From: John Green s 9(2)(a)
Sent: Monday, 25 February 2019 4:14 p.m.
To: FamilyJusticeReforms <FamilyJusticeReforms@justice.govt.nz>
Cc: s 9(2)(a)
Subject: RE: Meeting with the Independent Panel considering the 2014 family justice system reforms

Kia ora s 9(2)(a)

I would like to thank the Panel for the opportunity to hear from them regarding proposed changes to the family justice system and to provide comment on the day and by way of further correspondence before the end of this week.

A couple of matters were raised/discussed and on reflection I would like to offer some further comment/suggestions for consideration.

Rebuttable presumption in favour of FDR as the preferred approach to resolving care and contact disputes

We were delighted to see that the panel is considering our submission that there be a **'rebuttable presumption'** that all disputes relating to care and contact arrangements for children be referred to FDR when an application is made to the Family Court, unless there are good reasons not to.

We maintain that such an approach is in the best interests of FDR parties and their children and provides a consistent and certain unified approach to processing and administering care and contact disputes, irrespective of where the parties enter the family justice system.

A higher level of participation in FDR needs to be overtly supported and promoted as a highly efficient and effective process for resolving disputes concerning care and contact arrangements for children in a non-confrontational, non-threatening manner that has infinite capacity to reduce parental tension and conflict and the development of more intractable views, preserve and/or rebuild relationships, and most importantly, to protect children from the harmful effects and consequences of drawn out and damaging adversarial litigation.

We suggest if this presumptive approach is to be adopted, the present intake procedures in the Court ought to be modified so as to militate against the damaging effects of adversarial litigation which presently require affidavits to be sworn in support of applications and which process is not remotely conducive to:

a encouraging parties to resolve disputes in a non-confrontational, non-threatening manner that has capacity to preserve and/or rebuild relationships;

b reducing parental tension and conflict and the development of more intractable views; and

c enabling, empowering and supporting parents/guardians/whānau to work collaboratively as a team rather than as competitors to find the best care and contact arrangements for their children with the assistance and intervention of a skilled and independent FDR mediator.

Perhaps a simpler less destructive intake procedure could be adopted in which an applicant is only required to set out in basic detail the outcomes/relief sought sufficient to inform the court and the non-applicant party as to the nature of the case to follow.

Family Justice Service

The panel's proposal for a Family Justice Service and the adoption of the korowai analogy resonates with our own 'wrap-around' holistic and customer focussed approach to delivery of FDR and related family services.

Accessing FDR – streamlined process for court referrals

That proposal of itself (the fact that it is seen as a service and not a system) evinces a customer focussed/facing service that has multiple but connected parts and multiple points of entry ie, a 'multi-door' approach to family justice so that irrespective of the point of entry, the steps in the process are similar and seamless for all cases, with the first step being FDR mediation, where appropriate.

It is inevitable that separating parents, caregivers, and whānau who need help making decisions about their children (Intending FDR Parties) will access the Family Justice Service (and FDR in particular) at different points of entry. Many Intending FDR Parties will (and presently do) contact and select an FDR Supplier as a result of their own inquiries; or recommendations from friends and family, lawyers, community law centres, Citizens Advice Bureau etc and they should be entitled to exercise that election - choice of Supplier promotes efficiency, innovation and accessibility.

On the other hand others will either be less aware of their entitlement to select a Supplier or, for various reasons, will fail or neglect to exercise that election.

We submit that in those cases (ie where Intending FDR Parties apply to the Family Court or access the MOJ website looking for information about resolving care and contact disputes), those parties should simply be referred to a Supplier on a rotational basis through a central web based service administered by the Ministry. There are effectively only three Suppliers of nationwide FDR services – the FDR Centre, FairWay and Family Works (although their services are provided through two geographic centres). This would be easy to do, fair and transparent, s 9(2)(ba)(i)

Suppliers should be contractually obligated to respond to each inquiry within a mandated period (say two working days) with advice to the Court (where the Court is the referring body) as to when the appointment of an FDR Provider is made and the results first, of the FDR Assessment and second, of the FDR Mediation which enables and supports judicial oversight.

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

Funding/business model

If all FDR parties were fully funded, that would remove any perception of unfairness and streamline and speed up access to and delivery of FDR mediation and the resolution of care and contact disputes.

In cases where one party is fully funded and another whose income falls just outside the funding eligibility threshold has to pay for FDR, that party often understandably perceives the funding eligibility test as arbitrary and unfair.

Administering the funding eligibility test is problematic and time consuming. In many cases this aspect of the process causes significant delay to parties accessing mediation following an affirmative FDR Assessment as parties often struggle to complete the funding declaration form and obtain and provide the necessary documentation to establish their entitlement to funding.

s 9(2)(b)(ii), s 9(2)(ba)(i)

Pilot programme with Māori whānau/Oranga Tamariki

As mentioned we recently engaged in a pilot programme with Nanaia Mahuta's Out of Parliament Support team to develop strategic relationships with Māori support organisations in her electorate for the purpose of empowering Māori constituents to resolve family disputes in a culturally safe and appropriate way that aligns with Māori views of whānau in caring for children and mokopuna and, to improve family justice outcomes for Māori in the context of the FDR service and its interface with the Family Court.

s 9(2)(ba)(i)

However, the important upshot of this case, and the significant issue to be dealt with we suggest, is that it emphatically established that the present 'one size fits all' inflexible funding approach (the 12 hour model) does not align with the needs of Māori in relation to developing whānau centric solutions to caring for children and mokopuna as the (funded) time available is likely to be insufficient to achieve those outcomes in most cases. To put it in context, the time we spent in that one case was well in excess of 30 odd hours attending meetings, hui and court proceedings and the Ministry refused to fund any time in addition to the 12 hours.

We respectfully suggest that more could and should be done to empower Māori to resolve family disputes in a culturally safe and appropriate way and that if we are to improve family justice outcomes for Māori in the context of the FDR service and its interface with the Family Court, the service needs to provide more funded time to Māori FDR parties in these cases – whether that is calculated as a function of the number of individuals (extended whānau) involved or whether credits for the unused portion of the 12 hours available for other FDR parties might accrue on a six monthly basis so as to become available for those needy cases - I don't profess to have thought about it carefully enough at the time of writing. What I can say however, is that the present (largely two party monocultural approach) 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 and accordingly does not meet the needs of Māori as it is currently offered.

Thank you for the opportunity to contribute to this review process. If you have any further questions or require any further information please do not hesitate to contact me.

Ngā mihi

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A Preferred Supplier to the Ministry of Justice for FDR Mediation