

Strengthening family justice Reforms – submission from Isabel Aldiss.

1. Focus on children

I support the panel's recommendation for further research to be undertaken, starting with a comprehensive literature review of CIP. We need a culturally responsive process if children are to be included in mediation. Caution is needed when involving children in the FDR process because of their vulnerability. FairWay has implemented child protection policies for all its staff and contractors.

FairWay FDR process is child responsive process and is focused on child safety. This child inclusive mediation process is created by the exploration of the child's life and the generation of different options for care and contact arrangements. FairWay is currently conducting research in to the adoption of a safe child inclusive process.

I would like the panel to recommend that child specialists be specifically accredited for the role. Currently L4C do not necessarily have training for this specialist role and those working as specialist are not specifically accredited. Adequate training is necessary for those working with families to recognize pathological parenting patterns, intergenerational trauma and mental health issues, alongside family violence, and addictions issues.

Support the recommendation that a comprehensive check list for child safety be adopted. These reforms are at the forefront of addressing the social statistics in Aotearoa particularly the violence towards women and children.

2. Te Aro Family Court

I agree with the panel's recommendation that a culturally appropriate process and court be founded that would improve the outcomes for Maori in a Tikanga process. The government/ ministry has more than a statutory obligation to observe the three principles of Te Tiriti O Waitangi. The obligation is ensuring that these strands are woven through every part of the process and those working with families should demonstrate commitment to these principles.

Recommend the panel suggest to government/ ministry that a hui be held with Maori stakeholder organizations to determine their want/needs and specific Te Aro requirements to the family justice service. Changing the name from Family Justice to something like Whanau te Rangimaire Whakawhiti would be a great start (just as Child Youth and Family was changed to Oranga Tamariki).

Recommend that all suppliers have embody Treaty principles in their organizations by the demonstration of being authentic treaty partners honoring the principle of partnership, protecting taonga and enhancing participation of Tangata whenua in their whanau hui iwi. The demonstration of partnership amongst the suppliers working collaboratively, and promoting fairness and equality would be a way of embodying the principles. Rather than the competitive scarcity mindset which has been adopted by suppliers (the addition of the newest supplier to the market has taken this mindset to a new low).

I agree with the recommendation that the adoption of culturally appropriate training and accreditation for all those working with families in transition and in the family court. I would further suggest the panel recommend Suppliers and ADRO are mandated to adopt an accreditation process similar to NZAC (New Zealand Association Counsellors) members.

In 2018 NZAC implemented a new requirement for membership to demonstrate in depth knowledge of working with Maori. **The Puawānanga Process** is based on a relationship that members have with Puawānanga Kaitiaki. This process supports the first object of the NZAC Constitution, Te Tiriti o Waitangi, and achievement towards cultural understanding and competence. The counsellor is required to engage with a Puawānanga Kaitiaki (someone of Māori descent who can provide support for the counsellor undertaking this process).

Counselling and Therapeutic interventions

The spiral of grief which parents feel when their family transition to a new arrangement can lead to a devastating cycle of addiction, mental health and pathological parenting. There is no escape from the grief process. It is important for the tamariki involved that parents are as well supported with professionals who understand family transition. Parents search for answers and professionals who will listen to the narrative of grief. Whilst the 2014 reform took away the availability of counselling for those who were out of court process, there is still counselling available at a judge's discretion.

FDR can be transformative, therefore the reintroduction of lawyers at all levels of the process need to be with caution. FairWay mediators listen with depth and preserve a neutral presence to skilfully assist parents to reach full agreement. The process of EPFA can mitigate years of low trust and facilitate the parent committing to working together to create a better future for their children. Notwithstanding the complexity of some families the FairWay FDR providers provide better outcomes for families in Aotearoa.

The 12-hour FDR model provides flexibility for the parents to use the hours at their discretion. For example, families making interim agreements and revisiting these 3- or 6-months post joint meeting. This flexibility gives parents autonomy to produce an arrangement true for their families. I support the panel's recommendation for communication counselling in some cases this would be a useful intervention.

The provision of counselling needs to be flexible, dynamic, non-linear and one that did not hold up the FDR process. The difference between the three proposed counselling options and PFM need to be completely identified. PFM is the dynamic pre-mediation intervention.

I recommend that family therapy for complex cases come under the youth justice model. There is funding through MSD (Ministry of Social Development) for Multi Systemic Family therapy which could be an option for these types of cases.

The provision of counselling for children needs careful consideration due to the children's vulnerability during times of family transition. If the parents are coping the children do better. Providing greater support for the parents through an educative process such as PTS and counselling, would ensure better outcomes for the children. A suggestion is to develop an educative process like PTS for adults, "**children through separation**" which would normalize feelings of grief, build resilience and provide children with the necessary skills to transition between two homes. Children generally want parents to get on and communicate so communication counselling and parenting coaching would assist with pathological parenting patterns.

The gaps in counselling that I have identified is counselling that assist parents to sort out financial or property arrangement (which can delay parents to focus on the needs of the children)n.

Referrals from GP, Lawyer, teacher and parents themselves to counselling is recommended, as is the adoption of a clear referral process.

Confidentiality should not be waived under any circumstances. Court referral with the consent of the parties contact names, dates and outcomes.

3. Parenting though Separation

I agree that every parent should attend PTS. This prepares them for the reality of being separated. The more knowledge parents have around emotions and real-life stories the more this will help them. Some people don't do well in groups or are so stuck in the grief journey that they need some form of counselling be available

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

5. FDR

Absolutely we need stronger obligation on the Family justice professionals to promote FDR. However, this is unlikely to happen given the failure of the 2014 reforms. The legal profession and judges are responsible for the 40% increase in without notice applications.

Family Justice is a misnomer. What is fairness in a system which is rights based and win at all cost. What is needed is a complete re-training of the minds and heart of people in the system so they can set an example for parents who are in the mist of their own conflict.

Any professional (Lawyer, Judge, mediator, counsellor psychologist, court staff) working with families as they transition, need to undertake training in collaborative law, attachment parenting, early trauma and the impact, consensual process, pathological parenting patterns.

A streamlined FDR process would have judge's directing the parent/families to FDR. The court staff helping the parent fill online applications for FDR. Fairway has successfully held a pilot in Christchurch court where a resolution coordinator took applications straight from judges' direction.

Recommend that the removal of the competitive supplier system. A third supplier has further eroded a model of collaboration. I would also like the panel to recommend asking for the term FDR be generic. Therefore, suppliers cannot use this in their name. Such as the FDR centre – this misleads the public into thinking this is the MOJ.

6. Legal advice and representation, Case conferencing and Without notice application

Parents going through this family transition need all the assistance they can be given. They need to know the answer to questions such as

What are guardianship responsibilities and the child's rights under the COCA (Care of Children Act)

How long does court take and what are the cost?

What happens if FDR fails?

What is the Without notice threshold?

As a nation we do not like the idea of compulsion. Mandating FDR and PTS was setting it up for people with access to resources to find ways to buck the system. Those with money wasted court time and the legal profession bought into this. Parents can make their own parenting arrangements despite what the politicians believe. Sadly returning lawyers into the room will not be the revolution that the minister is hoping for.

Recommend pre-conference hearings held as mediation meetings where parents work with a neutral third party to make a parenting arrangement.

Recommend suppliers have the ability to refer cases which are exempted from FDR straight to the court.

7. Triaging and Cultural information for use in courts - diversity and inclusion

I have referenced an article which gets to the heart of the need to treat every family with whakautu ko tangatanga. The need for this to be a new era in Family te Rangimarie whakwhiti, the need to acknowledge the interconnectedness of family breakdown with the appalling social statistics; domestic violence, work place bullying, youth suicide, and youth anxiety rates. As a nation we need to talk more and fight less (court is a fight).

"For decades the primary way of resolving a big issue has been to lawyer up and head off to Court and for some that may be the preferred way of managing a situation, but for most a simple, quick and affordable option better suits the situation and the people involved.

FairWay's FDR service has a dedicated team of diverse resolution practitioners who come from different areas, countries, cultures, generations and professional backgrounds and we do our best to appoint a practitioner who we think will work best with each unique family. Their role is not to ensure that an agreement is reached, but to provide a platform that empowers families to have discussions and work through issues in the way that best suits them. If they reach an agreement – fantastic, and if they don't our practitioners have still enabled a conversation to occur that may not have happened otherwise.

Our resolution coordinators work hard at the assessment stage to build rapport and really get to know what is important to each family and what they are looking for in the FDR process so that we can meet them where they're at and empower them to tell us what they need to help them work through the change that is occurring.

Having a diverse team helps families to relate to their appointed practitioner. Families feel a connection that is stronger than an understanding, a shared lived experience of certain customs, cultures and communities that not everyone will have can go a long way to helping resolve disputes. The practitioner operates in between the black and white, the grey area

that many wouldn't be able to relate to and this alone can empower people to take ownership of the process and the outcome. As Ru Paul says, can I get an amen up in here?

With this brings diverse thinking which helps during the exploration stage of the FDR process. Diverse thinking is more than ticking different demographic boxes, it is considering issues from different perspectives, legal, social, cultural etc. each with their own benefits, an advantage that adjudicative processes cannot fully offer.

For these reasons it is so important that we continue to match the mediator with the family rather than using a next cab off the rank type approach. FairWay has and will continue to encourage diversity within our team so that we can continue to provide a flexible service that meets the needs of all families. This is the service that families want and deserve, and we are privileged to provide it" (*Anthony Syder Client Manger FDR written for publication in FairWay in house portal*).

Recommendation – it is imperative that any supplier have responsive systems and the diversity to assist families going through either the in court or out of court system. Triaging will be the success if Whanau te Rangimarie Whakawhiti is to be achieved or we continue the old adversarial system dressed up in grandma clothing.

8. Psychological reports -

Those professionals providing the voice of the child within this Whanau te Rangimarie Whakawhiti need to be specifically trained, understanding psychological complexity and the strategies children develop. Trauma is the outcome inflicted upon children by the well-meaning system. Children manifest anxiety when a tunnel lens is used and a DSMVI category diagnosis applied. An holistic approach is needed by those working with families so that the families truly are empowered to change their lives. Just yesterday I sat face to face with a mother. Her children (son and daughter) both sexually assaulted because the L4C recommended that shared care was in the best interested of the children. To this mother's horror she was over ruled and discounted.

I agree with the Panel's recommendation that critique report writers should be chosen from the court list of approved specialist report writers. I further recommend that NZ accredited counsellors who have a background in family therapy be considered. NZAC members embody the Te Tiriti principles and work with a social justice lens.

Conclusion

I would like to thank the panel for all the hours and work they have put into hearing submissions such as this one. The enormity of the task the panel has agreed to take and in the completion of is not to be under estimated. The families of Aotearoa need a new way to approach the transition from one household. My wish is that in parliament there is a conversation between the two main political parties so forthcoming changes are implemented with future generations in mind.

The family is the foundation of the school, the business and our land. To have staggering social statistics is an acknowledgement that as a nation we are getting something wrong. My hope that we can bring about whanau te ranigmaire whakawhiti (or something similar).

This submission is a private submission as a mother, mediator counsellor.

Nga Mihi

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