

Coversheet: Strengthening the Family Court – First stage initiatives to enhance child and whānau wellbeing

Advising agency	Ministry of Justice
Decision sought	Strengthening the Family Court – First stage initiatives
Proposing Minister	Hon Andrew Little

Summary: Problem and Proposed Approach

<p>Problem Definition</p> <p>What problem or opportunity does this proposal seek to address? Why is Government intervention required?</p>
<p>The Independent Panel (the Panel) appointed to review the 2014 reforms to the Care of Children Act 2004 (CoCA) released its report, Te Korowai Ture ā-Whānau (the report), in June 2019. The Minister of Justice directed the Ministry of Justice (the Ministry) to progress recommendations to strengthen the Family Court based on part three of the report. He envisages this to be the first phase of a broad, multi-year programme of work in the family justice system.</p> <p>The time frames set by the Minister for the introduction of legislation have limited the Ministry’s ability to conduct further analysis and consultation on the preferred or other options.</p> <p>This RIA assesses options to address three key issues that impede the effective functioning of the Family Court in resolving disputes about parenting arrangements or guardianship matters. Those three key issues are:</p> <ul style="list-style-type: none"> • unnecessary delay of resolution through the court; • insufficient support for parents, whānau and family; and • limited participation by children. <p>CoCA is the central piece of legislation which helps to ensure that appropriate arrangements are in place for children’s guardianship and care. It encourages agreed arrangements for, and provides for the resolution of disputes about, the care of children. There are currently around 16,000 children subject to CoCA proceedings in the Family Court each year.</p> <p>2014 family justice system reforms</p> <p>Extensive reforms of the care of children regime took effect in March 2014. These reforms were intended to encourage individual responsibility and shift the focus from in-court</p>

resolution to encouraging parents to reach agreement themselves, through out-of-court processes. The reforms aimed to enable the Family Court to focus its resources on serious and urgent applications that were not suitable for out-of-court resolution. Following the reforms, concerns were raised, that some reforms had a negative impact on children, parents and whānau and exacerbated existing issues.

The Independent Panel

In August 2018, the Minister of Justice appointed a Panel to review the 2014 reforms that relate to assisting parents/guardians to resolve disputes about parenting or guardianship matters.

The Panel was asked to focus on the effectiveness of the 2014 reforms in protecting the interests of children when resolving disputes about their care or contact, and in achieving safe, timely and durable outcomes for them.

The Panel consulted extensively in developing their report. Those most intimately affected by the 2014 reforms – children and young people, parents, caregivers, guardians, grandparents and other whanāu/family members – were surveyed. The experiences of community and professional providers were also drawn on.

The Panel publicly released its final report on 16 June 2019. It found that the Family Court has the most complex of mandates, especially in relation to care of children matters, where the decisions deal not only with the past and the present but also the future.

The final report is divided into four parts containing a total of 69 recommendations on: system-wide issues, ways to encourage early agreement, strengthening Family Court, and monitoring and development.

The Panel's recommendations represent an ambitious, wide-ranging programme of reform that would require significant resourcing to implement fully or at one time.

Decisions on prioritisation were necessary and the Minister of Justice directed the Ministry to work on progression of recommendations to strengthen the Family Court, consistent with part three of the final report.

This RIA considers why the recommendations chosen are the preferred start to a strengthened Family Court, addressing three key issues the Panel identified as impeding the effective functioning of the Family Court in resolving disputes about parenting arrangements or guardianship matters.

Key Issues

Drawing on consultations, submissions and research the Panel identified several consistent issues that impede the effective functioning of the Family Court:

- *Unnecessary delay of resolution through the court*
Delay of resolution of issues is endemic and impacted on most other areas in the family justice system. It is a significant factor in undermining confidence in the Family Court and can contribute to deepening parent and whānau conflict.

While there has been a reduction in the number of applications being filed in the

Family Court, there has been no reduction in delay i.e. the time taken to reach a final resolution of a case. Table 1 outlines some of the key court changes of the pre- and post-2014 reforms. The key variable is the unprecedented increase in without-notice applications. Research indicates that the underlying cause is the removal of lawyers in 2014 from the early stages of on-notice applications.¹

Table 1: Application numbers and disposals pre and post reforms

	Pre-reforms (2012/2013)	Post-reforms (2018/2019)
Number of CoCA Applications	22,498	17,953
Number of CoCA without-notice applications ¹	7,289	12,182
Proportion of without-notice applications	32%	68%
Average number of days to resolve a CoCA application	220	268

- *Insufficient level of support for parents, whānau and family*

The Panel found that much of the information to assist children, parents and whānau to understand family justice services and options to resolve issues around the care of children is inaccessible and of poor quality. There is limited access to state funded legal advice for those who are unable to afford a lawyer. The family justice system is unable to fully understand and respond well to family violence. People often have to rely on themselves to navigate through a complex and fragmented system. Parents experience stress due to separation, this can be exacerbated by financial difficulties and insufficient support during court proceedings.

- *Limited participation by children*

There is limited participation by children in issues that affect them and there is concern as to whether their voices are heard and their views taken into account both in and out of court. Children can experience immediate and long-term consequences if they are not listened to, including feeling isolated, lonely, anxious and having difficulty coping with stress. In court, lawyer for child is appointed to determine and represent the child's views. The Panel found that there was considerable variation in how lawyers for child approach this task.

Proposed Approach

How will Government intervention work to bring about the desired change? How is this the best option?

Consistent with the Minister's direction, the proposed package is focused on strengthening the Family Court and ensuring parents and whānau have access to the legal advice and information they need to resolve disputes. The responses are consistent with the recommendations of 'Part 3: Strengthening the Family Court' of the Panel's final report on the 2014 family justice reforms.

¹ Without-notice applications are urgent applications that can be determined without any other party being notified.

The Minister has advised that he intends this package to be the first phase in a long-term programme of change in the family justice system that addresses the 2014 reforms and the broader underlying systemic barriers to access to justice. The initiatives should, therefore, be seen in that context.

The proposed legislative responses are:

- reinstatement of legal representation in the early stages of CoCA proceedings and legal aid for eligible parties;
- s9(2)(f)(iv) [REDACTED]
- establishment of a children's participation principle;
- expectation on parents to consult, where appropriate, with children on important matters that affect them;
- establishment of lawyer for child criteria for appointment;
- requirement that a lawyer for child explain proceedings to the child;
- obligation on lawyers to promote timely and cost-effective resolution; and
- cross reference to the principles in section 4 of the Family Violence Act 2018 to guide decision making.

The proposed non-legislative responses are:

- s9(2)(f)(iv) [REDACTED]
- providing better information, under the auspices of the Family Court, to parents and whānau on the options that are best for them;
- establishing Family Justice Liaison Officers to help parents and whānau navigate the system, provide information on process and engage with family justice providers; and
- increasing the remuneration for lawyer for child s9(2)(f)(iv) [REDACTED]

While the focus of this initial package is on the Family Court itself, out-of-court options remain unchanged if parents and whānau are in a position to agree. Advice on out-of-court options will be provided through s9(2)(f)(iv) [REDACTED], better information, and the Family Justice Liaison Officers. It will also feature in the requirement for lawyers to promote a timely and cost-effective resolution. Data from the Ministry shows that it takes on average 37 days to resolve a case through mediation while it takes on average 268 days in-court. The preferred package and other potential options have been assessed against the following objectives. These objectives directly target the three identified issues.

Delay should be reduced (*Reductions in delay in the Family Court*):

- reinstating legal representation in early stages of proceedings. It is expected that this will initially reduce the disproportionate number of without notice applications being made (68% of all applications) by approximately 15%;
- s9(2)(f)(iv) [REDACTED]

- obligation on lawyers to promote timely and cost-effective resolution;
- reinforcing lawyers' obligations to provide information on the most timely and efficient options.

The ability to receive specialist support at a time of heightened emotional distress is increased through (*Support for parents, whānau and family*):

- re-establishing legal representation in early stages of proceedings, supported by legal aid for eligible parties;
- s9(2)(f)(iv) [REDACTED]
- establishing Family Justice Liaison Officers; and
- signalling the strengthening of the family justice system response to allegations of family violence in order to enhance safety.

Children's participation and involvement in the processes that affect their care is enhanced (*Enhancement of children's participation in the process*):

- enshrining participation as a key principle in legislation;
- introducing cultural and other criteria for the Family Court to consider when appointing lawyer for child;
- requiring the lawyer for child to explain proceedings to the child; and
- establishing an expectation that parents will consult with their children on important matters that affect them.

These four proposed amendments emphasise to lawyers and parents the importance of children being engaged appropriately in processes that affect their care. They emphasise children's rights and child-focused proceedings, and they also emphasise the need for the family justice system to be responsive to the needs of those that are using it.

The full benefit of the package will not be realised until 2-4 years following initial implementation. A key issue is that the Ministry will not have the financial and resource capacity to implement the initiatives from 1 July 2020. s9(2)(f)(iv) [REDACTED]

[REDACTED] The 50 Family Justice Liaison Officers will be phased in over two years.

The preferred package – as a mix of legislative and non-legislative measures - addresses the problems more comprehensively and with greater impact than other potential options.

This is outlined further in section 4.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

The main expected beneficiaries are the approximately 16,000 children involved in care of children proceedings in the Family Court each year and their parents and whānau. The potential benefits for this group are:

- Enhanced child wellbeing, mental health and life satisfaction from reduced conflict between parents and whānau through more timely and sustainable resolution of care of children matters. Separation and conflict have been linked to unauthorised school absence in children. ⁱⁱ Better school attendance may also be expected when conflict is minimised by reducing prolonged delay.
- Reduction in parents and whānau stress from greater support from the Family Court as well as faster and more certain arrangements involving their children. This will feed into improved job and income prospects from a lack of distraction and time off work. Ultimately an improved life satisfaction.
- Strengthened connections with whānau. Currently the delays in the Family Court mean that some children do not have contact with non-custodial whānau for significant periods of time. This can cause the relationship to disintegrate with associated detriment to the child and whānau wellbeing.
- Greater sense of safety for applicants proceeding on-notice who have unidentified, or not yet established, family violence as they will be able to be dealt with by the Family Court in a more timely manner.
- Greater sense of procedural fairness if delays are reduced and all cases can have legal representation.

We have low certainty as to the full impact of the intervention to the cohort. However, the Australian Social Values Library (ASVL) can monetise a number of these impacts on a unit basis. These impacts have been calculated using reverse sensitivity analysis through Treasury's CBAX tool. Reverse analysis was used to determine the level of impact required to breakeven. That analysis showed that only 2% of the 16,000 children that go through the Family Court under CoCA each year (the cohort) need to be affected (experience the potential benefits listed above) to the full amount monetised by the ASVL for the initiative to breakeven.

Note that the cost to parents and whānau, who do not qualify for legal aid, and wish to engage a lawyer for the early stages of proceedings was not included in the CBAX reverse analysis. This means that it is more likely that 3% of the cohort will need to be affected for the initiative to breakeven.

It is also likely that a greater proportion than 2 – 3 % of the cohort will be affected (experience the potential benefits listed above) but to a lesser degree and amount monetised by the ASVL. It is expected that this will still result in the initiative breaking even.

There will be a financial but unquantifiable benefit to low income parents and whānau who will be able to access legal representation in early stages through legal aid rather than not proceeding with the case, representing themselves or feeling the need to find money to pay a lawyer. In addition, all parents and whānau making applications under CoCA will have a choice to access legal representation, thus removing the reported burden of having to try and appropriately represent themselves in court in early proceedings.

A shift from without-notice applications to on-notice will also benefit respondents as they are more likely be involved from the inception of the case. This is consistent with the principle of natural justice. Operational benefits should flow to the State through improved court efficiency due to the expected reduction in without-notice applications involving the care of children.

The Ministry of Justice expects an initial 15% reduction in without-notice applications, and an equivalent volume increase in on-notice applications, from the reintroduction of lawyers in early stages. Without-notice applications take 2.1 times the court time of on-notice applications, as interim orders need subsequent review. This is based on modelling work undertaken by the Ministry's Sector Insights team. The Sector Insights team engaged with senior operational officials and analysed the proportions of application types within the family justice system (including out-of-court services).

The expected reduction in without-notice applications should increase the Family Court's ability to hear applications lodged on-notice, such as those from Oranga Tamariki or ones involving unidentified family violence, in a more timely manner.

Where do the costs fall?

The most significant costs fall to the government. The fiscal costs s9(2)(f)(iv) of the package of initiatives to strengthen the Family Court as the key institution in the family justice system are made up as follows:

- Increased legal aid for low income families to support the return of legal representation for the early stages of care of children matters. This involves legal aid being available to eligible participants who initiate on-notice proceedings. Without-notice applications can already receive legal aid. (\$24 million over 4 years)
- s9(2)(f)(iv)
- Requiring lawyers to promote timely and cost-effective resolution. This would strengthen the obligations imposed on lawyers by the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008*. (No fiscal cost)
- Enshrining children's participation as a principle in legislation. (No fiscal cost)
- Aligning the criteria for the appointment of lawyer for child with the criteria in the Oranga Tamariki Act 1989 which requires the court to appoint a lawyer who is suitably qualified to represent the child by virtue of their personality, cultural background, training and experience. (No fiscal cost)
- Requiring the lawyer for child to explain proceedings or appeals to children. This is consistent with the provisions in the Oranga Tamariki Act. (No fiscal cost)
- Expectation for parents to consult with children. This would make explicit the underlying obligations in CoCA and the United Nations Convention on the Rights of the Child (the Children's Convention). (No fiscal cost)
- Cross reference to the principles in section 4 of the Family Violence Act 2018 to guide decision making. (No fiscal cost)

The fiscal costs of the first stage non-legislative components are:

- s9(2)(f)(iv)
- Development of better information, under the auspices of the Family Court, for parents and whānau to help them navigate the system. (\$3.6 million over 4 years)

- Appointment of 50 Family Justice Liaison Officers to support the community as a navigator service for parents and whānau. (\$25 million over 4 years)
- Increase the remuneration of 'lawyer for a child' s9(2)(f)(iv) [REDACTED]. The rates have not changed since 1996 and there are now reduced numbers. s9(2)(f)(iv) [REDACTED]

The Ministry will produce guidelines to implement the requirements for the lawyer for child to explain the proceedings to children as well as the expectation for parents to consult with children. The cost of this can be quantified but is expected to be minimal and met within Ministry baselines as part of BAU processes.

There will be small additional costs for lawyers in complying with these measures, for example, for some lawyers, this may mean spending slightly more time with clients. However, as the changes that affect lawyers are simply confirming best practice, the Ministry expects them to be minimal.

There will also be continuing financial costs on parents and whānau, who do not qualify for legal aid, and wish to engage a lawyer but will struggle to do so. The report commissioned by the Independent Panel, *A qualitative study on behalf of the Independent Panel examining the 2014 family justice reforms* (the UMR report), found that the cost of lawyers, attending court proceedings, and associated meetings to be between \$20,000 and \$40,000. It is estimated that for those who choose to engage legal representation in early stages of proceedings there will be an increase between approximately \$2,000 – \$12,000 to this cost due to the reinstatement of lawyers in early proceedings.ⁱⁱⁱ The Ministry has no data and is not able to estimate the number of parents and whānau that are be affected by this. As women, on average, have less income and wealth than men this is likely to have a greater impact on women than men.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

The reintroduction of lawyers in all stages of on-notice proceedings is intended to slow down and begin to reverse the unprecedented level of without-notice applications. There are several risks that may affect the expected move from without-notice applications to on-notice applications (and its subsequent impact on reducing delay):

- The Ministry expects an initial 15% reduction in without-notice applications. This expectation is built on the understanding that access to lawyers is a significant reason for applying without-notice (discussed in section 2.2 page 16) - there is a risk that this factor may not be most significant incentive but other factors such as avoiding out-of-court resolution may play a more influencing role.
- The necessary behavioural change of lawyers and clients that is also required does not occur or occurs more slowly.
- The unknown complexity of cases may mean that the move between without-notice applications to on-notice applications may not eventuate to the expected extent.

A reduction in without-notice applications will also require greater recognition and appreciation of the merit of out-of-court services which are currently being avoided in order to directly access the Family Court. Better information and awareness of the merits of out-of-court services will mitigate this risk. For example, publication of the timeliness of out-of-court services: it takes on average 37 days to resolve a case through mediation while it takes on average 268 days in-court. In addition, the new role of Family Justice Liaison

Officers to explain processes and reinforcing the duty of lawyers to promote timely and cost-effective resolution will assist in providing better incentives to not go to court unless it is necessary.

s9(2)(f)(iv)

There is a risk that the fiscal costs for reintroducing lawyers in all stages will be higher than budgeted if on-notice applications become more complex.

Identify any significant incompatibility with the Government’s ‘Expectations for the design of regulatory systems’.

There is no incompatibility between this regulatory proposal and the Government’s ‘Expectations for the design of regulatory systems’. The current system is sub-optimal – the inability for on-notice applicants to access legal representation in the early stages of proceedings, and the resulting without notice status quo impedes access to justice. These proposals are more consistent with natural justice.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

The evidence base is the UMR report and the Panel’s report itself. The UMR report (*A qualitative study on behalf of the Independent Panel examining the 2014 family justice reforms*) is a research report which summarises qualitative interviews UMR conducted with children, Māori and Pasifika parents and whānau, and disabled parents.

UMR is a well-regarded research company and the Panel are well respected individuals. However, the UMR report disclaimed that while qualitative research can be used to identify a range of issues and assess the intensity with which views are held, quantitative research is necessary to establish with certainty the extent to which views expressed are held throughout all parents and children who have experienced the family justice system reforms since 2014.

The Ministry’s Sector Impacts Team has also modelled the impact of reinstating lawyers back into the early stages of proceedings and has reported an initial 15% drop in without-notice applications. This is based on engagement with senior operational officials with responsibility for service improvement and service delivery to courts and tribunals, and analysis of the proportions of application types within the family justice system (including out-of-court services).

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

Ministry of Justice

Quality Assurance Assessment:

The Ministry of Justice's RIA QA panel has reviewed the RIA: *Strengthening the Family Court – First stage initiatives to enhance child and whānau wellbeing* prepared by the Ministry of Justice and considers that the information and analysis summarised in the RIA partially meets the QA criteria.

In reaching this conclusion, the QA panel notes the constraints posed by the limited focus of the RIA on progressing only those options to strengthen the Family Court identified by the Independent Panel and implementable in the next fiscal year, and the limited availability of data to support the analysis in certain areas. Due to these constraints the Panel considers the analysis only partially meets the quality assurance criteria. This is primarily because it is not possible to be confident that the stated objectives are being met in the best possible way as alternative options have not been able to be considered. The time frames set for the introduction of legislation have also limited the ability to conduct further analysis and consultation on the preferred options. However, the RIA's extensive use of evidence and submissions to the Independent Panel ensure a range of perspectives are available, which helps to make the qualitative analysis that has been conducted robust and reliable. Implementation risks have also been identified and mitigated to the extent possible.

Reviewer Comments and Recommendations:

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Impact Statement: Strengthening the Family Court – First stage initiatives to enhance child and whānau wellbeing

Section 1: General information

Purpose
The Ministry of Justice is solely responsible for the analysis and advice set out in this Regulatory Impact Statement. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by Cabinet. Hon Andrew Little – Minister of Justice and Courts is the lead Minister.
Key Limitations or Constraints on Analysis
<p>As set out in the summary above, the breadth of recommendations in the Panel’s final report meant that prioritisation was required. The Minister of Justice directed the Ministry to work on progressing options to strengthen the Family Court that were implementable in the next fiscal year. This would be the first phase of a broad, multi-year programme of work in the family justice system. The Ministry’s recommended focus for the first phase would have also included enhancement of out-of-court family justice services.</p> <p>Within the parameters set by the Minister, these proposals implement specific recommendations, largely focusing on Part Three of the Panel’s final report. The time frames set for the introduction of legislation have limited the Ministry’s ability to conduct further analysis or consultation on the preferred or other options.</p> <p>Current processes for case management in the Family Court, which is reliant predominantly on email and paper files, have limited the Ministry’s ability to undertake robust data collection. Anecdotal evidence, qualitative research and some Ministry data has formed the basis of understanding of the issues identified, however the Panel acknowledged that data collected by the Ministry system was insufficient in some areas. Improved data collection will enable a better evaluation of Family Court issues going forward.</p> <p>An additional constraint related to data is found in the CBAX analysis. For this we used a cohort of 16,000 children (based on data collected for the 2016 Family Justice Admin Review). However, the families and whānau surrounding the children are not able to be more accurately quantified, so the impacts of these initiatives may be greater than anticipated.</p> <p>Limited data availability and quality have led to low certainty in the estimations and assumptions used for some cost and impact analysis.</p> <p>The Panel consulted widely in developing their report. Those most intimately affected by the 2014 reforms – children and young people, parents, caregivers, guardians, grandparents and other whānau/family members – were surveyed. The experiences of community and</p>

professional providers were also drawn on. However, the analysis would have benefited from undertaking further consultation with iwi and lawyer for child if time had permitted. The outlined limitations and constraints have shaped the proposed first phase and this analysis is focused exclusively on the implementation of the initiatives within that. We have greater certainty around some of the costs of this policy, however have lower certainty around some of the benefits. Nevertheless, we do not consider that there is significant risk in proceeding with this package as the beginning of a longer-term programme of change.

Responsible Manager (signature and date):

Sam Kunowski

General Manager, Courts and Justice Services Policy

Policy Group

Ministry of Justice

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

This RIA assesses options to address three key issues that impede the effective functioning of the Family Court in resolving disputes about parenting arrangements or guardianship matters. Those three key issues are:

- unnecessary delay of resolution through the court;
- insufficient support for parents, whānau and family; and
- limited participation by children.

This package reflects a theme of strengthening the Family Court and is the first phase in a potential programme of reform initiated by the Minister of Justice.

CoCA is the central piece of legislation which helps to ensure that appropriate arrangements are in place for children's guardianship and care, and encourages agreed arrangements for, and provides for the resolution of disputes about, the care of children. There are currently around 16,000 children subject to CoCA proceedings in the Family Court each year.

Extensive reforms of the care of children regime took effect in March 2014. Those reforms sought to encourage individual responsibility and shift the focus from in-court resolution to encouraging parents to reach agreement themselves, through out-of-court processes. The reforms aimed to enable the Family Court to focus its resources on serious and urgent applications that were not suitable for out-of-court resolution.

The Government committed to independently review the 2014 reforms. Specifically:

- the effectiveness of out-of-court measures, in particular, Family Dispute Resolution (FDR);
- the effectiveness of court processes, in particular, the increase in without-notice applications and the need to ensure the timely resolution of cases;
- the appropriate role and use of professionals, for example, FDR mediators, lawyers for parties (including legal aid lawyers), lawyers for children, and psychologists (court appointed report writers); and
- the extent to which out-of-court and in-court processes, including for determining final parenting orders, enable decisions that are consistent with the welfare and best interests of the child, with a particular focus on any differential impacts on Māori children.

In August 2018, the Minister of Justice appointed a Panel consisting of former Chief Human Rights Commissioner Rosslyn Noonan, and family law experts, La Verne King and Chris Dellabarca. The Panel were supported by an expert reference group. The Panel were tasked with comprehensively assessing the issues in the family justice system and avoiding the missteps of previous reforms. The Panel were directed to take a human rights approach and consult widely, to ensure that everyone's perspectives were considered.

The Panel delivered its final report in May 2019. It found that The Family Court has the most complex of mandates, especially in relation to care of children, where the decisions deal not

only with the past and the present but also the future.

The Panel reported that strong, consistent themes and issues emerged from consultations, submissions and research. These included unnecessary and pervasive delay at every stage; inaccessible and poor-quality information to assist children, parents and whānau to understand the family justice services and the options available to resolve care of children issues; limited access to state-funded legal advice for those who are unable to afford a lawyer; and limited participation by children.

The Panel's principal recommendation was to introduce a joined-up family justice service, Te Korowai, bringing together what the Panel regarded as the siloed and fragmented elements of the current in and out-of-court family justice services. The Panel envisaged that Te Korowai would support people to access the right family justice service at the right time for them.

The Panel's report makes 69 recommendations and is divided into four parts:

- issues that flow through all family justice services
- ways to encourage early agreement
- strengthening Family Court processes
- monitoring and development.

The four parts outline what the Panel felt is required to enable the Korowai to protect, support and empower children and their whānau.

The Panel's recommendations represent an ambitious, wide-ranging programme of reform that would require significant resourcing to implement fully or at any time. Decisions on prioritisation were necessary and the Minister of Justice directed the Ministry to work on progression of recommendations to strengthen the Family Court, consistent with part three of the final report.

This RIA considers why the recommendations chosen are the preferred start to a strengthened Family Court, addressing three key issues the Panel identified as impeding the effective functioning of the Family Court in resolving disputes about parenting arrangements or guardianship matters.

2.2 What regulatory system, or systems, are already in place?

The Family Court was established in 1981 to provide a forum for resolving issues relating to family matters in a private and less adversarial way following a report of the Royal Commission on the Courts. The Commission concluded that the Family Court should have a two-fold jurisdiction, both judicial and therapeutic, as each complemented the other. The Family Court was designed to place child wellbeing at its heart, seeking timely and sustainable resolution of conflict and disagreement.

Today the Family Court operates out of 58 locations across the country and there are currently 65 family court judges including the Principal Family Court Judge.

The Family Court's jurisdiction includes matters arising under about 25 family law statutes. Over 2018/19, around 60,000 applications were filed in the Family Court. Table 2 sets out the

types of applications heard in the Family Court by percentage of total volume.

Table 2: Family Court Application Types

Application Type	Percentage of Total Applications
Care of Children Act	30%
Oranga Tamariki Act	18%
Dissolution of Marriage and Civil Unions	14%
Family Violence	13%
Mental Health	12%
Protection of Personal Property Rights Act 1988	8%

The Family Court also deals with other family proceedings, including adoption and relationship property.

The family justice system encompasses the Family Court, the services accessed via the Family Court or in relation to family issues, and the professionals who steward those processes and services.²

Care of Children Proceedings

The family justice system provides both in-court and out-of-court services for parents and guardians that need help in agreeing care arrangements for their children. This may be because they cannot agree themselves or because it is not safe (for example in cases where family violence is alleged). Research shows it is conflict that is more emotionally harmful to children rather than the actual breakup of the relationship.^{iv}

A diagram of how children's care arrangement matters can move through the family justice system is in Appendix A. A process summary is in Appendix B³.

These show that the Family Court process is complicated for care of children proceedings. Parents/guardians can use of out-of-court services exclusively, with an option to formalise agreements in court, use in-court services exclusively, with a separate pathway for without notice applications, or take a pathway combining some or all of these options. Pathways can be iterative, and come with different levels of support services, legal advice and judicial oversight.

If the matter is not time critical then an 'on-notice' application can be filed. An on-notice

² These include lawyers, psychologists and providers of mediation and other services.

³ An overview of the system can be found here:

<https://www.justice.govt.nz/assets/Documents/Publications/Care-of-children-process-overview.pdf>

application is one in which the other party has the opportunity to respond to your application before the court makes the order.

Legal representation is not permitted in the early stages of on-notice applications and applicants need to represent themselves in the Family Court. However, the Family Legal Advice Service provides initial advice and information to help parents/guardians understand their rights, responsibilities and options and to help complete court entry forms. This funded service is available for people who meet the income eligibility test.

The proceedings will then be directed to mandatory out-of-court services unless an exemption applies. People can be exempt from participating if family violence has been disclosed, if a power imbalance exists, if one or both people are unable to effectively participate or where they would not participate.

- Family Dispute Resolution (FDR) is a mediation service designed to remove the stress, conflict, and expense of going to court, and to help people develop the skills to resolve any future issues regarding the care of their children.
- Parenting through Separation (PTS) is a course designed to help people understand and manage the effects of separation on their children.

People can access these services without going to court.

If people need to access the court via the 'standard track' (i.e. an on-notice application), a copy of the application is given to the other parent to respond and a court appearance will be scheduled. If agreement is reached the Family Court can then make a Final Parenting Order. If agreement is not reached the Family Court can schedule another court appearance.

If the need to resolve the dispute is urgent then a without-notice application can be filed. Legal representation is permitted for without-notice applications. The court will process the application and make a temporary Parenting Order. The court will give documents to the other parent to respond and a court appearance will be scheduled. If agreement is reached the Family Court can then make a Final Parenting Order. If agreement is not reached the court can schedule another court appearance and/or make a temporary order. Any temporary order needs to be reviewed at a later date.

Evaluations^v of court use since 2014 have shown:

Pathways: 48% of people only went to court, 32% only made contact with out-of-court services, and 20% made contact with both. The majority of people who used out-of-court services did not continue on to court (61%). Their issues may have been simpler to resolve and did not require court intervention.

Timeliness: The fastest path through the system was remaining out-of-court and the slowest path was the combination of in-court and out-of-court services. It took less time to go through the court pre-reforms. It is assumed that this is largely due to the shorter, less complex cases that were going to court, whereas now the court is left with lengthier, and often more complex cases. For example, without notice applications take 2.1 times the court time of on-notice applications, as interim orders need subsequent review.

Outcomes: People who made contact with both in-court and out-of-court services were least likely to reach a lasting outcome where they could stay out of the system. People who only required out-of-court assistance were 14 times more likely to achieve a lasting outcome than

the out-of-court/in-court pathway. In-court alone people were almost 5 times more likely to achieve a lasting outcome than the out-of-court/in-court pathway. However, the unknown complexity of cases going to court may have an effect on the likelihood of a lasting outcome.

The 2014 reforms

The 2014 reforms were intended to reduce conflict between separating parents, diverting cases away from the Family Court, where appropriate, and reducing the adversarial nature of disputes over children. The basis of the 2014 reforms was that out-of-court processes for resolving care of children disputes are more timely and sustainable, thereby reducing the emotional harm to children caused by conflict and delays.^{vi}

The main changes of the 2014 reforms were:

- FDR replaced out-of-court counselling as a means of assisting separating parents to focus on their children and reach agreement about care arrangements
- FDR and PTS (an existing information programme) were made compulsory before an application could be made for a parenting order or to decide a dispute between guardians (subject to exemptions)
- The Family Legal Advice Service was established
- Legal representation was removed from the early stages of on-notice CoCA proceedings.

Evaluation of the 2014 Reforms

The Ministry has been monitoring and researching the 2014 reforms since their implementation.

Evaluation indicates that the fundamental underpinnings of the reforms are sound i.e. that out-of-court processes are more effective, but that some key assumptions behind the reforms should be examined.

Key findings from five individual reports evaluating different aspects of the 2014 reforms showed:

Volumes and timeliness

The number of CoCA applications filed reduced by approximately 4,000 per year immediately after the reforms were implemented. However, the proportion of without-notice applications increased. The approximate proportion of CoCA applications which were filed without-notice increased from 30% in the two years prior to the reforms, to 70% in the two years following the reforms (Refer to Table 1).

The key drivers identified by interviewed applicants for filing without-notice were: ability to access legal representation, dealing with issues promptly and getting a decision. When faced with the choice of an on-notice application or a without-notice application, interviewed applicants, who could not resolve their dispute out-of-court, opted for the latter.

The findings regarding mandatory self-representation were that:

- A few parents did find representing themselves straightforward but most found it

difficult to represent themselves in the Family Court.

- Legal/court professionals believed that requiring parents to represent themselves expected too much of them. Court events involving self-represented parents were perceived as taking longer than those where lawyers represented parents.
- Almost all the legal/court professionals suggested that parents be allowed to use a lawyer to file their papers and represent them in all stages of Family Court proceedings. They believed that lawyers would even out any power imbalances between parents and keep cases moving through the court.

Since the reforms it now takes an average of 48 days longer for a CoCA application to be disposed of (Refer to Table 1).

These outcomes show there were behavioural responses to the 2014 reforms that were not anticipated. While lawyers may not be needed as system navigators, the behaviour of parents and whānau, lawyers themselves and judges would indicate that, without other changes to support out-of-court processes, their preference was for lawyers to provide the underlying support needed to navigate the family justice system.

Independent Panel

The Panel found that the 2014 reforms did not deal directly with the majority of the existing systemic issues. For example, the 2014 reforms did not mention children's participation, Māori or a te Ao Māori perspective, New Zealand's increasingly diverse population or people with disabilities.

Summary

Changes to care of children proceedings in March 2014 bolstered out-of-court services however, this meant that the role of the Family Court was de-emphasised. Responsibility was placed on the individuals involved to make timely and sustainable decisions for themselves and their children, at a time in their lives where they may be least able to make reasonable decisions.

In this first phase, the out-of-court services will remain in place and are unchanged. This RIA is about changes to strengthen the role of the Family Court.

2.3 What is the policy problem or opportunity?

The Panel identified that changes made in March 2014 in the Family Court have not assisted the prompt resolution of disputes and are resulting in child and parental stress. Issues in the Family Court undermine access to justice for children, their parents and whānau.

This RIA considers why the recommendations chosen are the preferred start to a strengthened Family Court, addressing three key issues the Panel identified as impeding the effective functioning of the Family Court in resolving disputes about parenting arrangements or guardianship matters.

Unnecessary delay of resolution

The Panel found that delay is endemic and impacts on almost every issue in the family

justice system. It is a significant factor in undermining confidence in the Family Court and can contribute to deepening parent and whānau conflict. Despite a reduction in the number of applications being filed in the Family Court, there has been no reduction in delay (Please refer to Table 1).

The Panel found that:

- a significant increase in the number of without-notice applications has resulted in increased resolution times for both without notice and on-notice cases;
- removal of lawyers in the early stages of proceedings for on-notice applications can result in a lack of focus in progressing proceedings in the Court;
- an increase in self-represented parents and whānau requires a greater time commitment;
- lack of triaging of applications has prevented cases moving through the Court in a timely way;
- there are insufficient judges to deal with cases in a timely manner, and a resultant backlog that requires resolution; and
- there is a lack of psychological report writers and, in some places, lawyer for child.

Insufficient support for parents, whānau and family

The Panel found that much of the information to assist children, parents and whānau to understand family justice services and options to resolve issues around the care of children is inaccessible and of poor quality. It heard that:

- people want information that will allow them to navigate the services confidently and make informed decisions;
- in the early stages of separation, timely and robust legal advice can assist with early resolution, however there is limited access to state funded legal advice for those who are unable to afford a lawyer;
- people often have to rely on themselves to navigate through a complex and fragmented system and this is especially true for Māori communities where responsibility for raising children is the collective responsibility of the whānau, hapū and iwi; and
- there are significant barriers for disabled parents and children when engaging with family justice services and lack of disability awareness among professionals.

Limited participation by children

Research indicates that children do not want to be decision makers in Family Court matters but do want to participate in the decision-making process. The Panel heard from a number of children who expressed the same.

The Panel found that there is limited participation by children in issues that affect them and concern as to whether their voices are heard and their views taken into account both in and out-of-Court. In-court, lawyer for child is appointed to determine and represent the child's views. The Panel found that there was considerable variation in how lawyers for child approach this task.

Limited participation from children was an issue before the 2014 reforms, however there were no specific proposals in the 2014 reforms about children's participation. Children's participation in decisions that affect them is a fundamental right in the Children's Convention, this right is not reflected in CoCA or the Family Dispute Resolution Act 2013. There is no expectation for parents to consult with children on decisions about their care.

There are a number of impacts, harms or possible improvements that this proposal seeks to address. The degree to which it does is discussed in section 5.2.

Impact on children

Children of separation and divorce with ongoing inter-parental conflict are four times more likely to have social and emotional problems than the general population.^{vii} Gluckman et al show it is conflict that is emotionally harmful to children rather than the actual breakup of the relationship.^{viii} This is particularly important as the Panel found that delay is felt more profoundly by children as their sense of time is slower.^{ix}

There is also an abundance of evidence that children who experience parental separation are, on average, worse off than their peers in intact families, on a number of measures of wellbeing including mental disorder, behavioural issues and substance abuse.^x This is especially so where parents are in ongoing conflict.^{xi}

The UMR report found that children's overriding memories and experiences of the family justice system were negative including a representative example of a child that "*just gave up on everything*".^{xii}

Impact on parents and whānau

Timely and sustainable resolution to disputes is also a key factor in reducing parental stress and anxiety as to the arrangements for their children.^{xiii} The UMR report showed that going to Court was a "*highly emotional time (with high stress) that is time consuming and unfair*".^{xiv} However the UMR report also found that having a lawyer reduced stress as they (parents and whānau) were being guided by someone who was knowledgeable of the system.^{xv}

Issues with personal safety

The Panel found that "*the delays in the Family Court prevented timely assessment of a child's safety and often increased the level of conflict between parents and whānau*".^{xvi} This is particularly an issue for delayed cases filed on-notice that have unidentified or not yet established family violence at their core.

The Panel also found that the removal of lawyers from some proceedings and inequitable access to justice disproportionately affects victims/survivors, who will be the group feeling most unsafe.^{xvii}

Impact on connections with whānau

The Panel found that delays in the court system mean that some children do not have contact with non-custodial whānau for significant periods of time. This can cause the relationship to disintegrate, with associated detriment to the child's and whānau's wellbeing.^{xviii}

Impact on procedural fairness and trust in the Family Court

Australian cost benefit analyses of legal aid have estimated a 20% increase in court efficiency when lawyers are present.^{xix}

This is consistent with the Ministry's expectation that the reinstatement of legal

representation in the early stages of CoCA proceedings will result in a 15% reduction in without-notice applications. An interim decision needs a subsequent review by the Court, meaning that a without-notice application takes twice the effort as an on-notice application. Thus, although the Ministry expects without-notice applications to be substituted for on-notice applications, there should be a net reduction in the effort required to resolve cases.

Child Poverty

Lack of wealth exacerbates the emotional and financial burden caused by the delays and lack of resolution between parents and whānau. Children in poverty are therefore affected more than children in households with more resources.^{xx} Research on decision making under stress indicates that when families face heightened financial stress their capacity to make independent decisions in the best interests of their children decreases.^{xxi}

2.4 Are there any constraints on the scope for decision making?

The key constraints were the parameters set by the Minister to focus on strengthening the Family Court and initiatives that could be implemented in the next fiscal year.

Within those parameters there were three constraints on decision making:

- The government’s fiscal position. This required that a staged approach was necessary to ensure that this initiative was compatible with the Fiscal Strategy.
- Ability of Ministry to absorb change. It is critical that these initiatives are well managed and absorbed into the Ministry’s existing operations. For that reason, a staged approach will be taken to introduce the s9(2)(f)(iv) Family Justice Liaison Officers.
- Ability to implement change in the near term. Only initiatives identified by the Panel that could be implemented in the near term were chosen for this package. Other issues may be addressed as part of a longer-term programme of work to strengthen the role of the Family Court and the family justice system more broadly.

- s9(2)(f)(iv)

s9(2)(f)(iv)

2.5 What do stakeholders think?

There are a wide group of stakeholders affected by how the Family Court operates in care of children matters. This includes those with professional roles (judges, lawyers, mediators, psychologists, family counsellors, workshop facilitators, court and other Ministry of Justice staff) and those who are using, intend to use or are subject to decisions made via in-court and out-of-court services (parents, caregivers, guardians, grandparents and other whānau,

children and young people).

The Panel, that these initiatives originated from, held over 110 meetings and received over 500 submissions. They engaged with judges, lawyers, mediators, professionals, community groups and users of the family justice system. They also commissioned UMR to undertake qualitative research by interviewing key groups, such as Māori, Pasifika, the disabled, and children themselves, to get their views on what was working and proposals for improvement.

We do not have records of all consultation undertaken by the Panel, however there were two formal consultations. The Panel initially consulted on what these groups thought the issues were with how the Family Court currently operates. The Panel undertook a second round of consultation on the direction it was considering taking in regard to recommendations for reform.

The Panel's report drew on the expertise of the Office of the Children's Commissioner; on the research of academics, both domestic and international; and on the experiences of other jurisdictions. The report references preliminary results of a major study by the University of Otago Children's Issues Centre, and commissioned further research by UMR, a specialist market research company. The Panel also had access to an expert reference group.

Consultation with Māori

The extent of the Panel's engagement with Māori, particularly with iwi that may have cultural redress under the Te Hiku o te Ika Iwi (Crown Social Development and Wellbeing Accord), is unknown. This will be taken into account when planning for future engagement on implementation of these proposals.

In regard to Part 3 of the Panel's report, encompassing the package of proposals covered by this RIA, stakeholders who responded via formal mechanisms identified:

Reinstatement of legal representation

The Panel did not specifically consult on reinstating lawyers, but rather concentrated on recommendations to improve the current Family Legal Assistance Service. However, the issue did come up in consultation. A few submitters 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 that, 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.

In addition, many submitters thought that reinstating lawyers would be enough to reduce the numbers of without-notice applications, while others thought it would not.

s9(2)(f)(iv)

[Redacted]

[Redacted]

s9(2)(f)(iv)

Establishment of a children's participation principle and Expectation to consult children

The Panel did not consult specifically on these proposals but drew on the findings of the UMR report for its final recommendations. Children and young people reported in the UMR report that the Family Court process is made easier when children/young people are kept informed, feel empowered to talk and ask questions, and where there is greater transparency about what is happening. The Panel noted children's participation in decisions that affect them is a fundamental right in the United Nations Convention on the Rights of the Child.

Lawyer for child

The Panel consulted on a number of issues around the role of the lawyer for child and made a series of recommendations, some of which are included in this initial package of reform, including establishing criteria for the appointment of lawyer for child.

Most submitters agreed with this initiative. 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.

Some professional submitters noted that the proposed criteria are the same as the Oranga Tamariki Act 1989 and supported 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 and had mixed views on whether it would be necessary to put it into legislation.

Early and just resolution

The Panel did not specifically consult on requiring lawyers to promote timely and cost-effective resolution. This recommendation arose from consultation on early legal advice and the ability of lawyers to minimise conflict and is based on a similar provision from Australia.

Further consultation

In the time available, the Ministry engaged with the Chief Justice and the Principal Family Court Judge, the Joint Venture on Family Violence and Sexual Violence Business Unit, the Ministry of Social Development, the Ministry of Business, Innovation and Employment, and Oranga Tamariki in developing these proposals.

s9(2)(ba)

s9(2)(ba)

[REDACTED]

[REDACTED]

[REDACTED]

Government Agencies

In general, agencies were supportive of the proposals and offered helpful insight and comment to clarify and strengthen them.

Oranga Tamariki

Oranga Tamariki provided the following feedback:

In general, we support the notion that children should be directly involved in making decisions on matters that affect their future. At the same time, child's wellbeing should always be at the centre of decisions that involve them. Sometimes these principles come into conflict, as we believe could be the case with this proposed legislative requirement.

We would encourage that the role and responsibility for the lawyer for child be enhanced to show there is a clear link between the lawyer for child and the expression of the child's view. Ultimately, they are best placed to provide impartial support for the child and would mitigate the issues you've identified.

Overall, we would like to proceed with caution, especially with regard to the practicality of parents or guardians being able to self-determine the appropriateness of consultation with their children. We look forward to working with you on any support you may need in developing guidance for parents and guardians.

Oranga Tamariki notes for example its concern about family situations involving family violence or care and protection proceedings under the Oranga Tamariki Act. In addition, the child has the right to not want to talk to a parent or guardian and should be able to choose their level of participation. Oranga Tamariki also has concerns around parents and guardians imposing differing views and involving the child further in the conflict between adults. Oranga Tamariki note that there are other mechanisms to support parents consulting with their children that could be enhanced, such as the role of lawyer for child, a refreshed information strategy and Parenting Through Separation courses. In response, the proposal has been

amended from a requirement to an expectation, and it is explicitly acknowledged that there are opportunities to ensure the implementation of the initiative reflects the intent.

The following agencies were consulted on the Cabinet paper: Crown Law; Police; Te Arawhiti; Te Puni Kōkiri; the Ministries of/for Health, Pacific Peoples, Women, Department of Corrections, Accident Compensation Corporation; Office for Disability Issues, Office of Ethnic Communities; the Treasury, and DPMC.

Section 3: Options identification

3.1 What options are available to address the problem?

Only options that are consistent with the Ministerial parameters of strengthening the Family Court and implementable in the next fiscal year have been considered. These constraints meant that the Ministry did not have an opportunity to explore alternative options to address the problem, but rather focused on assessing which combination of the Panel's recommended options which fit within these parameters was likely to be most effective:

1) *Focus on delay and support through legislative options.*

Only reintroducing legal representation in early stages, s9(2)(f)(iv) and introducing the obligations on lawyers and parents for children's participation and involvement. The legislative amendment that expects parents to consult with children will be aligned with countries such as Finland, Scotland and Sweden, where there are similar provisions. The non-legislative measures of Family Justice Liaison Officers, increasing remuneration for lawyer for child s9(2)(f)(iv) and creating better information for parents and whānau to navigate the system would not be included. This option means that legal aid will again be available to low income parents and whānau, judges' workload should be reduced, and a very strong signal sent to all participants in the family justice system that children need to be involved in processes. s9(2)(f)(iv)

2) *Focus on delay and support through the reinstatement of legal representation in the early stages of proceedings only.*

s9(2)(f)(iv)

3) *Focus on support through non-legislative options only.*

Increasing lawyer for child remuneration s9(2)(f)(iv) appointment of the Family Justice Liaison Officers, s9(2)(f)(iv) and providing better information for parents and whānau on their options. This option involves support and information to parents and whānau before they have decided what they wish to do. It will enable the information and benefits of out-of-court processes to be well promoted s9(2)(f)(iv)

Option 1 and Option 2 work best together and this combination (Option 4) is the preferred option.

All options considered would address the problem to a degree, particularly Option 1 and

Option 2. The Ministry expects that the reintroduction of legal representation in the early stages of proceedings will result in a 15% decrease in without-notice applications, which were in the Panel's view a key driver of delay. However, the preferred Option 4 - a mix of legislative and non-legislative measures, addresses the problem more comprehensively and with greater impact than the alternatives.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

Three criteria have been used to assess the potential options for change.

Reducing delays in the Family Court. That is, will the proposal reduce demand for without-notice applications and/or allow existing applications to be processed more efficiently?

Support for parents and whānau. Parental separation is inherently a time of high anxiety and distress – which is not conducive to calm decision making. Will the proposal provide support to the individuals involved as they work through their options?

Enhancement of children's participation in the process through an increased focus on rights and needs of children. CoCA concerns exactly that – matters to do with the care of children. Will the proposal enhance children's participation and understanding of processes that affect the very core of their lives?

The criteria all mutually enhance the Family Court and no trade-offs are needed between them. Other criteria could have been used but the Ministry had to choose those that fit within the parameters (see 'Limitations or Constraints' section).

3.3 What other options have been ruled out of scope, or not considered, and why?

Doing nothing. This was rejected as the delays in the Family Court and the associated lack of timely and sustainable resolution – the reasons for commissioning the Panel's work – appear to be causing significant emotional harm to children, parents and whānau. This would also ignore the high stakeholder expectations that led to the commissioning of the Panel's report.

Responding to the Panel's recommendations as one stage. This was rejected as it would require delaying the current initiatives until all of the proposals advanced by the Panel could be analysed and implemented. The Minister also directed that the focus for the first stage initiatives be on strengthening the Family Court, consistent with part three of the report.

Delaying the introduction of lawyers in the early stages of proceedings. This was rejected because the Ministry's expectation is that the reintroduction of legal representation could have the single greatest impact on delays within the Court. A delay in the reintroduction of legal representation is likely to be of significant concern to lawyers and the judiciary.

Section 4: Impact Analysis

Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?

	No action	Emphasis on delay and support through legislative options only (1)	Focus on delays and support through reintroduction of legal representation only (2)	Focus on support and enhancing the role of the Family Court through non-legislative options (3)	All three criteria met – preferred option
Reduction in delays in Family Court	0	++ The Ministry expects the reintroduction of legal representation in early stages to lead to a 15% reduction in without-notice applications. This, in the Panel's view, is a key driver of delay in the Family Court. s9(2)(f)(iv)	+ The Ministry expects the reintroduction of legal representation in early stages to lead to a 15% reduction in without-notice applications. This, in the Panel's view, is a key driver of delay in the Court.	0 Better information and the Family Justice Liaison Officers may mean that parents and whānau become better aware of the more timely out-of-court options. However, this is unlikely to be material in terms of delay.	++ The Ministry expects the reintroduction of legal representation in early stages to lead to a 15% reduction in without-notice applications. This in the Panel's view, is a key driver of delay in the Family Court. s9(2)(f)(iv)
Enhancement of children's participation in the process	0	+ The four proposed amendments that relate to children's participation will all emphasise and signal to lawyers and parents the importance of children being engaged in processes that affect their care.	0 With none of the other regulatory measures to enhance children's participation, this option is unlikely to involve a change to the status quo.	0 Better information and the Family Justice Liaison Officers may mean that parents and whānau become better aware of the need to consult and include their children in decisions. Increase in remuneration for lawyer for child will aid in recruitment and retention in the profession.	++ The four proposed amendments that relate to children's participation will all emphasise and signal to lawyers and parents the importance of children being engaged in processes that affect their care. Furthermore, the increase in remuneration for lawyer for child will aid in recruitment and retention in the profession.
Support for parents and whānau	0	+ UMR research found that having a lawyer reduced stress as they were guided by someone knowledgeable in the system. However, this is only effective once a lawyer is instructed.	+ UMR research found that having a lawyer reduced stress as they were guided by someone knowledgeable in the system. However, this is only effective once a	++ Better information and the Family Justice Liaison Officers will support parents and whānau in their early decision making. It will mean that the merits of out-of-court process can be clearly	++ Better information and the Family Justice Liaison Officers will support parents and whānau in their early decision making. It will mean that the merits of out-of-court process can be clearly understood.

		Section 4 of the Family Violence Act will provide guidance to officials in the family justice system to better understand and respond to family violence. It does not help in early stages where parents and whānau are seeking information on their options.	lawyer is instructed. It doesn't help in early stages where parents and whānau are seeking information on their options.	understood	UMR research found that having a lawyer reduced stress as they were guided by someone knowledgeable in the system
Overall assessment		<p>+ / +++ This option has merit as it should reduce delays and provide support to parents and whānau once a lawyer is instructed. s9(2)(f)(iv)</p> <p>As this option has approximately half the fiscal cost of the preferred option, using reverse analysis CBAX, only half the impact of the preferred option is needed to break even.</p>	<p>+ This option has merit as it should reduce delays and provide support to parents and whānau once the lawyer is instructed. It is unlikely to have much, if any, effect on children's participation in the family justice system or enhance the role of the Family Court itself.</p> <p>As this option has the lowest fiscal cost, applying reverse analysis CBAX, this option requires the lowest level of impact to break even.</p>	<p>+ This option has merit as it will support parents and whānau in their early stages of decision making. As the information and the Family Justice Liaison Officers are under the auspices of the Family Court, this will reflect positively on the Court and enhance its role.</p> <p>As this option has approximately half the fiscal cost of the preferred option, using reverse analysis CBAX, only half the impact of the preferred option is needed to break even.</p>	<p>++ This option has merit as it should reduce delays and provide support to parents and whānau at all stages – early when parents and whānau are considering their options and specialist support if a lawyer is necessary. s9(2)(f)(iv)</p> <p>As the information and the Family Justice Liaison Officers are under the auspices of the Family Court, this will reflect positively on the Court and enhance its role.</p>

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

The preferred option - option 4 - is the one that combines legislative and non-legislative options to strengthen the Family Court. Applying the three criteria:

- Delay should be reduced by:
 - reinstating legal representation in early stages. The Ministry expects this will reduce without-notice applications by 15%, with most of these being diverted to on-notice applications. Without-notice applications take 2.1 times the amount of effort as on-notice applications,
 - s9(2)(f)(iv) [REDACTED]
 - reinforcing lawyers' obligations to provide information on the most timely and efficient options.

- The ability for parents and whānau to receive specialist support at a time of heightened emotional distress is increased through:
 - re-establishing legal representation in early stages,
 - s9(2)(f)(iv) [REDACTED]
 - better information to parents and whānau on the options that are best for them,
 - Family Justice Liaison Officers to support the community as a navigator service for parents and whānau, and
 - a cross-reference to the principles in section 4 of the Family Violence Act 2018 to help develop better understanding of family violence and guide decision making.

- Children's participation and involvement in the processes that affect their care is enhanced through:
 - enshrining participation as a key principle in legislation,
 - requiring the lawyer for child to be culturally compatible with the child,
 - requiring the lawyer for child to explain proceeding to the child,
 - Increasing the remuneration for lawyer for child s9(2)(f)(iv) [REDACTED] to enhance recruitment and retention so this service can be available for children when needed.

We understand that these components, based on the Panel's recommendations, were widely supported by stakeholders.

5.2 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised	Evidence certainty (High, medium or low)

		<i>impacts</i>	
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Additional costs of proposed approach, compared to taking no action			
Government	Fiscal cost	§9(2)(f)(iv)	High
Parents and whānau	Need to pay for a lawyer if not eligible for legal aid if legal representation becomes the norm again.	Medium monetisable but unquantified	Low
Lawyers	Complying with new obligations	Low	Medium
Ministry of Justice	Additional change for the Ministry to manage and implement.	Low	High
Total Monetised Cost	Fiscal cost	§9(2)(f)(iv)	High
Non-monetised costs	As above	<i>Low - medium</i>	<i>Low - High</i>

Expected benefits of proposed approach, compared to taking no action			
Government	Greater sense of procedural fairness experienced by participants.	Using the evidence available it is not possible to quantify this impact. However, given the scale of the problem shown in the Panel's report, positive impacts should arise.	
Children	Reduction in depression and anxiety	<p>The ASVL can monetise this impact on a unit basis. Reverse analysis was used to determine the level of impact required to breakeven. That analysis showed that only 2% of the cohort needed to be affected by this impact, the parental stress impact and safety impact, to the full amount monetised by the ASVL for the initiative to breakeven.</p> <p>Note that the cost to parents and whānau, who do not qualify for legal aid, and wish to engage a lawyer for the early stages of proceedings was not included in the CBAX reverse analysis. This means that it is more likely that 3% of the cohort will need to be affected for the initiative to breakeven.</p> <p>It is also likely that a greater proportion than 2 - 3% of the cohort will be affected but to a lesser degree and amount monetised by the ASVL. It is expected that this will still result in the initiative</p>	Low

		<p>breaking even.</p> <p>Please refer to Section B: summary impacts: benefits and costs, page 6, for a full explanation of the reverse analysis undertaken.</p> <p>The scale of the problem outlined by the UMR research and the Panel's report would indicate that some positive impact is expected.</p>	
Parents and whānau	Reduction in stress and anxiety	<p>The ASVL can monetise this impact on a unit basis. Reverse analysis was used to determine the level of impact required to breakeven. That analysis showed that only 2 - 3% of the cohort needed to be affected by this impact, the reduction in depression impact and safety impact, to the full amount monetised by the ASVL for the initiative to breakeven.</p> <p>Note that the cost to parents and whānau, who do not qualify for legal aid, and wish to engage a lawyer for the early stages of proceedings was not included in the CBAX reverse analysis. This means that it is more likely that 3% of the cohort will need to be affected for the initiative to breakeven.</p> <p>It is also likely that a greater proportion than 2 - 3% of the cohort will be affected but to a lesser degree and amount monetised by the ASVL. It is expected that this will still result in the initiative breaking even.</p> <p>Please refer to Section B: summary impacts: benefits and costs, page 6, for a full explanation of the reverse analysis undertaken.</p> <p>The scale of the problem outlined by the UMR research and the Panel's report would indicate that some positive impact is expected.</p>	Low
Children, parents and whānau	Strengthened connections with whānau	<p>Using the evidence available it is not possible to quantify this impact. However, given the scale of the problem shown in the Panel's report, any improvement on the status quo should have some positive impact on the individuals involved.</p>	Low
	Increased sense of personal	<p>The ASVL can monetise this impact on a unit basis. Reverse analysis was used to determine the level of impact required to breakeven. That analysis showed</p>	Low

	safety	<p>that only 2% of the cohort needed to be affected by this impact, the parental stress and reduction in depression impact, to the full amount monetised by the ASVL for the initiative to breakeven.</p> <p>Note that the cost to parents and whānau, who do not qualify for legal aid, and wish to engage a lawyer for the early stages of proceedings was not included in the CBAX reverse analysis. This means that it is more likely that 3% of the cohort will need to be affected for the initiative to breakeven.</p> <p>It is also likely that a greater proportion than 2 – 3 % of the cohort will be affected but to a lesser degree and amount monetised by the ASVL. It is expected that this will still result in the initiative breaking even.</p> <p>Please refer to Section B: summary impacts: benefits and costs, page 6, for a full explanation of the reverse analysis undertaken.</p> <p>The scale of the problem outlined by the UMR research and the Panel’s report would indicate that some positive impact is expected.</p>	
Total Monetised Benefit	N/A		N/A
Total non-monetised benefit	Medium-High		Low

5.3 What other impacts is this approach likely to have?

Child Poverty

Lack of wealth exacerbates the emotional and financial burden caused by the delays and lack of resolution between parents and whānau. Children in poverty are therefore affected more greatly than children in households with more resources^{xxii}. Research on decision making under stress indicates that when families face heightened financial stress their capacity to make independent decisions in the best interests of their children decreases. Reducing delay is expected to help in alleviating some stress and financial hardship, which may be hindering some parents from making decisions in the best interests of their child.

5.4 Is the preferred option compatible with the Government’s ‘Expectations for the design of regulatory systems’?

The preferred option is compatible with the Government’s ‘Expectations for the design of regulatory systems.’ The current system is sub-optimal, and the proposals are more consistent with natural justice

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- ⁱ Ministry of Justice, *Family Justice: An Administrative Review of Family Justice System Reforms*, at p, 15
- ⁱⁱ Douglas Dalziel and Kirsty Henthorne, TNS Social Research *Parents'/carers' Attitudes towards School Attendance*. p. 10: <https://dera.ioe.ac.uk/5548/1/RR618.pdf>
- ⁱⁱⁱ <https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-main-report.pdf> Page 27
- ^{iv} <https://www.pmcsa.org.nz/wp-content/uploads/Improving-the-Transition-report.pdf> Section 6 p. 181
- ^v Ministry of Justice, *Family Justice: An Administrative Review of Family Justice System Reforms*, at p, 33
- ^{vi} New Zealand Law Commission, Report 82 'Dispute Resolution in the Family Court', at [336].
<http://www.nzlii.org/nz/other/nzlc/report/R82/R82-8.html>; Dr Grant Morris and Annabel Shaw, 'Alternative Dispute Resolution, Thomson Reuters (Wellington) 2018, at 1.2.8.; Jennifer McIntosh, Legislating for Shared Parenting: Exploring Underlying Assumptions, *Family Court Review* 47 No 3 Australia (2009) 389-400
- ^{vii} Bream, V. and Buchanan, A. (2003) "Distress among children whose separated or divorced parents cannot agree arrangements for them" *British Journal of Social Work*, 33:227-238.
- ^{viii} <https://www.pmcsa.org.nz/wp-content/uploads/Improving-the-Transition-report.pdf> Section 6 p. 181
- ^{ix} <https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-final-report-independent-panel.pdf> paragraph 131 p. 55
- ^x Ann Mooney, A. Oliver, C. and Smith, M. (2009) *Impact of Family Breakdown on Children's Well-Being: Evidence Review*. Thomas Coram Research Unit, Institute of Education, University of London.
- ^{xi} Mackay, R. (2005). *The Impact of Family Structure and Family change on Child Outcomes: A Personal Reading of the Research Literature*. Social Policy Journal – Issue 24. Wellington: Centre for Social Research and Evaluation at the Ministry of Social Development.
- ^{xii} <https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-main-report.pdf> p. 81
- ^{xiii} New Zealand Law Commission, Report 82 'Dispute Resolution in the Family Court', at [336].
<http://www.nzlii.org/nz/other/nzlc/report/R82/R82-8.html>; Dr Grant Morris and Annabel Shaw, 'Alternative Dispute Resolution, Thomson Reuters (Wellington) 2018, at 1.2.8.; Jennifer McIntosh, Legislating for Shared Parenting: Exploring Underlying Assumptions, *Family Court Review* 47 No 3 Australia (2009) 389-400
- ^{xiv} <https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-main-report.pdf> p. 52
- ^{xv} <https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-main-report.pdf> p. 62
- ^{xvi} <https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-final-report-independent-panel.pdf> bullet point 9 and 11, p. 49
- ^{xvii} <https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-final-report-independent-panel.pdf> bullet point 9 and 11 9, 11 p. 49
- ^{xviii} <https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-final-report-independent-panel.pdf> paragraph 151
- ^{xix} PwC (2009) *Economic Value of Legal Aid. analysis in relation to Commonwealth funded matters with a focus on family law*. Brisbane: National Legal Aid.
- ^{xx} <https://www.justice.govt.nz/assets/Documents/Publications/Without-notice-applications-in-the-Family-Court-Final-Report.pdf> paragraph 18
- ^{xxi} <https://www.sciencedirect.com/science/article/pii/S0149763412000218>

^{xxii} <https://www.justice.govt.nz/assets/Documents/Publications/Without-notice-applications-in-the-Family-Court-Final-Report.pdf> paragraph 18

^{xxiii} <https://www.sciencedirect.com/science/article/pii/S0149763412000218>