

Strengthening the family justice system

A consultation document released by the Independent Panel examining the 2014 family justice reforms



January 2019

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<i>E ngā mana</i>	<i>To the prestigious</i>
<i>E ngā reo</i>	<i>To the languages</i>
<i>E ngā mate kua hinga</i>	<i>To the dead who have fallen</i>
<i>E ngā karangatanga maha</i>	<i>To the numerous callings</i>
<i>Ki ngā manu o te Rangi</i>	<i>We acknowledge those who have flown here</i>
<i>Ki ngā Hua o Tangaroa</i>	<i>We acknowledge those who are from the sea</i>
<i>Ki ngā mau o te whenua</i>	<i>We acknowledge the sustenance we obtain from the land</i>
<i>He taonga tuku iho</i>	<i>Gifts passed on from our forebears</i>
<i>Mō tātou me ngā uri tamariki mokopuna</i>	<i>For us and sustainment of future generations</i>
<i>Mauri ki te Rangi!</i>	<i>Life principle enhancing to the heavens</i>
<i>Ora ki te whenua</i>	<i>Life to the land</i>
<i>Mauri Ora ki a tātou kātoa</i>	<i>Life principle enhancing to us all</i>

Nāu te rourou, nāku te rourou, ka ora ai te iwi.

With your basket, and our basket, people will flourish.

Foreword

The family justice system is facing significant challenges. This report highlights several critical issues and outlines suggestions for possible change.

In August 2018, the Independent Panel started its mahi to report on the 2014 changes to the family justice system. The first step was to find out how the 2014 changes have affected people who seek help to resolve disputes about parenting arrangements or guardianship matters.

The Panel asked people what was working well, what wasn't and what changes were needed. Those responding could do so through online tools, including 'Have your say' and 'Korero Mai', written submissions and face-to-face meetings.

We tried, where possible, to visit people in their rohe. We've been to 14 cities and towns, held over 110 meetings and met several hundred people. We've received over 500 submissions.

We've spoken to mothers, fathers, grandparents and wider whānau. We have heard from some children and young people. To make sure we hear from more people, we have commissioned further research.

It has been a privilege and humbling experience to meet and hear from so many people who have shared deeply personal experiences with us. We acknowledge the mana of everyone who has taken part and the strength and courage needed to do so.

We've also spoken to judges, lawyers, mediators, professionals, and community groups and organisations. They have told us of the challenges they deal with daily.

The Children's Issues Centre at Otago University shared with us its initial findings from the major research project it is undertaking, following the 2014 reforms, on how parents make arrangements for care of children post-separation. We will be receiving a further update from them to help our final report. We are grateful for their input.

We have published this paper so people can comment on the issues discussed and the changes suggested, before we finalise recommendations to the Minister of Justice in May. The final report will be strengthened by the responses we receive. People can contribute in several ways (see page 5). To meet the May deadline, submissions will close on Friday 1 March 2019.

We look forward to hearing from you.

Nā mātou noa, nā

Rosslyn Noonan (Chair)

Chris Dellabarca

La-Verne King

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We want to hear from you

We'd like to hear your views on our ideas for change. Your feedback will help us shape the Independent Panel's final report to the Minister of Justice in May 2019.

How to have your say

This document sets out the Panel's initial ideas for changes that could strengthen the Family Justice Services in New Zealand. Questions are listed throughout the document for your feedback.



You can give your feedback online by completing the submission form available at <https://consultations.justice.govt.nz>



You can also write your own submission and email it to FamilyJusticeReforms@justice.govt.nz or post it to:



Family Justice Reforms
SX10088
Wellington 6011



If you have any questions about this public consultation document or the Independent Panel and its work, please contact FamilyJusticeReforms@justice.govt.nz

Te Reo Māori and Easy Read versions of this document are available on the Family Court Rewrite webpage: <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/family-court-rewrite/>

Closing date to make a submission

The closing date for all submissions is **5.00pm, Friday 1 March 2019**. Because of our short timeframes, we cannot accept late submissions.

Background

Terms of reference

The Independent Panel was asked to consider the 2014 family justice reforms that relate to helping people resolve disputes about parenting arrangements or guardianship matters in the following areas:

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

The Terms of Reference allow us to recommend further work on specific issues that we haven't been able to explore sufficiently, or that are outside the Terms of Reference, but that could benefit from being considered in the context of our recommendations.

A copy of the Terms of Reference can be read [here](#).

Changes to the family justice system in 2014

Changes made to the family justice system in 2014 – known as 'the 2014 reforms' – were meant to shift the emphasis away from in-court to out-of-court processes. The 2014 reform goals were to have a modern and accessible family justice system that:

- was responsive to children and vulnerable people
- encouraged individual responsibility, where appropriate
- was efficient and effective.

The 2014 reforms changed the services and processes available to help people agree on the care and contact arrangements for children. Those changes can be sorted into the following:

- **out-of-court processes** (for example, the introduction of Family Dispute Resolution)
- **in-court processes** (for example, the introduction of 'case tracks')
- **the role of professionals** (for example, removal of lawyers from the early stages of in-court processes that are not urgent).

Consultation

The Panel has travelled and held meetings throughout New Zealand, and received over 400 submissions. A detailed summary of submissions can be read [here](#).

Strengthening family justice services

Case for change

The Family Court and related services were established in 1981 to reduce the harmful effects of parental conflict and adversarial legal processes on children, their parents and whānau.

The 2014 reforms introduced a system of 'in-court' and 'out-of-court' processes. To keep people out of court, the changes meant those who were unable to agree on arrangements for their children had to take part in a parenting programme and mediation before they could apply to the court, unless their situation was urgent.

The changes also severely limited parties' access to legal advice and representation. The expectation was that, by requiring all but those who filed 'without notice' applications to first try out-of-court services, more people would be able to resolve their issues out of court, delays would be reduced and children's wellbeing better secured.

The Panel agrees it is in the best interests of children if arrangements for their care and/or decisions about them can be decided without having to go to court, which is inherently adversarial.

Across New Zealand, parents, grandparents, caregivers, children and young people and their whānau told us about the difficulties they experienced in the Family Court and with related services. Community groups working with parents separating or in dispute over the care of their children gave details of the issues they deal with daily.

Many of the professionals we met or who made submissions (mediators, counsellors, lawyers, psychologists and judges) spoke of significant barriers to timely, fair, robust, long-lasting resolutions to those disputes. Early evaluations of the effect of the 2014 changes and current research confirm the validity of these concerns.

There are issues which are undermining the effectiveness of the Family Court and related services for separating parents and families in conflict. The critical aspects include;

- some elements of the 2014 reforms
- administrative and operational changes made by the Ministry of Justice over time
- increasingly complicated cases that involve family violence, drug use, poverty, mental health issues and the changing nature of family structures and relationships.

The review has exposed a system that is siloed, and which has even greater delays than occurred before 2014.

The Family Court and related services display a number of systemic issues. Some are a feature of the wider justice system, others reflect challenges within New Zealand society generally.

The critical issues include:

- damaging delays

- limited participation of children in the issues that affect them and no certainty that their voices are heard
- monocultural services, processes and procedures
- failure to recognise Te Ao Maori or incorporate tikanga Maori in procedures and processes
- a general lack of responsiveness to diversity
- no systematic accommodation of disabilities
- a 'one-size-fits-all' model that is not flexible and not sufficiently responsive to the diversity and increasing complexity of families
- concern about how the Family Court and related services deal with family violence and its effect on children and families
- lack of accessible, quality information.

Strengthened family justice services

The Family Court and related services provide crucial support to people facing family breakdown and who are in conflict about the care of their children. These services are required to focus on the safety and wellbeing of children caught up in those disputes. Ultimately, the Family Court has a responsibility to ensure children's safety and wellbeing when they are making decisions about them.

The Panel was heartened by the constructive suggestions made by submitters and the level of agreement that emerged on important issues.

Korowai of the Family Justice Service

The Panel considers that the Family Court and related services should work in a joined-up way that is accessible and responsive to families' different needs.

We envisage a structure that brings together the Family Court and a range of services. Named the Family Justice Service, it would form a korowai, a cloak for separating parents, caregivers, and whānau who need help making decisions about their children.

The korowai symbolises the empowering and protective roles of family justice. In a korowai, many muka (strands) are woven together. The muka represent uniqueness, diversity, interconnectedness and interdependence. The pona (knots) secure the threads. Together, they make up the korowai of the Family Justice Service

The korowai of the Family Justice Service is designed so people can access the right service, at the right time, in the right way, rather than having to follow an inflexible process.

Our proposed korowai of the Family Justice Service will:

- provide quality, accessible information, including for children and young people
- provide connections to community services
- provide targeted, state-funded counselling and therapeutic intervention
- provide Parenting Through Separation programmes

- provide Family Dispute Resolution
- provide access to legal advice and representation at any stage
- allow for better participation of children and young people
- allow people to make an application to court at any time and without pre-conditions
- establish the role of family justice service coordinator
- allow triaging (or prioritising) of all court applications
- provide early intervention in complex, high-conflict cases
- establish the role of senior Family Court registrar
- reduce the administrative workload of judges
- simplify court processes
- allow for greater availability of specialist advice to the court
- enhance the judicial authority to refer parties to Family Dispute Resolution and therapeutic counselling at any stage, setting timeframes and other limits.

Opportunities to strengthen the Family Justice Service

Many muka (strands) will make up the korowai of the Family Justice Service. The Service should be visible, informative, accessible, responsive, flexible and cohesive. It should encourage and support people to agree on decisions about their children and mokopuna at the earliest time and in the least adversarial way.

Within the korowai of the Family Justice Service, people will be able to access services through many different points – there will be ‘no wrong door’. Lawyers and community services will continue to assess people and refer them to the right services or to the Family Justice Service Coordinator at the Family Court.

When a court application is made without the parties involved having taken part in Parenting Through Separation or Family Dispute Resolution, they will, except in urgent cases, be referred to those services. In urgent cases, applications will be referred to a judge for immediate directions.

To make sure the principles of the Treaty of Waitangi are a part of the Family Justice Service, partnerships with iwi, hapū and community organisations could be formed and provision could be made for a mana voice in the Family Court. Tikanga Māori would be included in processes and procedures.

These and other suggestions, along with issues we are still considering, are discussed in this consultation paper.

Focus on children

The welfare and best interests of the child are the first and paramount consideration in decision making under the Care of Children Act 2004. These are guiding principles. The law puts a child's safety first and requires that children are given reasonable opportunities to say what their views are and for their views to be taken into account.

What we've learnt

Children should be at the heart of the Family Justice Service. We heard there is insufficient focus on the welfare and best interests of children. Issues that emerged include:

- delay and its negative effects on children
- poorly resolved parental conflict damaging for children
- inconsistent processes for understanding and dealing with family violence and its effect on children and their families
- inconsistent prioritisation of children's safety
- how and when children should take part in the Family Justice Service
- how children should be represented and by whom.

Changes we're considering

The Panel considers a joined-up Family Justice Service will deliver better outcomes for children and their parents, caregivers and whānau.

We are proposing the development of an integrated Family Justice Service that:

- provides accessible, quality information
- recognises Te Ao Māori and incorporates tikanga Māori
- meets the needs of people with disabilities
- is responsive to Aotearoa New Zealand's ethnic and cultural diversity
- ensures appropriate accommodation for people with disabilities
- allows assessment, triaging and early intervention
- draws on specialist family violence expertise
- reduces delay
- encourages easier access to and greater use of Family Dispute Resolution and targeted counselling.

To strengthen the focus on children in the Family Justice Service, we are also proposing improvements to make sure:

- children have access to quality child-friendly information, to help them cope with the effects of separation and understand what is happening (see further comments in the section 'Quality, accessible information' page 14)

- children can take part in a meaningful way and that their voices are heard
- children's safety, including from family violence, is properly dealt with.

Children's safety and participation are critical issues. We consider that the law needs to be changed to strengthen the assessment of a child's safety, and further research is needed in the area of children's participation.

Proposals

We are proposing that:

- consideration be given to whether the checklist in the former section 61 of the Care of Children Act 2004 should be part of the safety assessment process. If included, the checklist should be reviewed to make sure it captures all parts of a child's safety
- more information should be available at an early stage when the court is considering safety issues, for example, from the criminal courts and Police
- consideration be given to whether to have specialist family violence support workers in the Family Court similar to victim support that is available in the District Court
- on encouraging children's participation, further work should be undertaken that draws on the research already available in this area. This may include a trial programme to assess which child-inclusive models work best in a New Zealand context.

Questions

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

Te Ao Māori in the Family Court

The Terms of Reference asked the Panel to focus on any differential (or particular) effects on Māori children when considering whether in-court and out-of-court processes allow decisions that are consistent with the welfare and best interests of the child.

What we've learnt

The over-representation of Māori in prisons and Māori children in state care is widely known. Māori interest in a well-run and culturally appropriate Family Justice Service has, however, been overlooked. We consider more could and should be done to empower Māori to resolve family disputes in a culturally safe and appropriate way.

“...empower Māori to participate in a Pākehā system in a Māori way”

– Lawyers

During our consultation, we heard how monocultural the family justice system is. Although we spoke to community members and professionals who provide tikanga-based services (for example, tikanga-based dispute resolution), these are an exception.

Māori whānau, support workers and lawyers told us that the Family Court can be a foreign, isolating and intimidating experience. The way some family justice processes operate does not align with tikanga Māori or Māori views of whānau, particularly the role grandparents and extended whānau play in caring for children and mokopuna.

What we're considering

We are considering how the Family Justice Service could change so it responds better to tamariki and Māori whānau. There are opportunities for the system to be improved for whānau and for family justice professionals to improve their capability to better advise and support whānau through family disputes. Examples are:

- involving hapū, iwi and community organisations in family justice processes to make sure a mana voice is available in the Family Court
- incorporating tikanga Māori in the Family Court processes and procedures
- introducing culturally appropriate training for family justice professionals, including court staff, lawyer for child and the Family Court Bench
- improving the framework for cultural information to be heard in court (see ‘Cultural information in court’, page 30, for more information)
- appointing more Family Court Judges that are Māori and have a deep understanding of tikanga and Te Ao Māori
- dual warranting some Te Kōti Whenua Māori (Māori Land Court) judges for Family Court proceedings involving Māori children. This would help the court to make culturally appropriate decisions and raise the cultural capability of the Family Court Bench.

We are also considering whether any legislative or operational measures should be supported by a strategic framework that creates objectives and accountability for those involved. For example, through obligations on the Ministry of Justice, or the Government, to improve family justice outcomes for Māori, or through strategic relationships between the Ministry and iwi, hapū or Māori organisations.

We would like to hear your views on what a strategic framework could look like and how the Family Justice Service could be improved by and for Māori.

Questions

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

Quality, accessible information

Although the Ministry of Justice provides information online, through an 0800 number and in pamphlet form, New Zealanders generally do not know a lot about the family justice system. Many people are not aware of what services are available and how to access them.

Knowledge is crucial. By having an awareness and understanding of the Family Justice Service, and how to use it, people can effectively engage with it.

What we've learnt

During consultation, people told us:

- current information resources are difficult to follow
- information is provided in formats that not everyone can access (for example, people with disabilities, low level literacy, limited English, no access to technology or living in remote locations)
- little information is available for children and it is not given in a way that lets them access it independently.

“It was highly chaotic. I felt I was sent all over the place. Even internet searches give different results”

- Parent

Changes we're considering

We suggest the Ministry of Justice develops and puts in place an information strategy to establish a cohesive and consistent set of resources in formats that meet all needs, along with a system to review them regularly.

In developing such a strategy, consideration should be given to building an engaging, interactive standalone website. The site should include a section especially for children, with age-appropriate content that children can access independently. This could include games, animated videos, downloadable apps and other engaging activities. Children would be able to access this information on their own, for example, at school, without relying on a parent to give it to them.

The information strategy should make sure consistent information is given in formats that are accessible to speakers of other languages, people with disabilities or low literacy, people without access to technology and those living in remote areas.

The strategy should help support the joining up of the Family Justice Service by including information specifically for service providers, community organisations, lawyers and family justice professionals.

We suggest the Ministry of Justice also develops a public awareness campaign to improve New Zealanders' understanding of the Family Justice Service.

Proposals

We are proposing that:

- the Ministry of Justice develops and puts in place an information strategy to establish a cohesive and consistent set of resources in formats that cater to all needs. This should include

information for service providers, community organisations, lawyers and family justice professionals.

- the Ministry of Justice develops a public awareness campaign to enhance New Zealanders' understanding of the Family Justice Service.

Questions

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

Counselling and therapeutic intervention

The 2014 reforms removed free pre-court counselling. Now, a judge can direct people to see a counsellor, but only if they're involved in a court case about a parenting order or a dispute about guardianship. This counselling is available at the end of proceedings and aims to improve the relationship between parties to a dispute and/or help make the court's orders work.

What we've learnt

We have heard that the removal of counselling has had a significant and negative effect. Separation is one of the most stressful times in a parent's life. Parents are often feeling strong emotions and they need time to deal with these. Not being able to do so can mean parents struggle to think about their children's needs, and this stops them from focusing constructively on future decisions about their children.

"It provided meaningful self-awareness and insight along with tools to enhance communication, problem solving and conflict resolution"

- Professional Submitter

We heard a country-wide request for counselling to be made available once again.

Changes we're considering

We consider there is a role for counselling in post-separation issues.

It would be different from the counselling available before 2014. It would not be the place for resolving parenting disputes; that's the role of Family Dispute Resolution (FDR) or, when needed, the Family Court. It would not be available to help couples reconcile. Instead, counselling would help parents deal with the issues that are stopping them from resolving disputes about their children or that may lead to them getting into further disputes in the future.

We are considering whether counselling should be available early in engagement with the Family Justice Service, for example, on referral from Parenting Through Separation (PTS) or FDR providers.

We are also considering a proposal that three types of counselling be made available through the Family Justice Service, fully funded by the state. In each case, its use would be targeted, available for a limited number of sessions and delivered by accredited counsellors. The three types of counselling would be as follows.

1. At any stage, a party to a parenting dispute could be referred to counselling **to help them deal with personal emotions**, such as pain, anger or grief. It would be available where those emotional problems were stopping the person from dealing with issues of care, contact and guardianship.
2. A judge would be able to refer one or more parties to a case for more **in-depth therapeutic or behavioural family therapy-type counselling**. This would be for complex cases about parenting or guardianship issues.
3. A judge would be able to direct parties to attend counselling **to improve the parenting relationship or help them comply with an order** (as is the case currently).

As noted, three options would be available for people to access counselling. They could be referred by a PTS or FDR provider, where the provider considers that counselling will help the person to take part effectively in PTS or FDR. People could also be referred to the first type of counselling by the new Family Justice Service Coordinator (discussed on page 32), either before or after they file an application with the court.

A judge could direct parties to attend specialist counselling providers (the second and third types described above). We think this counselling should have court oversight. People would be expected to attend, and they would also waive (or give up) confidentiality about progress made and the outcome. Counsellors would report to the court on these matters within a set timeframe.

Some submitters said counselling should be available to children. While children may be involved in family therapy, the focus of the counselling we propose is to help parents resolve parenting disputes and improve their parenting relationship and behaviours. We think this should be the government's main focus and will also be of greatest benefit to children.

We are not proposing that counselling be compulsory in the sense that a person would be stopped from completing any step if they did not attend. Instead, the expectation will be that, if people are referred, they will go to counselling. Failure to go to counselling may be taken into account by a judge when making parenting orders or considering whether to order costs.

Proposals

We are proposing that:

- three types of counselling should be available in the new Family Justice Service, funded by the Government:
 - counselling to help people deal with emotions that are stopping them from dealing with issues of care, contact and guardianship
 - more in-depth therapeutic or behavioural family therapy-type counselling for complex court cases about parenting or guardianship issues
 - counselling to improve the parenting relationship or help people comply with an order (as is the case currently).

Questions

10. 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?
11. Are Parenting Through Separation/Family Dispute Resolution suppliers, Family Justice Service Coordinators and Judges best placed to refer people to counselling? Are there any other service providers who should be able to refer to counselling or should people be able to refer themselves?
12. Should confidentiality be waived when parties are directed by the court to therapeutic intervention, in what circumstances and about what matters?

Parenting Through Separation

Parenting Through Separation (PTS) is highly regarded. Submitters felt it helped them to focus on their children and the effects of separation. Submitters told us how valuable it was to hear about other people's experiences and to share their own.

What we've learnt

PTS can be hard to access, particularly for those with full-time care of children and those living in remote areas. Wait times add to frustration. Some submitters said that language, culture and disability can stop people from accessing and taking part in PTS. There is not enough monitoring done on how well these needs are met across the multiple contracted providers.

We heard that PTS is not relevant for everyone. PTS is designed for separating parents, but attendance is compulsory for all parties wishing to file an on notice application to the court, including grandparents, other whānau and non-traditional parental relationships (such as parents who've never been in a relationship).

“engaging with PTS, parents and caregivers build their knowledge and understanding of the impact that separation has on both themselves, and their child or children, and the wider family or whānau”

- PTS provider

Changes we're considering

We believe PTS is an important part of the Family Justice Service. If separating parents intend to engage in Family Dispute Resolution or make an application to the Court, there should be an expectation that they will attend PTS. The court should be able to refer people to PTS at the early stage of court proceedings.

We consider that, while PTS is a helpful programme overall, many issues need to be addressed. More information and a thorough analysis are needed of the issues outlined above. We're considering a recommendation that the Ministry of Justice undertakes a review of PTS to:

- update programme content, to reflect current research
- decide if PTS is suitable for all parties, such as grandparents, and, if it's not, what should be available for them
- look at solutions to accessibility issues for non-English speakers, people from other cultures and people with disabilities
- look at solutions to accessibility issues for people who can't attend in person (this will include consideration of an online version of the course)
- consider a three-yearly review to measure the effectiveness of the programme's content and delivery, to make sure it's still fit for purpose.

Proposals

We are proposing that:

- parties are expected to attend PTS if they intend to engage with FDR or make an application to the Court
- a review is undertaken of PTS
- a review of PTS takes place every three years.

Questions

13. Do you agree that there should be an expectation on parties to attend PTS, rather than having it as a compulsory step for everyone?
14. If PTS is not mandatory, how should this expectation of attendance be managed and achieved?

Family Dispute Resolution

The 2014 reforms set up Family Dispute Resolution (FDR). It was designed to help separating parents or other whānau to reach agreement about the care of their children or mokopuna. It was meant to be quicker, cheaper and less stressful than going to court. Research suggests for those parties who have taken part in FDR, it can be a quick, affordable and effective process.

What we've learnt

We heard that the significant issues with FDR have prevented it from working as it was supposed to. For example:

- FDR was not promoted as expected
- fewer people have attended and exemptions are higher than expected
- FDR is hard to access
- the cost of FDR is a barrier for some people
- FDR is not sufficiently responsive to cultural diversity
- people with disabilities find it hard to access FDR and are not always adequately accommodated
- child participation practices vary
- people don't always want to have to attempt FDR before being able to file an on notice application in court
- once the court is involved and parties have been directed to FDR, there is no judicial oversight of FDR
- there are concerns about the durability and enforceability of agreements reached at FDR.

“The ease with which ‘without notice’ applications are approved undermines and devalues the FDR process. By-passing FDR...undermines the principle of encouraging parents to take responsibility and to cooperate while making decisions in the best interest of their children.”

- Professional Submitter

We've heard differing views on whether FDR should be compulsory or voluntary. The research shows that a lot of cases that go to mediation reach partial or total agreement. Some submitters told us they felt forced into mediation. The compulsory nature of it stopped people from taking part in a meaningful way. Given the participation and exemption rates, FDR could be described as compulsory in name only.

Changes we're considering

We want to promote a higher level of participation in FDR. We're considering ways to make sure FDR is available at the most appropriate time for parents, caregivers and their whānau, whether or not an application has been made to the court.

Where an application has been made to the court, but FDR has not been undertaken, we're considering whether an automatic referral should be made to FDR unless good reasons are given not to (a rebuttable presumption).

We're also considering the suggestion that a process for court referrals to FDR should be clearly outlined in the Family Court Rules 2002 that address the ability of the court to make direct referrals, timeframes and how outcomes are reported back to the court.

We believe that 'preparation for mediation' should remain. This is where parents get a mix of support and coaching to help them think clearly about what arrangements are best for their children ahead of mediation.

Submitters also highlighted several other issues, including the confidentiality of the process, enforceability of mediated agreements, the sustainability of the FDR workforce and the possibility of extending FDR to relationship property matters. These, and other issues, will be considered in the Panel's final report.

The funding of FDR is addressed on page 39.

Proposals

We are proposing that:

- FDR should be available at the most appropriate time for parents, caregivers and their whānau, whether or not an application to court has been made
- where an application to court has been made but FDR not undertaken, the matter be referred to FDR, unless good reasons are given not to (rebuttable presumption)
- a clear process is outlined in the rules for the court to make direct referrals, addressing timeframes and how outcomes are reported back to the court (while keeping the ability for parties to abandon proceedings, if appropriate).
- a review is undertaken of child participation practices in FDR, to identify any issues and best practices (child participation is dealt with on page 10).

Questions

15. Do you agree with the idea of a rebuttable presumption? If so, how might it be worded to make sure that parties take part in Family Dispute Resolution unless there are compelling reasons not to?
16. Do we need stronger obligations on family justice professionals to promote FDR and conciliatory processes generally?
17. What could a streamlined process for court referrals to FDR look like?

See page 40 for questions on costs of FDR

Legal advice and representation

Before 2014, parties to proceedings in the Family Court could be legally represented at all stages. That changed in 2014, when lawyers were removed from the early stages of on notice proceedings. This meant legal aid wasn't available to a person who couldn't afford a lawyer. Instead, a Family Legal Advice Service (FLAS) was established to give people initial information and advice on the out-of-court processes (FLAS 1) and limited help in completing court applications (FLAS 2).

Separating parents often ask for advice from lawyers as a first step, and this can help to resolve issues early in the process.

What we've learnt

We've heard that the removal of legal representation has been a critical change. As a result:

- people reported feeling confused and helpless when representing themselves
- people's confusion and helplessness is made worse by the court forms they must use when applying to the court
- inequities exist between those who have access to legal advice and those who do not
- FLAS help is short term and limited
- without notice applications have increased
- the workload of judges and court staff has increased from helping unrepresented parties
- delays and length of hearing time have increased
- communities and cultures that prioritise respect for authority figures and feel uncomfortable directly addressing or disagreeing with a judge are disadvantaged
- denying access to legal representation limits access to justice and undermines human rights.

"Access to justice requires legal representation for parties and children throughout proceedings. Legal representation reduces Judges' work-loads, and Court time. It also ensures access to justice, and better outcomes for parties and children"

- Lawyer

Ministry-funded independent research in 2017 found that over 80 per cent of applicants interviewed listed the main reason for making a without notice application was they wanted a lawyer in court.

Changes we're considering

We intend to recommend that parties' right to have a lawyer represent them at all stages of Care of Children Act 2004 proceedings is reinstated, with legal aid funding available to those who qualify for it.

What we're still thinking about

We're still considering how legal aid and FLAS will fit into a system where legal representation is reinstated.

FLAS has benefits that are not available under legal aid. FLAS is income tested only, not asset tested, and does not have to be paid back.

Many submitters were not aware that FLAS existed. Those who did know about it often found it hard to find a provider. They also found it frustrating because approved providers were frequently unavailable, not able to be contacted or had stopped providing FLAS.

Many submitters were disappointed by the amount of help and advice FLAS offered, often feeling more was needed. People felt confused that FLAS providers could offer legal advice but couldn't act on their behalf as a lawyer usually would.

Legal aid is not currently available for people who only want advice and help and who may not want to make an application to the court. Two options are suggested for change:

- make legal aid available to people who only want advice and help
- retain and enhance FLAS 1 to provide more thorough advice and help pre-court and to create a solicitor–client relationship.

Having wider access to legal advice is efficient, because lawyers can resolve matters in a quick way, out of court. Keeping FLAS may allow more people to have access to funded legal advice than would otherwise be eligible for it under legal aid. Also, a FLAS lawyer could continue to act for a party, if matters weren't resolved.

Proposal

We are proposing that:

- parties are allowed to have legal representation at all stages of proceedings.

Questions

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

- Should it be part of a legal aid grant, or
- could there be an enhanced role of FLAS 1 (giving a person initial information and advice on the out-of-court processes), including the creation of a solicitor-client relationship?

Case tracks and conferences

The 2014 reforms introduced three case tracks and five optional judicial conferences, which were meant to progress cases to timely resolution.

What we've learnt

During our consultation, we heard that there are too many case tracks and too many conferences – the system is complicated, hard to navigate, not complied with and adds to delays. The increase in without notice applications has also affected the usefulness of the case tracks. Many submitters said the current court forms are complicated, not user-friendly or don't give the court the information it needs to make decisions.

"The track system is far too complicated. The system is clogged partly because the tracks are hard to traverse"

- Professional submitter

Changes we're considering

We're considering whether the system could be reduced to two case tracks:

- on notice (standard)
- without notice (urgent).

The number of conferences could be reduced. We think it's important each conference has a clear purpose, to stop cases dragging through the court in a series of successive adjournments.

We're considering whether settlement conferences should be retained. However, more thought is needed on whether there is an ideal time in the process for these conferences, for example, following receipt of a psychologist's report, and how these conferences 'fit' with judicial decisions to direct parties to FDR.

We believe greater use of telephone and video conferencing will reduce delay and waiting times.

Proposals

We are proposing that:

- the system be simplified to two case tracks: on notice (standard) and without notice (urgent).
- the number of conferences be reduced from five to three, for example, a judicial conference, settlement conference and a pre-hearing conference.
- the use of video and telephone conferences be increased.

Questions

19. How do you think we could improve the efficiency of court processes?

Without notice applications

Without notice applications are a fundamental process in the Family Court, because they give immediate relief in urgent cases. Before the 2014 reforms, 30 per cent of all Care of Children Act 2004 applications were made on a without notice basis. That number rose quickly after the 2014 reforms and has remained at around 70 per cent. Research tells us the main reason for applying without notice is so a party can have a lawyer represent them. Where a lawyer acts, a party is eligible to apply for legal aid.

What we've learnt

We have concerns about:

- the inappropriate use of the without notice application process
- the failure to disclose essential information for proper consideration of the application
- the large increase in the amount of time devoted to the eDuty platform to deal with these applications and the resulting pressure placed on the registry and judges
- the increase in appointments of lawyers for the child and the cost implications of this
- parties not using out of court services such as PTS and FDR
- parties acting in a negative and adversarial way towards each other
- long delays in court.

“The rate at which applications are now made under the ‘without-notice’ pathway highlights the issues with the standard pathway and the implications of restrictions to legal representation on victims’ selection of the pathway”

- Social service provider

Changes we're considering

We are thinking about:

- allowing a party to be legally represented at all stages. We expect this will help decrease the number of without notice applications
- removing uncertainty around and reinstating a party’s ability to apply to rescind (overturn) a parenting order made on a without notice basis
- having sanctions (or penalties) for where without notice applications are made inappropriately (for example, costs being awarded or referral to the New Zealand Law Society or Legal Services Commissioner and Secretary for Justice).

Questions

20. Will reinstating legal representation be enough to reduce the number of without notice applications? Or would other interventions be required? For example, are sanctions required for unnecessary without notice applications? If so, what sanctions would be appropriate?
21. Do you think there is value in clarifying that parenting orders made without notice can be rescinded?

Triaging

Triaging is where the most appropriate pathway is identified for each application filed with the Family Court. It allows early decisions on whether a case might best be progressed in the community by referral to Parenting Through Separation (PTS), Family Dispute Resolution (FDR) or other services. For complex cases, it allows early referral to a judge for directions, including possible referral for targeted therapeutic or other interventions.

What we've learnt

We heard that the lack of effective or meaningful triaging has led to delays and undermined the court's ability to respond to complex cases in a child-appropriate timeframe. This has led to entrenchment of parties' positions and negative outcomes for children.

"By providing a number of avenues for families to use when they need assistance, and by triaging each parent who applies for assistance, we can make better use of resources and, we can prevent Parties who do not need an In-Court experience from being subjected to it"

- Professional submitter

Changes we're considering

We consider there needs to be an effective triage system.

Many community organisations, service providers (for example, FDR providers) and lawyers who see parents at the start of the process provide effective assessment or screening of parents. This is important, and we think it should continue. It may mean parents are referred to agencies in the community in the first instance (which we support). It may also mean, in appropriate circumstances, they are referred to the Family Court. This referral will be formally triaged by the Family Justice Service Coordinator.

During our consultation, many people suggested a 'one-stop-shop' approach to help with triaging, early identification of issues and early intervention. Many people currently go to lawyers, family members or the Family Court for advice. Others get help from community services.

We consider there should continue to be multiple entry points to the Family Justice Service; there should be 'no wrong door'. People should continue to access help as they do now. Lawyers, PTS and FDR providers and community services will continue to screen people and refer them to appropriate services or the Family Court.

We think more needs to be done to support community organisations to provide screening and access to support and services in a joined-up way in their communities. We heard many times during our consultation that the Family Justice Service needs to promote joined-up service delivery, reduce conflict and be accessible for families.

The Family Justice Service Coordinator will carry out triaging in the Family Court (see page 32).

Proposal

We are proposing that:

- integrated assessments, screening and triaging should be established, and relationships strengthened between the Family Court and wider family justice services in the community.

Questions

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

Complex cases

The Panel has heard that the complexity of some cases makes their resolution difficult.

What we've learnt

The main features of complex cases are:

- high conflict between the parties
- entrenched positions taken by one or both parties
- parties not being able to focus on the child's interests
- breakdowns in relationships between children and at least one parent
- parties failing to disengage from the other
- deeply rooted negative behaviours and beliefs that are hard to challenge or change
- degrees of mistrust or increased anger, poor or abusive communication and, in some cases, family violence
- parents using the court process to continue to harass and engage their former partner in an ongoing relationship.

“When a matter is declared ‘complex’ and case managed by a judge it is, generally, beneficial for the parties because the parties know the Judge knows all the details of their case. It feels as though the system has less churn and that more care is being taken”

- Lawyer

Although the number of these cases is small, they take up a disproportionate amount of time. They're difficult, time-consuming and need early and effective intervention.

We've heard there is no one case management response to these cases. We've heard some cases need access to therapeutic interventions or services provided by professionals outside of court. It has been suggested that, when this happens, parties should waive confidentiality so the counsellor or psychologist can report directly to the judge, and/or that a party or parties in a high-conflict case should be able to be psychologically assessed (there's no power to do this at present).

Changes we're considering

Complex cases need early and effective intervention. We're considering introducing a separate process to better manage these cases. This would include:

- triaging all applications, to identify these cases earlier
- giving judges more powers to direct parties to time-limited, focused therapeutic intervention with a psychologist or counsellor
- having an individual judge undertake case management.

Triaging is discussed on page 26. Counselling and therapeutic intervention are discussed on page 16.

Proposals

We are proposing that:

- all applications are triaged by the Family Justice Service Coordinator, to identify complex cases at the earliest opportunity
- judges are given more powers to direct parties to time-limited and focused therapeutic intervention
- individual judges undertake case management.

Questions

23. What other powers do you think might be helpful to enable judges to better manage complex cases?
24. What types of therapeutic intervention would be useful in complex cases? For example, should a judge have the power to direct a party for psychological or psychiatric assessment or alcohol and other drug assessment?

Cultural information in court

Two provisions in the Care of Children Act 2004 allow the court to receive information about a child's cultural background. Cultural reports are an independent report requested by a judge to help inform their decision. Section 136 of the Act allows a person, at the request of a party to proceedings, to speak to the court about a child's cultural background.

What we've learnt

Historically, both provisions have been underused. This is despite Aotearoa New Zealand's increasingly diverse population and the need for the court to understand and respond appropriately to a child's cultural needs. Data shows that, for guardianship proceedings where ethnicity is recorded, around 22 per cent of parties are Māori, 5 per cent are Pasifika and 4 per cent are Asian. Some submitters also noted the young demographic profile of Pasifika and migrant communities. Pasifika have the highest proportion of children, compared with other ethnic groups.

"Cultural reports are good, but they feel like an add on. They get plonked into a system where it doesn't fit (it feels like palliative care). Applaud the judges who seek cultural reports but it's still within the confines of a Western system"

- Cultural report

Cultural reports are hardly ever requested in the Family Court. The Family Court Bench has identified that the major obstacles to cultural reports are the small pool of report writers and the lack of framework around the provision of the reports. Judges are reluctant to ask for a report if no one can provide it.

During our consultation, we heard from parents, whānau and community members who were concerned that the court did not fully understand their child's cultural background. They weren't sure how to bring this information to the court's attention in a meaningful and culturally safe way.

Changes we're considering

We consider that parties should be better supported and empowered to bring relevant cultural information to the court's attention. The provision to do this is in section 136 of the Act, however, many people don't know about it and it's hardly ever used. Appropriate information and guidance could be developed to help parties, lawyers, whānau and community members use this provision. An opportunity also exists to strengthen the provision so that the court must hear from a person called under section 136 except if special reasons are given not to.

If the court needs independent, expert information about a child's cultural background, it should be able to ask for a cultural report with confidence that a process is in place for the delivery of that report. We propose that the Ministry of Justice does further work to establish what that process could look like, and what training and professional development is necessary to make sure cultural report writers are available to the court.

This work should also consider whether the threshold for requesting a cultural report is suitable. At present, a cultural report can only be requested if the court is satisfied the report is 'essential' to

help decide the application. A lower threshold, possibly with the ability for parties or lawyers to ask the court to obtain a cultural report, may increase their use.

Proposals

We are proposing that:

- information and guidance be developed for parties, lawyers and the community about how cultural information can be helpful, and use is encouraged of the existing provision for a person to speak in court (section 136, Care of Children Act 2004).
- the provision for a person to speak in court be strengthened so that the court must hear from a person called under section 136 of the Care of Children Act 2004.

What we're still thinking about

We are still thinking about:

- recommending further policy work to develop an improved framework for the provision of cultural information to the court, including consideration of funding
- what training, support and ongoing professional development is needed to increase the number and capability of cultural report writers
- whether the threshold for requesting a cultural report should be changed.

Questions

25. What could be done to encourage lawyers and judges to make better use of s133 cultural reports? For example, should there be a different threshold for cultural reports? If yes, what would be an appropriate threshold?
26. Do you think greater use of section 136 of the Care of Children Act 2004 would prove more valuable than presenting cultural information in a report format? If so, what type of information and guidance would be needed to support parties to use section 136? What barriers are there for parties to use section 136 of the Care of Children Act 2004?
27. Do you have any other proposals for improving the quantity and quality of cultural information available to the court?

A “new” role – Family Justice Service Coordinator

The role and responsibilities of the Family Court Coordinator have changed over time. The core functions, including providing advice, linking people to lawyers and services in the community and referring matters to a judge for urgent consideration have gradually reduced, and the role is now mainly administrative.

What we've learnt

The gradual shrinking of the Family Court Coordinator's role means people have no one person to go for information, advice and connection to services.

The overwhelming view from submitters who worked in the Family Court and from community services is that a significant breakdown and disconnection has happened in the relationship between the Family Court and the organisations that come into contact with parental separation in the wider community. All expressed regret about this and felt there is a need for an integrated or seamless relationship between them.

Changes we're considering

We're considering establishing a new role of Family Justice Service Coordinator (FJSC) at a senior level within the Family Court.

The FJSC will have a crucial role as the link between the community and Family Court. The FJSC will establish and maintain links with Parenting Through Separation (PTS) and Family Dispute Resolution (FDR) providers and other community services.

People will be able to go to the FJSC for information and guidance without making an application to the court. The FJSC will be able to refer parties to PTS, FDR, legal advice or community services as a first step.

The FJSC will be responsible for triaging all applications to the Family Court (see the Triage section on page 26). On notice applications that need urgent judicial attention can be referred directly to a judge for directions. Non-urgent applications are likely to be referred to PTS or FDR services or for legal advice.

The FJSC's role should be established in law.

Proposals

We are proposing that:

- a new role of Family Justice Services Coordinator (FJSC) be established
- the FJSC triages all applications to the Family Court and makes sure that on notice applications needing urgent judicial attention are referred directly to a judge for directions. Non-urgent on notice applications are likely to be referred to Parenting Through Separation (PTS) or Family Dispute Resolution (FDR) providers or for legal advice.

- the FJSC connects those people who do not wish to make an application to court to appropriate services in the community
- the main elements of the FJSC role should include:
 - providing information and guidance on process, next steps and options
 - connecting people to services such as FDR and PTS or community services
 - establishing and maintaining links with community services
- the role of the FJSC should be established in law.

Questions

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

A “new” role – senior Family Court registrar

One of the aims of the 2014 reforms was to reduce delay in the system. Since the reforms, cases before the court have become more complex and demands on judges and registry staff have increased. Delays have also increased.

What we've learnt

There are significant delays in the Family Court and cases are not being dealt with in child-appropriate timeframes. Submitters told us that judges are spending more time than in the past on administrative tasks, which can create delays that can increase conflict between the parties.

Registrars in the Family Court already have a wide range of powers available to them (a registrar, for example, can legally deal with most interlocutory procedural matters) although many are not used in practice.

Changes we're considering

We're considering establishing the position of senior Family Court registrar (SFCR), to reduce the hours judges spend on administrative matters and to increase judicial sitting time. The Family Court Amendment Act 2008 created the role of SFCR, but the provisions were never brought into force and were later repealed. This position wouldn't have to be established in every registry, because the SFCRs could operate electronically (such as the eDuty process for judges) or travel to other registries as required. SFCRs shouldn't be limited to acting in Care of Children Act 2004 matters, but they should be able to use their full range of powers across all Family Court proceedings.

We suggest that the law should set out the jurisdiction and powers of SFCRs. They could include: interlocutory matters; applications made without notice; pre-hearing conferences; uncontested applications; applications for leave; matters that are consented to by all parties; confirmation of orders made overseas; the holding of inquiries; and the enforcement of orders and directions.

Regulations would have to be made to specify the kinds of orders and directions an SFCR could make in family proceedings.

Proposal

We are proposing that:

- the position of senior Family Court registrar be established to speed up court processes and reduce the judicial administrative workload, thereby increasing judicial hearing time.

Questions

29. What do you think of the proposal to establish a Senior Family Court Registrar position?
30. What powers do you think Senior Family Court Registrars should have in order to free up judicial time?
31. What sorts of competencies should Senior Family Court Registrars have?

Lawyer for Child

Before the 2014 reforms, the Family Court was required to appoint a lawyer for child unless it was 'satisfied the appointment would serve no useful purpose'. The 2014 reforms changed the criteria so a lawyer for child was only to be appointed when there were concerns for the child's safety or wellbeing and the court considered the appointment necessary.

What we've learnt

Some submitters reported being satisfied with the role of lawyer for child and their ability to represent the child's views, welfare and best interests. Others raised a number of issues, including:

- children's voices are not sufficiently advocated for and heard
- lawyers don't have the appropriate specialist skills to advocate for children. Suggestions were made that the role should be either completely replaced with child development experts, or lawyers for children need to work together with child development experts
- the statutory criteria for appointment of lawyer for child do not require consideration of a lawyer's personality, cultural background, training, qualifications and experience
- lawyers for children have inconsistent practices
- parties do not understand the role of lawyer for child
- people feel there is a lack of independence in the complaints process
- there is pressure on the workforce because providers are leaving, not helped by the fact that remuneration rates haven't increased since 1996.

Changes we're considering

We are considering that:

- the same appointment criteria in section 159 of the Oranga Tamariki Act 1989 should apply to the Care of Children Act 2004 (where practical, appointing a lawyer who is, by reason of personality, cultural background, training and experience, suitably qualified to represent the child or young person)
- the Ministry of Justice should strengthen the information given to parties explaining the role of lawyer for the child
- lawyer for the child training, professional development and supervision requirements should be strengthened and regularly reviewed to reflect evidence and best practice
- compliance with the Family Court Practice Note on selection, appointment and review of lawyer for the child should be strengthened (review of lawyer for the child lists must be done at intervals of no more than three years)
- lawyer for the child remuneration rates should be reviewed and updated.

Proposals

We are proposing that:

- new criteria be introduced for the appointment of lawyer for the child, to make sure each child's needs are met by the most suitable lawyer (focussing on personality, cultural background, training and experience, suitability of their qualification)
- information given to parties and children about the role, obligations and limitations of lawyer for the child be improved
- lawyer for the child training, professional development and supervision requirements be regularly reviewed and strengthened
- the list of approved lawyers for the child be regularly reviewed and updated
- remuneration rates for lawyer for the child be reviewed.

Questions

32. Do you agree with the proposal to introduce new criteria for appointment of lawyer for the child to make sure of the best fit?
33. What are the core skills for the role of lawyer for the child, and what training and ongoing professional development do you see as necessary to develop those skills?
34. Do you see a role for an additional advocate with child development expertise to work together with the lawyer for the child, to support the child to express their views and make sure they're communicated to the judge?

Psychological reports

The 2014 reforms made changes to when a specialist report can be asked for and what they should cover. Now, a report from a specialist can only be ordered by a judge when it's essential to decide a court case and the case won't be unduly delayed by getting one.

A party may ask the court for permission to get a 'second opinion (critique report)' in special circumstances. A judge may agree that a report writer's notes and other material can be shared with the party's psychologist who is completing the second opinion.

What we've learnt

While some submitters reported being satisfied with the information provided by psychological reports, others raised issues with the process. These issues included delays in obtaining reports, concerns about bias and the intrusive nature of the process, and a misunderstanding of the report writer's role.

Our consultations have identified the following issues:

- delays in appointing a report writer and in receiving a report
- difficulties with recruitment and retention of suitably qualified and experienced psychologists
- effects of multiple complaints procedures against psychologists
- lack of professional pathways into Family Court work
- confusion about the definition of second opinion reports and whether these are the same or different from critique reports
- lack of process for second opinions (critique reports), including information from the report writer's notes that is released to the critique report writers
- reports being obtained too late in the court process.

"The biggest problem is timeliness"

- Parent

While overcoming these issues will help to improve the availability of psychological report writers, it's worth noting that New Zealand currently has a shortage of psychologists (clinical psychologists are on Immigration New Zealand's *Long Term Skill Shortage List*).

Changes we're considering

We acknowledge the value that psychological reports bring to the Family Court, and we're aware this work has limited appeal to psychologists. The shortage of psychologists is a complex problem that likely needs addressing from many angles. We consider that, within its responsibilities for the Family Justice Service, the Ministry of Justice should look at measures to improve recruitment and retention of more psychological report writers.

Anecdotally, critique reports are more valuable when the writer is appropriately qualified and experienced in Family Court work. We therefore consider that critique report writers should be chosen from the court list of approved specialist report writers.

Proposals

We are proposing that:

- psychological critique report writers should be required to be approved report writers under section 133 of the Care of Children Act 2004
- the Ministry of Justice should look at measures to improve recruitment and retention of psychologists
- in response to complaints about a section 133 report writer, that the judge's decision regarding the complaint be made available in any subsequent disciplinary hearings.

Questions

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

Costs

The 2014 reforms shifted away from a state-funded family court system to one where parties contribute to the cost of resolving disputes about children. The main changes were:

- Family Dispute Resolution (FDR) was made free to parties, if they met certain eligibility requirements
- for those not eligible for government funding, the cost of FDR is \$448.50 per person
- the introduction of cost contribution orders (CCOs). These require people to pay part of the cost of lawyer for the child, lawyer to assist the court, and specialist report writers. People pay an equal, one-third share of those costs and the Government pays the other share
- CCOs can't be made where a party is getting legal aid
- application fees (\$220) were introduced in 2012
- the court may waive the filing fee or not ask a party to pay their share of costs, if it would cause hardship or a person is getting legal aid.

What we've learnt

We have heard that:

- the cost of FDR discourages parties from attending, particularly where one party receives government funding and the other does not
- CCOs create financial hardship, which often increases already significant legal costs
- judges have only made a CCO in around 15 per cent of cases where they could be made
- CCOs are made inconsistently around the country
- CCOs are administratively burdensome and rates of recovery are low
- CCOs are made after the court case is closed, and delays often happen in their processing, which causes upset for people who have had their dispute determined.

“Some families are struggling with day to day stuff and can't afford it”

- Parent

Proposals

We are proposing that:

- Parenting Through Separation be kept as a free service
- counselling be funded by the government (as discussed at page 16)
- automatic CCOs be removed and replaced with judicial discretion. For example, where a party has acted unreasonably or unnecessarily drawn out proceedings (perhaps by refusing to attend FDR), the court can make a CCO against that person (this is separate from court costs ordered between the parties in proceedings).
- filing fees not be changed.

What we're still thinking about

Whether:

- FDR should be free for both parties where one party is eligible for Government funding; or
- FDR should be free for all parties (with a possible trial of this proposal);
- The eligibility threshold for government funding for FDR should be raised.

Questions

39. Do you agree with the Panel's proposal that cost contribution orders are modified? For example, do you think a judge should order a party to contribute to the cost of professionals when making final orders based on the party's behaviour during proceedings?
40. Should FDR be fully funded by the government for everybody, or should FDR be free for both parties where one party is eligible for government funding? Should the eligibility threshold be raised?

Other matters

Other significant issues, some pre-dating 2014, others arising since, have negatively affected the implementation and administration of the current family justice system. These include:

- removal of specialist Family Court registries
- a requirement to use Ministry of Justice forms that are hard for parties, court staff and judges to access and use
- the Family Court Rules 2002 being hard to understand and navigate
- the need for a workforce strategy to address, for example, a loss of specialist Family Court staff, high rates of turnover of Family Court staff and the lack of specialist Family Court career pathways
- the lack of specialist services and supports for grandparents and family members raising children
- the lack of specialist services and supports for people with a disability needing assistance to resolve disputes about children
- a need to better cater to self-represented parties to ensure they are not disadvantaged nor create unnecessary delay

These matters need further consideration and will be covered in our final report.

Next steps

The closing date for submissions is **5.00pm, Friday 1 March 2019**. Because of our short timeframes, late submissions will not be accepted.

The Panel will use your submissions to inform its final report, which will include recommendations for change, to the Minister of Justice. This report is due to be delivered by the end of May 2019.

Questions

1. What should be included in a comprehensive safety checklist?
2. What information should be available to the court to assess children's safety and in what circumstances?
3. What role should specialist family violence workers have in the Family Court? Should there be separate support workers for adults and children?
4. Do you have any other suggestions for more child-responsive court processes or services?
5. Should obligations be placed on the Ministry and/ or the Government to improve family justice outcomes for Māori? What would these obligations be?
6. How could the Ministry of Justice or the Government partner with hapū, iwi or Māori organisations to deliver services?
7. How would you incorporate tikanga Māori into the Family Court?
8. Do you have any other suggestions to improve the Family Justice Service for Māori, including any comment on the examples provided above?
9. What information do you think would help service providers, community organisations, lawyers and family justice professionals to achieve a joined-up approach to the Family Justice Service?
10. Would the three proposed types of counselling meet parties' needs, or are there gaps in the counselling services that need to be filled? For example, should there be counselling available to children?
11. Are Parenting Through Separation/Family Dispute Resolution suppliers, Family Justice Service Coordinators and Judges best placed to refer people to counselling? Are there any other service providers who should be able to refer to counselling or should people be able to refer themselves?
12. Should confidentiality be waived when parties are directed by the court to therapeutic intervention, in what circumstances and regarding what matters?

13. Do you agree that there should be an expectation on parties to attend Parenting Through Separation, rather than having it as a compulsory step for everyone?
14. If PTS is not mandatory, how should this expectation of attendance be managed and achieved?
15. Do you agree with the idea of a rebuttable presumption? If so, how might it be worded to make sure that parties take part in Family Dispute Resolution unless there are compelling reasons not to?
16. Do we need stronger obligations on family justice professionals to promote FDR and conciliatory processes generally?
17. What could a streamlined process for court referrals to FDR look like?
18. Is there a place for more accessible provision of funded legal advice for resolution of parenting disputes outside of court proceedings? What would the key elements of this service be and how could it be achieved? For example: <ul style="list-style-type: none"> • 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?
19. How do you think we could improve the efficiency of court processes?
20. Will reinstating legal representation be enough to reduce the number of without notice applications? Or would other interventions be required? For example, are sanctions required for unnecessary without notice applications? If so, what sanctions would be appropriate?
21. Do you think there is value in clarifying that parenting orders made without notice can be rescinded?
22. How best should integrated assessment, screening and triaging be implemented? What other measures would you like to see implemented in order to improve the interconnection of the Family Justice Service?

23. What other powers do you think might be helpful to enable judges to better manage complex cases?
24. What types of therapeutic intervention would be useful in complex cases? For example, should a judge have the power to direct a party for psychological or psychiatric assessment or alcohol and other drug assessment?
25. What could be done to encourage lawyers and judges to make better use of s133 cultural reports? For example, should there be a different threshold for cultural reports? If yes, what would be an appropriate threshold?
26. Do you think greater use of section 136 of the Care of Children Act 2004 would prove more valuable than presenting cultural information in a report format? If so, what type of information and guidance would be needed to support parties to use section 136? What barriers are there for parties to use section 136 of the Care of Children Act 2004?
27. Do you have any other proposals for improving the quantity and quality of cultural information available to the court?
28. What do you think of our proposal to create a new role; the Family Justice Services Coordinator (FJSC)?
29. What do you think of our proposal to establish a Senior Family Court Registrar position?
30. What powers do you think Senior Family Court Registrars should have in order to free up judicial time?
31. What sorts of competencies should Senior Family Court Registrars have?
32. Do you agree with our proposal to introduce new criteria for appointment of lawyer for the child to make sure of the best fit?
33. What are the core skills for the role of lawyer for the child, and what training and ongoing professional development do you see as necessary to develop those skills?

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

35. Does the definition of 'second opinion' reports need clarifying?

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

37. At what stage in the court process would psychological reports be most helpful?

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

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

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

Important information about your submission

What happens to your submission

Your submission will only be used by the Independent Panel for the purpose of considering the 2014 family justice reforms. It won't be shared with government agencies other than the Ministry of Justice (which is providing administrative support for the review).

Your submission will become official information. This means the Ministry may be required to release all or part of the information in your submission in response to a request under the Official Information Act 1982. The Ministry may, however, withhold all or parts of your submission if it's necessary to protect your privacy or if it has been supplied subject to a duty of confidence. Please tell us if you don't want all or specific parts of your submission released, and the reasons why.

Court information and information about third parties

Please don't share documents about Family Court cases you've been involved in (such as affidavits) or any specific details about your case (such as case numbers). This will help protect the privacy of other people who were involved, such as your children and whānau. It will also make sure your submission does not breach the provisions of the Family Court Act 1980, which make it an offence to publish information about young or vulnerable people without the permission of the court.

Please don't share names or any other information that could identify any other person, including children and whānau. This is out of respect for their privacy.

Privacy

Here's a link to the Ministry's privacy policy: https://consultations.justice.govt.nz/privacy_policy.

Collecting personal information

The Ministry only collects personal information that you *choose* to give it while using the consultation website: for example, your email address. You **can** submit anonymously.

Sharing your information

The Ministry does not give information about you to anyone else, unless one of the following applies:

- one of the reasons the Ministry got the information was to give it to someone else
- you have allowed it
- it is authorised or required by law or, in exceptional circumstances, for reasons permitted under the Privacy Act 1993, such as to prevent or lessen a serious and imminent threat to somebody's life or health
- the information is to be used in a way that will not identify you, or it is to be used for statistical or research purposes and won't be published in a way that will identify you.

Access to personal information the Ministry holds about you

You can ask the Ministry to give you any information that it holds about you, and you can make any changes to that information. Contact the Ministry's Privacy Officer:

- email: privacy@justice.govt.nz
- phone: (04) 918 8800
- post: Privacy Officer, Ministry of Justice, PO Box 180, Wellington.

Demographics

We have some final questions we'd like you to complete. Answering these questions is voluntary, but if you do, it helps us to understand who has engaged in the response to this document.

If you're a user of the Family Justice Service

D1 If you have used the Family Justice Service, what particular services did you use or come into contact with? *Tick all that apply.*

- | | | |
|--|--|--|
| <input type="checkbox"/> Parenting Through Separation | <input type="checkbox"/> Family Legal Advice Service | <input type="checkbox"/> Family Dispute Resolution |
| <input type="checkbox"/> Family Court | <input type="checkbox"/> Lawyer for the child | <input type="checkbox"/> Your lawyer |
| <input type="checkbox"/> Specialist report writer | <input type="checkbox"/> Counsellor | |
| <input type="checkbox"/> Other (please specify): _____ | | |

D2 What was your relationship to the child or children who were the subject of the family dispute?

- | | | |
|--|--|--------------------------------------|
| <input type="checkbox"/> Parent | <input type="checkbox"/> Guardian | <input type="checkbox"/> Grandparent |
| <input type="checkbox"/> Whānau/family | <input type="checkbox"/> Other (please specify): _____ | |

If you're a professional in the Family Justice Service

D3 If you work in the Family Justice Service, what is your role? *Tick all that apply.*

- | | | |
|---|---|--|
| <input type="checkbox"/> Parenting Through Separation | <input type="checkbox"/> Family Legal Advice Service | <input type="checkbox"/> Family Dispute Resolution |
| <input type="checkbox"/> Specialist report writer | <input type="checkbox"/> Lawyer for the child | <input type="checkbox"/> Lawyer for parties |
| <input type="checkbox"/> Counsellor | <input type="checkbox"/> Family Court (eg, judge, registrar, court coordinator) | |
| <input type="checkbox"/> Other (please describe): _____ | | |

Questions about you

You don't have to answer these questions, but it's useful if you do because this helps us better understand the information we receive. You may choose to answer all or some of these questions.

D4 Is this an individual submission or a submission by a group or organisation?

Individual Organisation (please specify): _____

D5 Age: Under 16 16–24 25–34 35–44 45–59 60+

D6 Gender: Male Female X (gender diverse)

D7 Where do you live?

Northland Auckland Waikato Bay of Plenty

Gisborne Hawke's Bay Taranaki Manawatu–Wanganui

Wellington Tasman Nelson Marlborough

West Coast Canterbury Otago Southland

D8 Ethnicity (*tick all that apply*)

New Zealand European Māori Pacific peoples Asian

Middle Eastern African Latin American

Other (please specify): _____

Glossary

application	The act of making a request to the court. Also, the name of the document that contains the request.
Care of Children Act 2004	The Care of Children Act 2004 is the main law relating to the guardianship and care of children. It came into force on 1 July 2005 and replaced the Guardianship Act 1968.
case tracks	Case tracks determine what processes or steps the case will follow.
conference	A meeting between parties, their lawyers and the judge to discuss aspects of the case. There are different types of conferences including settlement conferences, issues conferences and pre-hearing conferences.
contact arrangements	Rights of a person who doesn't have day-to-day care of a child to spend time with the child.
cost contribution order (CCO)	A Family Court judge can order an applicant or respondent to Family Court proceedings to contribute to the cost of providing a lawyer for the child, lawyer to assist and specialist reports.
costs	A court can require a party to pay some of the costs of the proceedings including the other party's legal costs.
court order	A formal direction from the court requiring a person to do or not do certain things.
direction	An order made by a judge in relation to the conduct of a proceeding.
eligible	Allowed.
Family Court	A division of the District Court that was established under the Family Court Act 1980 as a place where people living in New Zealand could receive help with family problems.
Family Dispute Resolution (FDR)	An out-of-court service provided by a Family Dispute Resolution provider to help parties to a family dispute resolve the dispute without having to pursue court proceedings; and making sure that the parties' first and most important consideration in reaching a resolution is the welfare and best interests of their children.
Family Legal Advice Service (FLAS)	This service offers initial advice and information for parties in dispute over arrangements involving care of their children. The service is only available for people who meet the income eligibility test.
guardian (of a child)	Being a guardian of a child means having all duties, powers, rights and responsibilities that a parent has in bringing up the child.
hearing	The part of a legal proceeding where the parties give evidence and submissions to the court and the judge may make a decision.
interlocutory	Matters that are dealt with after an application is made but before a hearing.
jurisdiction	The authority to make legal decisions and judgments.

lawyer for the child	A lawyer appointed by the court to represent a child involved in, or affected by, proceedings in the Family Court.
legal aid	Government funding to pay for legal help for people who cannot afford a lawyer.
mahi	To work or do.
make an application	Ask the court to make a decision.
mediation	A process where the parties, with external help, create a safe environment where they can address their issues and come up with agreements.
mediator	A dispute resolution practitioner who helps the parties toward their own resolution in a mediation but does not decide the outcome.
mokopuna	Grandchild, grandchildren.
on notice	An application that is served on the other person and they will be given the chance to respond to the application before the court makes a decision.
parenting order	An order made by the Family Court that says who is responsible for day-to-day care of a child, and when and how someone else important in the child's life can have contact with them. Parenting orders can be enforced just like any other order of the Court.
Parenting Through Separation (PTS)	A free information programme that helps separating parents understand the effect of separation on their children.
party (or parties)	People involved in a court case, such as the applicants, appellants or respondents (who are generally called 'parties').
proceeding	A case being considered by a court.
rebuttable presumption	A presumption that something is true unless evidence is provided that shows that it is not.
rohe	Boundary, district, region, territory or area of land.
settlement conference	Refers to a meeting between parties and the Judge who will try to help the parties to reach agreement. At a settlement conference, a Judge can only make orders with the agreement of the parties.
specialist report	A cultural report, or a report from a psychiatrist, psychologist or other medical professional.
tamariki	Children.
Terms of Reference	Instructions given to someone when they're asked to consider or investigate a particular subject, telling them what they must cover and what they can ignore
whānau	Extended family or family group.
without notice	An application that is not served on the person to be affected by it (the respondent) and therefore they do not have the opportunity to have a say before a judge makes an interim (temporary) order.

