maintain flexibility to respond to each family's individual circumstances, and a view that FDR should be voluntary.

Fifty-nine submitters responded to question 16. Of these, 76% supported stronger obligations on family justice professionals to promote FDR and conciliatory processes. Many of these submitters considered that FDR participation rates could improve if people received consistent information and advice about FDR from family justice professionals.

Forty-three submitters responded to question 17. Many submitters (43%) suggested that the Registry, the Family Court Coordinator and the judges have a role in triaging applications and should refer appropriate cases to FDR. A common concern among submitters was that referrals to FDR should be made in a timely way, and that there should be a 'streamlined' or 'seamless' handover process between the Court and the FDR supplier.

## What submissions said

### Q15 Rebuttable presumption in favour of Family Dispute Resolution

Forty-six submitters commented on whether there should be a rebuttable presumption in favour of Family Dispute Resolution. Of these, 43% agreed with the proposal.

Although I very much welcome the proposal that there be a rebuttable presumption that the court should direct parties to FDR where they have not already undertaken it, I would not want FDR to be reduced to an instrument of the court.

**Barrister/Mediator**

FDR needs to be undertaken as the first step of the process by most people and the reasons for avoiding the process need to be stipulated much more tightly.

**Family Works Resolution Service (Northern)**

Many submitters who supported the rebuttable presumption in favour of FDR thought that it would be useful to encourage more people to attempt FDR before going to court.

Some submitters (26%) disagreed with the proposal. There were several reasons for this, including the impact on vulnerable parties and family violence victim-survivors, the need to maintain flexibility to respond to each family's individual circumstances, and a view that FDR should be voluntary.

Some submitters noted that a rebuttable presumption would not be as effective as a mandatory approach, or that the rebuttable presumption should be retained alongside the mandatory FDR requirement.

Several submitters stated that the rebuttable presumption should not be imposed in cases involving family violence or risks to a child's safety. Some submitters noted that a requirement to provide good reasons why FDR should not be attempted may impact some groups unfairly, such as victim-survivors of family violence and deaf or disabled people.

Some submitters (30%) made comments on the idea without expressing clear agreement or disagreement or did not understand what was meant by a rebuttable presumption. A few submitters suggested that there should be consequences for those who do not engage in FDR, for example, costs implications or penalties.

### Q16 Obligations on family justice professionals to promote conciliation

Fifty-nine submitters answered this question. Of these, the most (76%) supported stronger obligations on family justice professionals to promote FDR and conciliatory processes. Many

of these submitters considered that FDR participation rates could improve if people received consistent information and advice about FDR from family justice professionals.

It is clear that all parts of the system must reinforce that most people can resolve parenting arrangements themselves with support of FDR. In looking to strengthen the family justice system it will be important to engage the support of all family justice professionals to promote FDR and other out of court services and to position these as the 'normal' way to resolve parenting disputes.

**Resolution Institute**

A few submitters noted that information about FDR and its benefits needs to be more widely available for both parents and professionals to address misinformation about FDR and promote conciliatory processes.

If any changes in obligations on family justice professionals to refer to FDR are made, we need to ensure that we bring professionals with us on the journey so that they see the benefit for their clients, rather than being told this is a requirement... Part of this journey is to ensure that appropriate resources, information and simple pathways are available to both professionals and participants to ensure they can see both the value of and have confidence in the FDR process.

**Fairway Resolution**

Some submitters (14%) did not consider that stronger obligations on professionals were necessary. A few submitters including the New Zealand Law Society considered that the obligation on family lawyers to promote conciliation in the Family Court Act 1980 was sufficient. It was also suggested that family justice professionals, including family lawyers, already act in a conciliatory way.

... generally professionals operating in Family Court do advocate for conciliatory processes.

**Family Court Coordinator**

## **Q17 Process for court referrals to Family Dispute Resolution**

Forty-three submitters commented on or made suggestions about how the process for court referrals to FDR could be changed or improved. Many submitters (43%) suggested that the Registry, the Family Court Coordinator and the judges have a role in triaging applications and should refer appropriate cases to FDR.

*The 'triage' position can order mediation, or a Registrar or Judge can order mediation. Anytime a 'settlement conference' is determined in the current system - should be replaced with FDR mediation.*

**FDR Provider**

Many of these submitters suggested that there needs to be some improvement to the court referral process in order for the Court to maintain appropriate oversight of a case as it

proceeds through FDR. This includes allowing the Court to continue to monitor the case and have the case brought back to court if resolution is not reached.

*The issue for referrals to FDR from Court at the moment is that there is not a process for referral or tracking. Courts should be able to directly refer to a supplier. This could be rotated between suppliers on a monthly basis or via another mechanism to allow for a fair allocation between suppliers. There should be clear expectations provided around timeframes for the completion of the mediation process and the expectation of reporting back including to whom and in what detail.*

**Family Works Resolution Service (Northern)**

A common concern among submitters was that referrals from the Court to FDR should be made in a timely way, and that there should be a 'streamlined' or 'seamless' handover process.

The Law Society proposed that FDR should be brought under the 'umbrella' of the Family Court, and that managing and allocating FDR referrals to FDR suppliers could be managed by specialist registry staff.

Two submitters suggested that without notice applications that are not granted (i.e. do not meet the threshold) should be referred back to FDR if suitable.

*Where the without notice process has been used without merit the e-duty judge could consider a referral to FDR.*

**Portia Law**

Two submitters mentioned cost and affordability of FDR. These submitters thought that court-directed FDR will be pointless if people cannot afford to attend. Auckland Disability Law commented that participants' accessibility and support needs should be met to ensure a streamlined process in and out of court.

Several submitters commented on how the transition from FDR to the Court could be improved. These submitters thought that there should be a seamless handover process for cases that are exempted from FDR or unable to reach resolution. One submitter suggested that parties who have attempted resolution but have not been able to resolve their dispute should have their matter heard urgently in Court.

*Where all matters are unable to be resolved at FDR Mediation there should then follow a seamless handover/return of the case to the Court.*

**The FDR Centre**

# Legal Advice and Representation

## Background

The Panel sought feedback on how access to legal advice and representation could be improved. People were asked to respond to the following question:

**Q18** *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?*

## Summary

Sixty-two submitters responded to question 18. Most submitters (91%) said that there is a need for more accessible funded legal advice.

Some submitters (13%) agreed that any provision of funded legal advice should be incorporated as part of the legal aid grant. Some submitters (18%) supported the option to retain FLAS 1 and agreed that it needed to be enhanced.

## What submissions said

### Q18 Provision of more accessible, funded legal advice

Most submitters (91%) said that there was a need for more accessible, funded legal advice. Several submitters noted that the limited availability and overall unaffordability of legal advice was an access to justice issue.

*My impression of the court system is that justice is only for those who can afford it.*

**Parent**

Some submitters (13%) agreed that any provision of funded legal advice should be incorporated as part of legal aid. Most submitters mentioned that there should be more

availability of legal aid and that the current threshold should be lowered so that more people could access it. A few submitters suggested that legal aid should also be available for legal advice and assistance in out of court processes such as FDR.

*Most of the fees claimable in the [Legal Aid Fixed Fee] Framework are for activities occurring within the litigation process. This is the antithesis of the 2014 changes concern to promote less adversarial resolution of family disputes. Aside from funding for FDR, there is little opportunity for parties to deploy other processes aside from Court.*

**Law organisation**

Some submitters (18%) supported the option to retain FLAS 1 and agreed that it needed to be enhanced.

*Access to representation is a key component in access to justice. We strongly support the proposal to allow representation at all levels of proceedings. It follows that representation and advice need to be available to all parties. For this reason, ADL supports the option to retain and enhance FLAS 1.*

**Auckland Disability Law**

Submitters said that if FLAS was utilised better, there would be less need for lawyers to get involved later on. Several submitters supported creating a solicitor-client relationship within FLAS 1. A few submitters have commented that the introduction of FLAS has only created another step in the process that they must go through.

*Victims of family violence and those challenged by mental health conditions must engage with numerous professionals and navigate a complex system with little support. FVDRC believes it would be more effective and efficient to establish a relationship with their legal advocate from the outset, rather than creating additional steps for them to go through. Because of the limited scope of FLAS victims of family violence are less likely to disclose information about their situation.*

**Family Violence Death Review Committee**

A few submitters (5%) were wary of reinstating lawyers at every stage of care of children proceedings. They believed it could create more conflict, that the lawyers would become mouthpieces for their clients and in general, lawyers promote an adversarial approach. In contrast, some submitters thought that early legal advice could be helpful to prevent disputes escalating, promote agreement and provide a reality check.

*...access to competent legal advice has to be of benefit to the Family Justice System. My experience tells me that parties who receive such advice prior to the issue of proceedings will be less likely to require the assistance of that system. And even if they do, there is a very good chance that the areas of dispute will be narrowed.*

**Retired Family Court Judge**

# Case Tracks and Conferences

## Background

The 2014 reforms introduced several new features to court processes, including case tracks and conferences, with the aim of maximising efficiency and reducing pressures on the Courts.

The Panel outlined their proposals to reduce the system to two case tracks – on notice (standard) and without notice (urgent) – and reduce the number of conferences. They also suggested increasing the use of video and telephone conferencing to reduce delay and wait times. People were asked to respond to the following question:

**Q19** *How do you think we could improve the efficiency of court processes?*

## Summary

Fifty submitters responded to question 19. Some submitters (19%) agreed with the Panel's proposal to reduce the number conference types.

Some submitters (26%) agreed that the system should be simplified to two tracks.

Some submitters (20%) supported more use of telephone and video conferencing as it could help to reduce delay and waiting times

## What submissions said

### Q19 Improving the efficiency of court processes

Fifty submitters responded to question 19. Many parents and whānau outlined the delays they had experienced in court and commented that the current case tracks and conferences had added to the delay.

Some submitters (19%) agreed with the Panel's proposal to reduce the number conference types. They felt that there is confusion over the various types of conferences, which can contribute to delay. One submitter said that they found settlement conferences useful.

*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.*

**Waitemata Community Law Centre**

Some submitters (26%) agreed that the system should be simplified to two tracks.

Some submitters (20%) supported greater use of telephone and video conferencing as it could help to reduce delay and waiting times. They felt some people may be more comfortable with remote conferences because of disability, accessibility and safety issues. However, one submitter had concerns around privacy and confidentiality in relation to remote conferences.

*...the use of video and telephone conferences has issues around confidentiality and privacy (given that no one can be sure who is at the other end of the telephone). There are also potential problems around participants recording those conferences.*

**Law firm**

Other suggestions for improving the efficiency of court processes included:

- Introducing electronic filing of applications
- Improving the quality and quantity of IT solutions in the courtrooms
- A case manager for every case
- Improved training for court staff
- Provide clear information to parties with court documents
- Replace settlement conferences with FDR.

# Without Notice Applications

## Background

The Panel sought feedback on resolving the large increase in without notice applications following the 2014 reforms. People were asked to respond to the following questions:

**Q20** *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?*

**Q21** *Do you think there is value in clarifying that parenting orders made without notice can be rescinded?*

## Summary

Fifty-five submitters responded to question 20. Many submitters (36%) thought that reinstating legal representation would be enough to reduce the number of without notice applications, while others (22%) thought it would not.

Many submitters (47%) thought that sanctions would be required to prevent unnecessary without notice applications. Others (20%) opposed the idea of sanctions.

Thirty-eight submitters responded to question 21. Most submitters (68%) felt that there is value in clarifying that parenting orders made without notice can be rescinded.

## What submissions said

### Q20 Reinstating legal representation

Fifty-five submitters responded to question 20. Around one third of submitters (36%) thought that reinstating legal representation would be enough to reduce the number of without notice applications. Others (22%) thought that additional interventions would be required.

Some submitters noted that a key reason parties filed without notice applications was to obtain legal representation. They considered that reinstating lawyers in the early stages of proceedings would see a decrease in the number of without notice applications.

*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.*

**Waitemata Community Law Centre**

Some submitters also thought that reinstating lawyers in the early stages of CoCA proceedings would help to sort out disputes and progress cases in a timely manner, so that they would not escalate to the point where they needed to file a without notice application.

The New Zealand Law Society agreed that reinstating lawyers would reduce the number of without notice applications made, but did not think this would be sufficient to reduce delays within the court system or address the backlog of unresolved applications.

Other submitters (22%) felt that reinstating lawyers would not be enough to reduce the number of without notice applications. Submitters gave other reasons for the increase in without notice applications, such as parties trying to circumvent the pre-requisite requirements (Parenting Through Separation and Family Dispute Resolution) for filing on notice applications. Others thought it could be due to an increase in the complexity of cases overall.

*It is unlikely that only reinstating legal representation would be enough to reduce the without notice applications. Applying without notice is not solely being used to gain representation. It is also being used to by-pass the mandatory prerequisites.*

**Portia Law**

*Since the reforms were put in place society has changed - I currently work as an FCC, there are no simple matters anymore, people aren't in the Family Court to sort out who has the kids and when. The disputes now generally all involve mental health issues, domestic violence, family harm and drug and alcohol risk.*

**Family Court Coordinator**

Some submitters emphasised that there is still a need for parties to be able to file without notice in urgent situations.

## **Sanctions to reduce the number of without notice applications**

Of the thirty-seven submitters who mentioned sanctions in their response to question 20, 70% thought that sanctions would be required to reduce the number of without notice applications. These submitters wanted consequences for exaggerations or false allegations by parties or their lawyers.

*Clear punishments for false accusations made in order to get these notices, but ideally a system that has the staff available to run at speed which means everyone dealing with the system can have swift access to a Court hearing.*

**Parent**

Some submitters felt that sanctions should only be imposed on lawyers.

*...it is lawyers who are making those allegedly non-urgent applications – not “people”. Thus, it is lawyers who need to be held to account for their inappropriate use of the urgent track.*

**Submitter**

A couple of submitters noted that the Law Society already has the ability to impose sanctions on lawyers who file without notice applications that do not meet the threshold.

Other submitters (30%) opposed the idea of sanctions. Some submitters thought that this would have a detrimental impact on vulnerable parties and could deter people from filing without notice applications even if the situation was urgent.

*There can be valid grounds for seeking 'without notice' applications, and these are usually the safety of the child. [...] By having the right to impose sanctions, you are going to scare away the very people who warrant urgent intervention to keep the child safe.*

**Grandparent**

Some submitters felt that introducing sanctions for parties would be unfair, as people may not understand the without notice threshold or may honestly believe that their case meets the threshold.

A couple of professionals said that, in their experience, it was rare for without notice applications to be clearly without merit – even cases that were moved to the on notice track usually still had elements of urgency.

## **Q21 Rescinding without notice parenting orders**

Thirty-eight submitters responded to question 21. Most (68%) agreed that there is value in clarifying that without notice parenting orders can be rescinded. Some submitters felt that this was important to clarify, as often parties have a low level of awareness and understanding of court processes.

*Yes, clarifying processes are essential, it will help to reduce confusion and may help with more positive resolutions.*

**Save the Children NZ**

A couple of submitters supported parties being able to rescind without notice parenting orders, and the Law Society recommended that the Court should also be able to rescind them.

# Triaging

## Background

The Panel sought feedback on triaging and the best way of achieving an interconnected Family Justice Service. People were asked to respond to the following question:

**Q22** *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?*

## Summary

Forty-six submitters responded to question 22.

Some submitters (26%) said that the Family Justice Service Coordinator would be key to achieving integrated assessment, screening and triaging processes. Some thought that for this role, training would be required in family violence and working with and supporting children.

One submitter was concerned that it was not appropriate for anyone but a judge to triage a case, and that people would be incentivised to exaggerate in order to have their case progressed quickly.

## What submissions said

### Q22 Implementing integrated assessment, screening and triaging

Forty-six submitters responded to question 22. Submitters made a number of suggestions on how integrated assessment, screening and triaging might be implemented.

A few submitters (4%) said that the triaging process should be standardised across the family justice system.

...each and all entry points to the process uses the same/or very similar criteria for screening and triaging...

**FDR Provider**

Some submitters (26%) said that the Family Justice Service Coordinator would be key to achieving integrated assessment, screening and triaging processes, and that they should have knowledge of all the services available to parties.

*The 'Face of the Family Court' should offer all families an inclusive solution-based place to assist families in conflict. The suggestion that there be multi access points into the system will make it easier for parties/families to get in the door of the Family Court. At the point of arrival, clients need accessible information as to how the process can assist and what the options look like.*

**New Zealand Association of Counsellors**

A few submitters (7%) commented that the Family Court and family justice services in the community need to communicate and work better together. Several submitters suggested that other professionals should be involved in triaging such as psychologists, mediators, lawyers, and case managers.

Several submitters said that the Family Justice Service Coordinator would require training in family violence and working with and supporting children.

*We strongly support triaging and on-going screening by domestic violence specialists for every woman who presents to the Family Court. However, this screening/triaging cannot be carried out by people without specialist training. All screening and triaging must be carried out by people who are trained, and experienced in, the gendered dynamics of violence, coercion and abuse against women and children.*

**New Zealand Family Court Specialist Psychological Group**

One submitter was concerned that it was not appropriate for anyone but a judge to triage a case, and that people could be incentivised to exaggerate in order to have their case progressed quickly.

*The determinations necessary to triage applications to the Court are the findings of fact – which is the job of the Family Court judge, not administrators...*

*...applicants to the Family Court will be incentivized to exaggerate claims of abuse against the other parent in order to move to the most urgent tier of the triage schedule. Applicants do so in the hope of reducing the waiting time before their court hearings.*

**Submitter**

Another submitter had concerns about community providers, particularly in small towns, having the responsibility and accountability for triaging.

# Complex Cases

## Background

The Panel sought feedback on how the family justice system could better deal with complex cases. People were asked to respond to the following questions:

**Q23** *What other powers do you think might be helpful to enable judges to better manage complex cases?*

**Q24** *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?*

## Summary

Forty-four submitters responded to question 23, giving a wide range of suggestions for powers that would help judges manage complex cases. The most common suggestions were good case management (20%), such as having a single judge manage a case, and triaging and early identification (16%).

Forty-five submitters responded to question 24. Most submitters (78%) agreed that a judge should have the power to direct a party for psychological or psychiatric assessment, or alcohol and other drug assessment.

## What submissions said

### Q23 Powers to manage complex cases

Forty-four submitters responded to question 23. Submitters gave a wide range of suggestions for powers that would be helpful for judges to manage complex cases. A common suggestion raised (20%) was the need for good case management, and several submitters recommended that a single judge manage a case throughout proceedings.

*One judge to each case (including related cases), rather than changing judges between hearings, conferences etc, as we have experienced over a long period.*

**Grandparent**

This recommendation was supported by most professional submitters, who considered that case management by a single judge would allow familiarity with parties and the issues of the case and would ensure consistency of decision making.

Another suggestion raised by some submitters (16%) was the importance of triaging and early identification of these complex cases. Some submitters suggested that this triaging could be done by the Family Justice Service Coordinator.

*Early triaging and assigning a Judge to complex cases early on.*

**Lawyer**

Other recommendations included immediate intervention where family violence is suspected, ensuring decisions are enforced, greater use of technology, and a waiver of confidentiality to enable counsellors and FDR providers to report back to the Court.

A couple of submitters felt that judges already have sufficient powers to allow them to manage complex cases.

Several submitters objected to the term “complex cases”. They considered that the criteria used to deem a case “complex” are features of family violence and indicate that family violence is or was present. They felt that using the term “complex” to describe these cases minimises family violence.

*The reframing of violence as ‘conflict’, ‘complex relationships’, ‘situational’ or ‘historic’ is enabling violence to be ignored and women to be judged and blamed for the violence they and their children have been endured/exposed to.*

**Auckland Coalition for the Safety of Women and Children**

## Q24 Therapeutic intervention

Forty-five submitters responded to question 24. Most submitters (78%) agreed with the examples given for therapeutic intervention (that judges should be able to direct parties for psychological or psychiatric assessments and alcohol or other drug assessments).

*In cases where a party or parties are in a high-conflict situation, physical or emotional/psychological abuse, or other forms of family violence are suspected psychological or psychiatric assessment should be compulsory and the results should be made available to the court. This would enable appropriate safety plans to be put in place and greatly reduce the ongoing harm to the abused family members and the ongoing cost to society.*

**Grandparent**

The Family Violence Death Review Committee suggested that assessments need to be carried out by practitioners skilled in family violence dynamics.

Some submitters thought that judges should also be able to direct parties involved in complex cases to attend specialist counselling interventions such as in-depth therapy,



counselling to improve communication, drug and alcohol cessation, or additional support for parties with mental health issues. Other suggestions included anger management courses and educational parenting programmes.

Submitters felt that any intervention or assessment directed by a judge should be fully funded by the government. Some submitters raised concerns about the current health workforce shortage and how this might impact on the timeliness of interventions.

Some submitters disagreed with judges being able to direct parties to therapeutic interventions and assessments. A couple of submitters argued that parties with certain mental health issues and personality disorders would easily be able to 'trick' the assessor as they would know what answers to give. Others were concerned about the impact that interventions or assessments could have on vulnerable parties.

*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.*

**Waitemata Community Law Centre**

One submitter considered that therapeutic intervention is never appropriate in cases involving family violence, and a forced psychological assessment of a family violence victim could lead to unsafe outcomes for the victim and their children.

# Cultural Information In Court

## Background

The Panel sought feedback on how the Family Court receives information about a child's cultural background. People were asked to respond to the following questions:

- Q25** *What could be done to encourage lawyers and judges to make better use of section 133 cultural reports? For example, should there be a different threshold for cultural reports? If yes, what would be an appropriate threshold?*
- Q26** *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?*
- Q27** *Do you have any other proposals for improving the quantity and quality of cultural information available to the court?*

## Summary

There was general support for the need for more information about a child's cultural background to be made available to the Court.

Thirty-two submitters responded to question 39. Suggestions for encouraging better use of cultural reports included lowering the threshold to obtain a report, providing training and information to judges and lawyers, and recruiting and training more cultural report writers.

Twenty submitters responded to question 40. Submitters generally supported the proposal to encourage greater use of section 136. Suggested barriers to the use of section 136 included language, privacy and trust.

Twenty-six submitters responded to question 41. Suggestions for improving the quantity and quality of cultural information included introducing a presumption that the Court should obtain cultural information, and the Court providing and paying for interpreters.

## What submissions said

### Cultural information is important

Submitters who responded to this section generally supported the need for more information about a child's cultural background to be made available to the Court. One submitter noted that children have cultural rights under the Children's Convention.

*Children have a right to practice [their culture] and have their culture respected, Article 30 of the Convention.*

**Submitter**

Some submitters noted the importance of cultural information for care of children matters due to the increasing cultural diversity of New Zealand society. A few submitters said that better cultural information was needed for matters involving Māori children.

*There could be cultural reports written in the family court to delve into whānau/hapū dynamic and how one's genealogy, socio-economic background and upbringing affects an individual. It would also recognise and acknowledge how this differentiates from the makeup of non- Māori families. This would also delve into the "intergenerational-curse" and how we as Māori (today) have suffered due to the atrocities endured by our Tupuna.*

**Submitter**

### Q25 Encouraging lawyers and judges to make better use of cultural reports

Thirty-two submitters responded to question 39.

Some submitters commented on the difficulty of obtaining section 133 cultural reports. The key issues identified by submitters were the small number of cultural report writers available, the delay in obtaining reports, and judges and lawyers not understanding how a cultural report may be useful.

Submitters made a few suggestions for how more cultural reports could be encouraged. This included:

- Lowering the threshold to obtain a report
- Training and information for judges and lawyers so they understand the value of a report and how it could assist the case
- Recruiting and training more cultural report writers, and have a centralised list of approved report writers,
- Appropriate remuneration for cultural report writers
- Ensuring cultural report writers are provided with all essential information.

Some submitters (28%) commented on the threshold for cultural reports under section 133. One submitter said that the threshold should not be any different from the other expert reports that can be obtained under section 133. The other submitters suggested that the threshold should be changed, either by lowering the threshold to make it easier to obtain a cultural report or by requiring a judge to consider the usefulness of a cultural report for all matters.

These submitters considered that the current threshold (where a report is 'essential' to the disposition of a case) was too high. Some submitters suggested that the threshold should be lowered to where a cultural report would be 'useful' or where the judge is satisfied that a cultural report is needed.

*A different threshold would be helpful. I think even having a "usefulness" threshold would be good provided the usefulness outweighed the issue of delay.*

**Lawyer**

One submitter suggested that a cultural report should be compulsory where the proceedings concern Māori or Pasifika children.

YouthLaw suggested that 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.

## **Q26 Section 136 - cultural information from whānau and community members**

Submitters were asked to suggest ideas to encourage greater use of section 136. Section 136 allows a person, at the request of one of the parties, to speak to the Court about a child's cultural background. It is not well-known and rarely utilised.

Twenty submitters responded to this question. Those submitters that did respond generally supported the proposal to encourage greater use of section 136.

One submitter explained that a verbal contribution would complement a written section 133 report.

*Both aspects (a written and verbal report) are important and should be encouraged to be used. The verbal report can be used to embellish what is already noted and can be tikanga based. Additionally, the tone and feeling that comes with a verbal delivery can be lost in a written report and so both mechanisms are important and should be encouraged.*

**Te Pūtahitanga o Te Waipounamu**

Several submitters suggested that information and guidance should be developed to inform and support potential speakers under section 136.

Submitters identified several barriers that would need to be addressed to encourage more whānau and community members to speak to the Court, including:

- Speakers may not feel comfortable attending court
- Language barriers and availability of interpreters
- Issues of privacy, trust and confidentiality particularly in small or new migrant communities.

Three submitters were concerned about the evidentiary and natural justice implications of information provided to the Court under section 136. One submitter suggested that there should be a right of reply to allow the other party to respond to information provided by a speaker.

## Q27 Improving the flow of cultural information to the Family Court

Twenty-six submitters responded to question 41. They made several suggestions to improve the flow of cultural information into the Family Court, including:

- A presumption that the Court should receive evidence on culture
- The Court should provide and pay for interpreters
- Better information on what cultural reports and cultural speakers are, particularly for self-represented litigants
- Consult with communities and Oranga Tamariki to identify existing resources

Several submitters commented on cultural report writers:

*We have too few specialist report writers to call on and this can slow a family's case down by several months while reports are waited on.*

**Family Court staff**

*Report writers need to be remunerated appropriately for their expertise.*

**Family Court staff**

# Family Justice Service Coordinator

## Background

The Panel sought feedback on its proposal to establish the new role of the Family Justice Service Coordinator (FJSC). People were asked to respond to the following question:

**Q28** *What do you think of our proposal to create a new role; the Family Justice Service Coordinator (FJSC)?*

## Summary

Sixty-one submitters responded to this question. Most submitters (82%) supported the Panel's proposal to create the new role of the Family Justice Service Coordinator. Several submitters felt that the creation of the FJSC would be an integral part of achieving the Panel's vision of a joined-up system and would provide a valuable link to community services.

A few submitters responded negatively (7%). Some had concerns about the FJSC triaging applications to the Court. Others felt that the role would add another layer of bureaucracy to the court process.

## What submissions said

### Q28 Establishment of the FJSC role

Sixty-one submitters responded to question 28. Most submitters (82%) supported the Panel's proposal to create the new role of the Family Justice Service Coordinator.

Several submitters felt that the creation of the FJSC would be an integral part of achieving the Panel's vision of a joined-up system and would provide a valuable link to community services.

*This is a great idea. If there was one service provider responsible for Counselling, another for PTS and another for FDR, then the FJSC could coordinate with these services.*

**FDR professional**

Submitters thought that the role should include the following elements:

- Offering accessible information and help to people
- Triaging of applications
- Referrals to and promotion of out of court services
- Maintaining a working relationship with out of court service suppliers and other community services.

Some submitters had concerns about the FJSC triaging applications to the Court. They felt that this should be left to the judge to decide or should only be done by someone with sufficient training and experience in identifying family violence. One submitter felt that it would be important for triaging criteria to be consistent across all organisations and points of entry to the family justice system.

Some submitters stressed that for the FJSC role to be successful, it would need to be well resourced and supported by a team of staff, including having multiple FJSCs in the larger District Courts.

Some submitters, particularly FDR suppliers, raised issues regarding the FJSC being based in court. They had apprehensions about court being viewed as the place to go to get information, and concerns that the FJSC might show a preference towards promoting and recommending in court resolution over referral to out of court services, such as FDR.

*It is really important, even with this role providing a valuable source of information on how to access Family Justice Services, that it doesn't become a single point of entry to services [...] only some people will need to go to court, so it is vital that court isn't positioned as 'the place' to go to get information or access services. Parents should still be able to access information on services on the internet, by phone, direct with FDR mediators and Suppliers, and via lawyers.*

**Resolution Institute**

*It would be important for them to be seen as independent and their function focussed on ensuring that all services were promoted appropriately. While based in Court a community presence would be crucial with the tack of promoting 'out of court processes' as well as in Court options. If the Coordinator was over aligned with the Family Court this would bring the resolving of family dispute too close to a court context.*

**Family Works Resolution Service (Central)**

A couple of submitters did not support the creation of this role as they felt that it was just adding another layer of bureaucracy, and the money could be better spent elsewhere. Auckland Disability Law suggested the additional need for a Disability Supports Coordinator to respond better to the needs of disabled people.

*We also believe there is a need to establish the role of a Disability Supports Coordinator. This Disability Supports Coordinator role would support the service's staff interaction with Deaf and Disabled People, and also assist service users to navigate the system.*

**Auckland Disability Law**

# Family Court Coordinators

In response to the Panel's question about the Family Justice Service Coordinator, some submissions (13%) mentioned the existing role of the Family Court Coordinator. These were mainly from Family Court staff or Family Court registries.

Many submitters thought that the proposed FJSC role and job description is largely the same as the historic Family Court Coordinator role, which has been reduced over time and is now mostly administrative. Whether or not they supported the establishment of the FJSC, submitters felt the current Family Court Coordinators needed to be better resourced and have administrative support.

Some submitters suggested that it was not necessary for a new role to be created, but rather that the Family Court Coordinators should be better resourced in their current role.

*I don't think a new role needs to be created. The current FCC job description provides for everything discussed for the FJSC role. The reality is FCCs are not resourced enough to cater all of the needs in their job descriptions.*

**Family Court Coordinator**

Other submitters supported the creation of the FJSC and thought that some existing Family Court staff would have the competencies for this new role.

*Giving this role a formal title will not only provide a good career option, it will also ensure that high quality is maintained, especially as I envisage that appropriate training will be provided [...] It may well be that there are a number of Family Court Coordinators around the country who could step into this role without difficulty.*

**Retired Family Court Judge**



# Senior Family Court Registrar

## Background

The Panel sought feedback on its proposal to establish the new role of the Senior Family Court Registrar (SFCR). People were asked to respond to the following questions:

- Q29** *What do you think of our proposal to establish a Senior Family Court Registrar position?*
- Q30** *What powers do you think Senior Family Court Registrars should have in order to free up judicial time?*
- Q31** *What sorts of competencies should Senior Family Court Registrars have?*

## Summary

Forty-two submitters responded to question 29. Most submitters (76%) supported the Panel's proposal to establish a new position of Senior Family Court Registrar (SFCR).

Twenty-nine submitters responded to question 30. Many submitters (45%) thought that Senior Family Court Registrars should be granted the powers necessary to handle administrative and simple matters in order to free up judicial time.

Thirty submitters responded to question 31. Submitters suggested a range of competencies for the Senior Family Court Registrar role. The most common suggestions were legal skills or qualifications (33%), knowledge of relevant legislation and processes (30%), understanding of family violence (20%), understanding of child rights and development (20%), experience working in the Family Court (17%), and cultural competence (17%).

## What submissions said

### Q29 Establishment of the Senior Family Court Registrar role

Forty-two submitters responded to question 29. Most submitters (76%) supported the Panel's proposal to establish a new position of Senior Family Court Registrar. Most submitters who agreed with the establishment of the SFCR felt that the new role would improve the efficiency of the Court and help to free up judicial time.

*The SCFRs will undertake a judicial role that will, in turn, free Judges up to undertake core work.*

#### **Family Court Judges**

A couple of submitters, including the Family Court Judges, emphasised that the SFCR would need to have appropriate infrastructure and resourcing available for the position to be able to be successful.

Some professional submitters suggested that instead of creating a new position, existing registrars should be exercising their current powers or that these powers could be extended. A couple of these submitters also considered that there are existing court staff who would be able to step up into this position.

*We should think carefully before going back to more roles. There are senior staff currently who could be used in a different way. Senior Court staff who have depth of experience should be afforded opportunity to act as senior registrars to carry out quasi-judicial functions.*

#### **Family Court Coordinator**

A couple of submitters did not support the creation of the SFCR role as they felt that it was adding another layer of bureaucracy and another highly paid position. One submitter supported the establishment of the SFCR, but also questioned whether it was the best use of limited resources:

*Again, if there is new resourcing available, one would hope that indigenous initiatives, and community responses like Tū Pono are also given consideration in the reform of family justice, rather than just adding more roles within the bureaucracy.*

#### **Te Pūtahitanga o Te Waipounamu**

One submitter was concerned about the impact of judges delegating work to the SFCR.

## **Q30 Freeing up judicial time**

Twenty-nine submitters responded to question 30. Many submitters (45%) thought that to free up judges' time for hearings and dealing with cases, SFCRs should be granted the powers necessary to handle small, uncomplicated matters.

Suggestions for powers for SFCRs included:

- interlocutory matters
- uncontested applications
- pre-hearing conferences
- directions conferences
- matters that all parties have consented to
- applications for leave.

Other suggestions for matters that the SFCR could deal with were removing counsel upon application, issuing cost contribution orders, turning FDR agreements into consent orders, and managing complaints.

Some professional submitters (14%) disagreed with the idea that SFCRs should manage without notice (e-duty) applications as they felt that these are often complicated matters that are better dealt with by judges.

*I definitely think that registrars should not be deciding e-duty applications. The consequences of getting something like a protection order wrong are huge.*

**Lawyer**

The Law Society recommended an analysis of the powers currently available to judges and registrars, to assist in identifying appropriate powers available to a SFCR.

### Q31 Competencies

Thirty submitters responded to question 31, suggesting a range of competencies for the Senior Family Court Registrar, including:

- Legal skills or qualifications (33%)
- Knowledge of relevant legislation and processes (30%)
- Knowledge of all forms of family violence and the impacts of it (20%)
- An understanding of child rights and development (20%)
- Experience working in the Family Court (17%)
- Cultural competence (17%).

*They should be very well versed in the reality of abuse, family court matters and the impact these have on lives. I have never felt like a 'person' in the family court, just a number.*

**Parent**

Submitters also suggested a number of soft skills that should be required for the role, including communication skills, sound judgement and decision making, and empathy.

*A good understanding of the legislation and necessary processes; ability to communicate well with a range of people; discretion; empathy; emotional intelligence and strength to handle frustrated people without taking it personally; an air of authority; a bit of life experience.*

**Grandparent**

# Lawyer for Child

## Background

The Panel sought feedback on the role of lawyer for child. People were asked to respond to the following questions:

- Q32** *Do you agree with our proposal to introduce new criteria for appointment of lawyer for the child to make sure of the best fit?*
- Q33** *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?*
- Q34** *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?*

## Summary

Fifty-six submitters responded to question 32. Most submitters (84%) agreed with the Panel's proposal to introduce new appointment criteria for the lawyer for child to ensure best fit based on personality, cultural background, and training and experience.

Fifty submitters responded to question 33. Submitters made many suggestions for core skills and training requirements for lawyer for child. The most common suggestions related to working with and understanding children (60%), an understanding of family violence and trauma (28%), cultural competency (24%), and disability awareness (6%).

Sixty-two submitters responded to question 34. Most submitters (79%) agreed that there was a role for an additional advocate with child development expertise to work alongside the lawyer for child.

## What submissions said

### Q32 Appointment criteria

Fifty-six submitters responded to question 32. Most submitters (84%) agreed with the Panel's proposal to introduce new appointment criteria for the lawyer for child to ensure best fit. Submitters emphasised the importance of using criteria focussing on personality, cultural

background, and training and experience to match each child with the best lawyer for child to represent their views and best interests.

*I think it is very important the lawyer is a good fit for the child so that the child feels safe and supported and the family do too*

**Parent**

Some professional submitters acknowledged that the proposed appointment criteria are the same as in the Oranga Tamariki Act 1989. They supported this alignment of the legislation.

A few submitters raised concerns about the availability of suitable lawyer for child candidates. Some professionals working in the Family Court felt that matching the child with an appropriate lawyer for child was already standard practice carried out by Family Court Coordinators. They had mixed views on whether it would be necessary to have this put into legislation.

*We also assess the affidavit when a Lawyer for child is required to see what the needs and complications are for the family and who on the list would have the best skill set for the case.*

**Family Court Coordinator**

Another issue raised by a few submitters was the threshold for appointment of lawyer for child. Most submitters commenting on this issue felt that the criteria for appointment should be reinstated to the lower threshold that was in place before the 2014 reforms.

*YouthLaw Aotearoa consider that the former appointment criteria of lawyer for child should 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.*

**YouthLaw Aotearoa**

## **Q33 Core skills and training**

Fifty submitters responded to question 33. Most submitters (60%) made general suggestions around working with and understanding children, as they considered this to be essential to the role of lawyer for child. Submitters suggested that a lawyer for child should have formal training in areas such as child development, child psychology, attachment theory and child advocacy to allow them to work effectively with children of all ages. They also stressed that lawyer for child needs to be able to communicate with children at their level of understanding, and that this must be determined on a case-by-case basis, as children of the same age can have different levels of ability and maturity.

*Core skills should include; communication with child, supporting a child's participation – including those of very young children. Training should include; child rights training including on how decisions made will impact a child's rights, supporting children to*

*participate, child development training – i.e. First 1000 days, adolescence, how to effectively communicate with children including listening to children.*

**Save the Children NZ**

Some submitters highlighted the need for lawyer for child to have specific training in disability and cultural awareness. Others felt that training to increase cultural competency would not go far enough to provide adequate cultural support for children. It was suggested that for this to be addressed, there would need to be an increased number of Māori and Pasifika Lawyers for Children.

Another common suggestion (28%) was that lawyer for child should have an awareness and understanding of issues such as family violence and trauma. Submitters felt that the lawyer for child should be aware of the impacts that family violence and trauma have on children and child development, and should be able to recognise and act when such problems are present.

[lawyer for child's core skills should include:]

- *understanding more about domestic violence, narcissism, control and the effects that has on the child and primary caregiver.*
- *understanding and learning more about attachment parenting.*
- *understanding psychology of children.*

**Parent**

Professional submitters who commented on lawyer for child training and professional development felt that this needed to be frequently held and regularly reviewed.

## **Q34 Child advocate**

Sixty-two submitters responded to question 34. Most submitters (79%) agreed that there was a role for an additional advocate with child development expertise to work alongside the lawyer for child.

All parents/grandparents/wider whānau submitters who responded to this question thought that appointing an additional child advocate would be a good idea and would bring valuable skills to offer further support and representation for the child. Some submitters felt that based on their previous experience, a lawyer for child may not be the best person to gather the child's views.

*Yes, definitely. Despite my children being able to communicate well from an early age, their views were not adequately represented. They could make sure that each child had a suitable person to attend interviews with LFC, or to respond on their behalf.*

**Parent**

*The Advocate role would be the best way to get a child centred approach underway as early as possible.*

**Grandparent**

Most professional submitters, including all youth focused organisations, also agreed that a child advocate would be a valuable addition to work with the lawyer for child.

*The provision of a child advocate would be a way to address and re-balance the fact that children inherently lack agency due to their age and stage of life; however, this does not mean that they should not be supported to have agency within the Family Justice Service, and the provision of appropriate child advocates provides a way to ensure this.*

**Barnardos**

Submitters thought that a child advocate would provide experience and expertise in working with children, and could support the child through the Court process, particularly in complex cases. Others considered that they would be able to take a trauma-informed approach, work with children based on a child's sense of time and could be matched with children based on cultural background and other such requirements.

A couple of submitters suggested that the child advocate could replace the lawyer for child entirely.

Some professional submitters disagreed with the idea of a child advocate role. The key reason for this was that lawyer for child already completes training in child development and advocacy, and it was considered they already have the necessary skills. Some submitters also had concerns about the possible detrimental impact of children being exposed to too many professionals.

*The Law Society has significant reservations about the possibility of an additional advocate being introduced and does not support such a role being developed. Lawyers for children should have, by their training and expertise, the ability to communicate with children along with the ability to convey, within the rules of evidence, the child's views to the court.*

**New Zealand Law Society**

*The addition of a child advocate to a process which already frequently involves children being exposed to conversations/interviews with a number of adult professionals is complex and fraught.*

**Family Court Judges**

Some submitters who supported the child advocate role shared this concern, and felt that care should be taken when adding to the number of professionals working with a child.

# Psychological Reports

## Background

The Panel sought feedback on section 133 psychological reports and critiques/second opinions of those reports. People were asked to respond to the following questions:

- Q35** *Does the definition of 'second opinion' reports need clarifying?*
- Q36** *What improvement do you think could be made to the process for obtaining critique reports?*
- Q37** *At what stage in the court process would psychological reports be most helpful?*
- Q38** *Do you have any other comments about section 133, for example the threshold test for obtaining a report?*

## Summary

Twenty-three submitters responded to question 35. Most submitters (82%) agreed that the definition of 'second opinion' needs clarifying.

Twenty-three submitters responded to question 36. Views were evenly split on whether or not the Court should be required to select critique report writers from the list of court-approved specialist report writers. Other suggestions for improvement to the critique report process included reducing the timeframes and lowering the threshold.

Thirty-one submitters responded to question 37. One third felt that psychological reports would be most helpful early in the court process to avoid delays and ensure the Court had the information as early as possible. Several submitters said that a report should be requested in complex cases or where there are symptoms of mental health, abuse or family violence.

Twenty-five submitters responded to question 38. Submitters had a range of views on the threshold for psychological reports and the appropriateness of psychological reports in family violence cases. Other suggestions from submitters included psychological reports on parents, and a national list of psychological report writers.



## What submissions said

### Q35 Clarification of the term ‘second opinion’

Twenty-three submitters responded to question 35. Most (82%) agreed that the definition of ‘second opinion’ needs clarifying. Ten submitters provided explanations of their answers, four of which felt that the interchangeable use of the terms ‘second opinion’ and ‘critique’ is confusing.

### Q36 Improvements to the process for obtaining critique reports

Twenty-three submitters responded to question 36. Some submitters (17%) agreed with the Panel’s suggestion that critique report writers should be selected from the Family Court lists of approved report writers. A few submitters (7%) disagreed and felt that a critique report writer should not have to be chosen from a list, as this would limit the independence of the critique.

*If parties who believe they have been unfairly assessed because of ideological bias are to maintain confidence in the process, it will be important for them to be able to choose for a second opinion or critique a suitably qualified psychologist who may be outside the ‘approved list’. In any case, the judge will need to approve the psychologist and that should continue to provide sufficient gate-keeping.*

**Psychologist**

The New Zealand Law Society submitted that the threshold for the Court approving a critique report in ‘exceptional circumstances’ is too high and should be amended to “*if the court is satisfied, after weighing any competing considerations, that a critique should be obtained.*” Another submitter felt that there should be an automatic right of critique by an independent expert.

Some submitters (13%) wanted to see shorter timeframes for critique reports to prevent delays to proceedings. Others (7%) considered that for the purposes of natural justice, a critique report writer should have access to the notes and materials used by the original psychological report writer.

### Q37 At what stage in the court process would psychological reports be most helpful?

Thirty-one submitters responded to question 37. Many submitters (32%) thought that reports should be ordered ‘immediately’, ‘at the beginning’ or ‘at the start’ to avoid delays and ensure the parties and the Court had the benefit of the information contained in the report as early as possible.

*YouthLaw Aotearoa submit that section 133 should be amended to require the court to consider whether reports should be requested at the very beginning of proceedings. We believe that requesting reports early in the process rather than at an advanced stage in the proceedings could reduce the delay caused by specialist reports.*

**YouthLaw Aotearoa**

One parent suggested a report should be ordered after the first roundtable meeting with the judge. Another parent thought that a report should be able to be ordered at any stage the applicant sees fit, and a third parent felt that reports are currently requested too easily.

The New Zealand Law Society felt that the circumstances of the case dictated when the most helpful time for a psychological report would be.

*In the Law Society's view there is no particular stage in the court process where a psychological report would be most helpful. Whether or not a report is obtained will depend on the particular circumstances of the specific case. Section 133(3) contains adequate guidance for the court when deciding whether a report is obtained – that the information the report will provide is essential to the disposition of the application; the report is the best source of the information; the proceedings will not be unduly delayed by the time taken to prepare the report; and any delay will not have an unacceptable effect on a child.*

**New Zealand Law Society**

Some (16%) submitters thought that a report should be requested when the case is complex or there are symptoms of mental health, abuse or family violence. One FDR provider considered it preferable that a psychological report is ordered before FDR takes place.

## **Q38 Other comments about section 133**

Twenty-five submitters responded to question 38. Responses covered a range of topics.

The threshold for section 133 psychological reports was mentioned by some submitters (24%). Some (12%) felt that there needs to be a clearer definition of the threshold, one submitter considered that the threshold should be lowered to the pre-2014 wording, and a few (8%) thought that the threshold should be higher.

*We believe that the current 'test' exceptional circumstances is poorly defined (as we point out with other parts of the changes to the legislation) and used differently (or not at all) by different Judges. We believe that best practice would suggest that an 'identified issues' screen would give better guidance as to the value of and need for specialist reports.*

**New Zealand Family Court Specialist Psychological Group**

*There needs to be a much higher threshold for s133. An accusation of 'alienation' ends up costing people thousands of dollars even if unfounded. The amount of further stress these assessments have on children and victims of abuse is overlooked. They should not be*

*ordered unless there is significant concern from the judge or lawyers, not just because a party asks for it.*

**Parent**

Some submitters (12%) considered that the Court should be able to request a psychological assessment of the parties rather than just the child.

There were two suggestions for alternatives to psychological reports:

*In some ways, it would be better if the Court could access the mental health history of a person rather than rely on one report. Having the full picture would be more useful and give a better idea of the issues.*

**Grandparent**

*Experienced Teachers or Social Workers could undertake these roles if they undertook training in a specific postgrad qualification for this. Currently we already have some reports e.g. section 131 reports coming from Oranga Tamariki whose staff appear too bogged down dealing with day to day care issues to be doing this.*

**Grandparent**

Several submitters advocated for a national list of approved psychological report writers. YouthLaw Aotearoa suggested that *“the psychologist’s personality, cultural background, training and experience be considered by the court when appointing a psychologist”*.

Submitters had opposing views on the appropriateness of psychological reports in family violence cases. Two parents felt that any time a family violence affidavit or a protection order application is filed, there should be an automatic request for a psychological report. In contrast, one submitter considered that family violence is outside the expertise of psychologists, and psychological reports are therefore never appropriate in family violence cases.

The Auckland Coalition for the Safety of Women and Children submitted that all court report writers should be family violence specialists.

*Reports to the Court must all be from domestic violence specialists, trained specifically in the gendered dynamics of violence, coercion and abuse. These reports would include risk assessments and psychologist’s reports. Reintroduce reports 132 and 133 that assess the nature and seriousness of the violence and what the victim thinks is the likelihood of reoccurrence.*

**Auckland Coalition for the Safety of Women and Children**

# Costs

## Background

The Panel sought feedback on how much parties should be required to contribute to the cost of resolving disputes about children in the family justice system. People were asked to respond to the following questions:

- Q39** *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?*
- Q40** *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?*

## Summary

Forty-three submitters responded to question 39. Most submitters (70%) agreed with the Panel's proposal to modify cost contribution orders from being automatic to being made at the judge's discretion.

Fifty-five submitters responded to question 40. Most submitters (69%) agreed that FDR should be fully funded by the Government for everybody. Some submitters (16%) felt that FDR should be free for both parties when one party is eligible for funding.

## What submissions said

### Q39 Cost contribution orders

Forty-three submitters responded to question 39. Most submitters (70%) agreed with the Panel's proposal to replace automatic cost contribution orders with judicial discretion. Many of these submitters felt that costs should only be ordered for specific behaviours or in specific situations, such as vexatious litigation, causing deliberate delays in proceedings, and filing false accusations. Some submitters thought that the ability to order costs could be a useful deterrent for these behaviours.

*I believe this should only be used when the Court's time has been unnecessarily wasted by vexatious behaviour. The costs sent out are off putting for people who are genuinely*

*acting in the child's best interests such as family members, who are often already under substantial emotional and financial pressure undertaking these proceedings.*

**Grandparent**

Some submitters thought that costs should only be ordered in exceptional or extreme circumstances. It was pointed out that financial penalties ultimately harm the children.

Of the submitters (9%) who disagreed with the Panel's proposal, most thought that costs should not be ordered for any party for any reason. Some submitters were concerned about the impact that this could have on vulnerable or disadvantaged groups, particularly parties who had experienced family violence, and parties with disabilities.

*Any costs based on a service user's behaviour and delays attributed to that person carry a risk of becoming sanctions based on deafness, mental health problems (diagnosed or undiagnosed, as the case may be) or other disability.*

**Auckland Disability Law**

Some submitters disagreed with certain groups having to pay fees in the Family Court in general, such as grandparents and family violence victim-survivors.

*A victim of long term abuse should not have their future and that of their children further disadvantaged by the actions of their abuser. I will be paying for protecting my children for the rest of my lives.*

**Parent**

Some professional submitters noted that currently, few cost contribution orders are being made because judges are using their discretion to waive costs for parties. Cost contributions orders were not regarded to be an effective or efficient system at present and submitters thought that the cost of administration may outweigh the amount being recovered.

## Q40 Funding for FDR

Fifty-five submitters responded to question 40. Most submitters (69%) agreed to FDR being fully funded by the Government for everybody. The reasons given included:

- Removing the cost barrier would make FDR more accessible
- It would get rid of the perception of unfairness and inequality when one party is funded and the other is not
- It would reduce administrative delays for mediators
- Ultimately, it would save costs as there would be a reduction in the number of people needing to go to court to resolve their disputes.

*Given the success rate of FDR, that the process empowers parties to reach their own road map, the government should pay in full. What does 12 hours cost v the costs of an average family court application? The benefits for society of people out of the court system and designing their own future must be weighed.*

**FDR Provider**

Some FDR Suppliers and ADROs felt that fully funded FDR would increase the uptake of FDR, and this in turn would reduce the delays in court.

*A free service will increase the amount of cases that are able to reach resolution outside of the family court enabling the family court to progress matters that do require their assistance in a timely manner.*

#### **FairWay Resolution**

Some submitters drew comparisons between FDR and employment mediation. They thought that as employment disputes are fully funded by the government, then family disputes should be as well. Some submitters suggested that FDR could be fully funded in certain situations, such as when parties are directed to FDR by a judge.

Of those submitters (16%) who agreed with free FDR for both parties where one party was eligible for government funding, most saw this as a less favourable option to fully funded FDR, but still an improvement on the status quo. Some FDR suppliers thought that this funding scheme would make the system more confusing and complicated for parties, and would not address the administrative delays or the difficulties faced by FDR providers in sorting out payment.

A few submitters (5%) disagreed with FDR being fully funded or free for both parties where one was eligible. Some felt that parties should have to pay for FDR if they are able to afford it, as this would ensure the parties were taking responsibility and would make them more motivated to resolve their disputes. A couple of submitters felt that all parties should pay something for FDR, though they considered this should be significantly lower than the current fee.

All submitters (22%) who mentioned the eligibility threshold for FDR funding agreed that this should be raised if FDR is not fully funded for all parties.

# Other Matters

Several submitters made suggestions that fell outside the questions in the consultation paper. These included:

- A Family Law Service along the lines of the Public Defence Service
- Duty solicitors in the Family Court
- The reintroduction of specialist Family Court registries
- A review of the Family Court Rules
- Better support for grandparents and whānau caregivers
- The Panel assessing their proposals using the Child Impact Assessment Tool
- A rebuttable presumption of shared care of children of separating parents
- Increased judicial resource
- A much better court IT system
- A model where an applicant would be able to file an 'application lite' if they initially elected not to engage in FDR
- An investigative court made up of judges and lay people
- An integrated Family and Criminal Court for family violence proceedings
- An early-intervention tier within the Family Court, where Counsel to Assist provides mediation and determines interim contact and guardianship issues.

There were also a number of suggestions for initiatives that would generally fall outside the scope of the care of children section of the family justice system.

One submitter advocated for increased interventions for family violence perpetrators, particularly Māori, who are often victim-survivors of childhood abuse, neglect or violence themselves.

Another suggested ongoing health and wellbeing assessments of family and whānau, and free wrap around support services such as access to safe housing, financial services, food, clothing, health services and support groups.

One submitter thought there should be early, initial, equal division of primary earner income to neutralize one parent exerting financial control over the other, as well as career assistance for primary caregivers who have been out of the workforce for an extended period of time due to childcare responsibilities.

# Submissions from Organisations

Listed below are the 32 organisations or groups that made written submissions categorised by main activity or interest area. Some of these submissions have been made publicly available at <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/family-court-rewrite>.

Interest area	Organisation or group name
Children's advocacy groups	Barnardos Better Outcomes NZ Birthright New Zealand Office of the Children's Commissioner Save the Children
Family Dispute Resolution	Arbitrators and Mediators Institute of New Zealand (AMINZ) Fairway Resolution FDR Centre Presbyterian Support (FamilyWorks) Central Presbyterian Support (FamilyWorks) Northern Resolution Institute
Family violence or sexual violence advocacy groups	Auckland Coalition for the Safety of Women and Children Shine Wellington HELP
Government organisations	Family Violence Death Review Committee
Health/whānau ora organisations	New Zealand Nurses' Organisation Te Pūtahitanga o Te Waipounamu
Iwi-based organisations	Waihōpai Rūnaka
Judiciary	Family Court Judges



Lawyers and legal professional bodies	<p>Auckland Disability Law</p> <p>Collaborative Law Association of NZ</p> <p>New Zealand Law Society</p> <p>Portia Law</p> <p>The Law Room</p> <p>Waitemata Community Law Centre</p> <p>YouthLaw Aotearoa</p>
Mental health professionals or professional bodies	<p>New Zealand Association of Counsellors</p> <p>New Zealand Family Court Specialist Psychological Group</p> <p>New Zealand Psychological Society</p>
Parent/whānau support or advocacy groups	<p>Canterbury Men's Centre</p> <p>Families 4 Justice</p>
Union delegates	<p>PSA Ministry of Justice Rūnanga Delegate Committee</p>

# Glossary

ADRO	Approved Dispute Resolution Organisation
CCO	Cost contribution order
FDR	Family Dispute Resolution
FLAS	Family Legal Advice Service
PTS	Parenting Through Separation
Section 133 report	A request made by a judge under section 133 of the Care of Children Act for a specialist written cultural, medical, psychiatric, or psychological report on a child.

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