

## **GUIDELINE: FAMILY COURT COUNSELLORS**

### **1. PURPOSE**

- 1.1. This document outlines the criteria and process for appointment of counsellors and counselling organisations providing counselling services in the family justice system. The document serves as a guide for Ministry of Justice staff, counsellors and counselling organisations about the process and their respective roles and responsibilities.

### **2. INTRODUCTION AND COMMENCEMENT**

- 2.1. This document covers the following:

1. Purpose
2. Introduction and commencement
3. Terms and definitions
4. Regulations for counsellors and counselling organisations
5. Criteria for the appointment of counsellors
6. Appointment of counsellors
7. Approval of Counselling Organisations
8. Referral process for In-Court Counselling
9. Responsibilities of Counsellors
10. Responsibilities of Counselling Organisations
11. Administration of Family Court Counsellors
12. Privilege
13. Timeframes
14. Complaints
15. Ceasing to be a Family Court Counsellor

- 2.2. This Guideline will take effect from 1 March 2016.

### **3. TERMS AND DEFINITIONS**

- 3.1. In this Guideline, the term “counsellor” refers to the definition provided under section 46K of the Care of Children Act.
- 3.2. “Counselling Organisations” are those organisations approved under section 46H (1) of the Care of Children Act 2004 (CoCA).
- 3.3. Court-directed counselling (i.e. under 46G of the Care of Children Act 2004) is referred to as In-Court counselling.

### **4. REGULATIONS FOR COUNSELLORS AND COUNSELLING ORGANISATIONS**

- 4.1. Section 46G of the CoCA enables a judge to direct the Registrar to refer parties to counselling. The judge may only do this if he/she believes counselling is the best means of assisting parties with their relationship or any decision of the court. The judge can make the direction at any time during the proceedings, but only once.
- 4.2. In-Court counselling is only available to parties applying for a parenting order under section 48 or for a direction under section 46R (disputes between guardians) of the CoCA.
- 4.3. Counsellors and counselling organisations can only provide In-Court counselling services if they have been appointed or approved in line with the Care of Children (Counselling) Regulations 2013. These regulations set out criteria for appointing individuals and approving organisations. The Secretary for Justice (or his authorised delegate) appoints counsellors and approves counselling organisations.
- 4.4. The approval process for individual counsellors is managed by each Family Court and a recommendation made to the Secretary for Justice (or his authorised delegate) for his approval. Once counsellors are appointed, they are on the national list of Family Court counsellors.
- 4.5. The approval process for counselling organisations is administered by the National Office of the Ministry of Justice. Any counselling organisation approved by the Secretary (or his authorised delegate) will be published in the *New Zealand Gazette*, on the Ministry website, and will be formally communicated to court staff.

### **5. CRITERIA FOR THE APPOINTMENT OF COUNSELLORS**

- 5.1. The Care of Children (Counselling) Regulations 2013 set out the following criteria for appointment as a counsellor:
  - a) the person must be a member of or affiliated to an appropriate professional body;
  - b) the person must hold a counselling qualification at level 6 or higher in the New Zealand qualifications framework;
  - c) the person must have enough experience in counselling to provide reasonable assurance of competence in providing counselling in the context of Family Court processes;

- d) the person must be culturally aware, in particular of Māori values and concepts;
- e) the person must be able to address diversity in people being counselled; and
- f) the person must be able to—
  - i. assess people being counselled, and their circumstances and history, for factors (in particular, in relation to possible domestic violence) indicating risks that may arise during, or in the context of, counselling sessions; and
  - ii. manage any risks likely to arise.

5.2. As per Part 2 of the Vulnerable Children Act 2014 counsellors must also:

- g) Have a written child protection policy in place that contains provisions on the identification and reporting of child abuse and neglect.

5.3. The tables below provide detail on assessing against the Care of Children (Counselling) Regulation 2013 and the Vulnerable Children Act 2014.

5.4. Ongoing supervision, professional development, and upholding a child protection policy is required by all counsellors and will be monitored by National Office with annual reviews.

<b>Care of Children (Counselling) Regulation 2013</b>	<b>Definition</b>	<b>Evidence/ways of demonstrating</b>
6(a): the person must be a member of or affiliated to an appropriate professional body.	<p>Current Membership or affiliation to the following organisations:</p> <ul style="list-style-type: none"> <li>• New Zealand Psychological Society</li> <li>• New Zealand College of Clinical Psychologists</li> <li>• New Zealand Association of Counsellors</li> <li>• Aotearoa New Zealand Association of Social Workers</li> <li>• New Zealand Christian Counsellors Association</li> <li>• Psychotherapists Board of Aotearoa New Zealand</li> <li>• New Zealand Psychologists Board</li> <li>• New Zealand Association of Psychotherapists</li> <li>• New Zealand College of Clinical Psychologists</li> <li>• Addiction Practitioners Association Aotearoa New Zealand</li> </ul> <p>Membership to other organisations may be accepted at the Ministry's discretion.</p>	Relevant professional membership and practising certificate .

<b>Care of Children (Counselling) Regulation 2013</b>	<b>Definition</b>	<b>Evidence/ways of demonstrating</b>
6(b): the person must hold a counselling qualification at level 6 or higher in the New Zealand qualifications framework.	<p>Qualifications at a minimum of Level 6 NZQA in the following fields of study will be accepted:</p> <ul style="list-style-type: none"> <li>• Counselling</li> <li>• Social Work</li> <li>• Applied Social Service, majoring in social work</li> <li>• Social and Community Work</li> <li>• Social Work</li> <li>• Psychotherapy</li> <li>• Clinical Psychology</li> <li>• Psychiatry</li> </ul> <p>Other qualifications may be accepted at the Ministry's discretion.</p>	Evidence of relevant qualification (e.g. certificate, academic transcript) from a NZ tertiary provider; or evidence of equivalency to relevant NZ qualification.
6(c): the person must have enough experience in counselling to provide reasonable assurance of competence in providing counselling in the context of Family Court processes.	<p>Counselling skills, namely:</p> <ol style="list-style-type: none"> <li>a) Assessment;</li> <li>b) Engagement and formation of a constructive working alliance with involved parties;</li> <li>c) Ability to work within a time-limited context in a focussed, and structured way;</li> <li>d) Systemic approach to working with families and whānau;</li> <li>e) Ability to maintain a focus on the needs of the child;</li> <li>f) Ability to work with affected parties as required, including</li> </ol>	<p>Relevant ongoing professional development and specialised training;</p> <p>Knowledge of current trends and relevant literature;</p> <p>Observation of practice upon application;</p> <p>Oral and written assessment upon application.</p>

Care of Children (Counselling) Regulation 2013	Definition	Evidence/ways of demonstrating
	<p>both parents, individual and family/whānau interviews as required;</p> <p>g) Facilitation of shared decision making, impartially and fairly;</p> <p>h) Facilitation of negotiated resolutions to conflicted situations;</p> <p>i) Co-counselling/tandem counselling; and</p> <p>j) Record keeping.</p> <p>Knowledge and understanding:</p> <p>a) Understanding of a systemic approach to working with families;</p> <p>b) A range of appropriate therapeutic interventions;</p> <p>c) Human development, life stages;</p> <p>d) Child development and its relevance to day-to-day care and contact issues;</p> <p>e) Attachment and bonding;</p> <p>f) Grief and loss;</p> <p>g) Effect of family/whānau separation on children and adults;</p>	

<b>Care of Children (Counselling) Regulation 2013</b>	<b>Definition</b>	<b>Evidence/ways of demonstrating</b>
	<p>h) Gender issues;</p> <p>i) Various kinds of parenting arrangements and parenting plans;</p> <p>j) Local community therapeutic resources for children, young people and their families;</p> <p>k) Relevant family law; and</p> <p>l) Understanding of the responsibilities of the counsellor in relation to the Family Court.</p> <p>Self-awareness including an understanding of:</p> <p>a) The impact of one's own values and beliefs on court counselling role;</p> <p>b) Own positioning in relation to gender, class, sexuality and ethnicity;</p> <p>c) Professional and personal issues that may impact on Family Court work;</p> <p>d) Self-management skills;</p> <p>e) Regular clinical/professional supervision and the appropriate use of supervision in relation to Family Court work;</p>	

<b>Care of Children (Counselling) Regulation 2013</b>	<b>Definition</b>	<b>Evidence/ways of demonstrating</b>
	f) Effective stress management strategies; g) Ability to accept feedback and make changes; and an h) Ability to handle intense feelings.	
6(d): the person must be culturally aware, in particular of Māori values and concepts.	Understanding a Māori World View Cultural awareness, including demonstrating an understanding of: a) Your own cultural awareness by providing examples of when you have experienced Māori values and concepts; b) What you consider to be a limitation or limitations in working with other cultures; and c) When to use specialist cultural advice. In addition when working with Māori, the practitioner will demonstrate the following attributes: a) Correct pronunciation of Te Reo b) Understanding of whānau, hapū and iwi c) Understanding of the appropriate tikanga in respect of dealing with the client and the clients whānau d) an understanding of the local iwi or manawhenua.	Observation of practice upon application; Oral and written assessment upon application.



<b>Care of Children (Counselling) Regulation 2013</b>	<b>Definition</b>	<b>Evidence/ways of demonstrating</b>
6(e): the person must be able to address diversity in people being counselled.	Ability to adapt counselling style to the range of people likely to be encountered.	Observation of practice upon application;  Oral and written assessment upon application.
6(f): the person must be able to –  (i) assess people being counselled, and their circumstances and history, for factors (in particular, in relation to possible domestic violence) indicating risks that may arise during, or in the context of, counselling sessions;	<ul style="list-style-type: none"> <li>a) De-escalation of inter-parental and/or family/whānau conflict;</li> <li>b) Assessment and management of all aspects of safety – including child safety, family/whānau violence and harm to others, and self-harm;</li> <li>c) Inter-parental conflict and how to de-escalate conflict;</li> <li>d) Dynamics of family/whānau violence and impact on children and adults;</li> <li>e) Dynamics of child abuse and neglect; and</li> <li>f) Crisis intervention.</li> </ul>	Observation of practice upon application;  Oral and written assessment upon application.
6(f): the person must be able to –  (ii) manage any risks likely to arise.	Strategies for the safe management of problematic behaviours.	Observation of practice upon application;  Oral and written assessment upon application.
8: The following are matters disqualifying a person from appointment as a Family Court	Maintenance of a violence-free lifestyle and high standards of personal and professional conduct.	Police Check: has no convictions (the Ministry may consider to waive this criteria if, in its opinion,

<b>Care of Children (Counselling) Regulation 2013</b>	<b>Definition</b>	<b>Evidence/ways of demonstrating</b>
<p>counsellor:</p> <ul style="list-style-type: none"> <li>a) not being of good character;</li> <li>b) not being a fit and proper person to be a Family Court counsellor.</li> </ul>		<p>the offence was minor);</p> <p>Has no protection orders or restraining orders against them;</p> <p>Attest that the person has no upheld complaints relating to professional misconduct.</p>

<b>Vulnerable Children Act 2014</b>	<b>Definition</b>	<b>Evidence/ways of demonstrating</b>
<p>Part 2 16 (b) &amp; 19</p>	<p>Adopt, understand and adhere to a written Child Protection Policy that contains provisions on the identification and reporting of child abuse and neglect in accordance with section 15 of the Children, Young Persons and their Families Act 1989.</p> <p>Review the policy at least every three years.</p>	<p>Providing a copy of the policy on application as a counsellor to the local Family Court;</p> <p>Providing a copy of the policy and a statement confirming its ongoing application as part of the annual review.</p>

## **6. APPOINTMENT OF COUNSELLORS**

- 6.1. Where a need exists for counsellors to be appointed in a specific Court, the Registrar and/or a Court's Manager will convene a panel to consider applications for inclusion on the list of counsellors available to undertake Family Court appointments.
- 6.2. The panel will consist of a Family Court Co-ordinator and/or a Court's Manager, two experienced counsellors appointed by the Court, a cultural representative and the Registrar or a Court's Manager as convenor. Inclusion of a tangata whenua representative is also encouraged.
- 6.3. A panel will normally have five members, but may be convened with a quorum of three members. Any panel of three must include a Family Court Co-ordinator or a Court's Manager, an experienced counsellor appointed by the Court and a cultural representative.
- 6.4. The process for selection of counsellors is as follows:
  - a) The applicants will submit an "Application for inclusion in the Family Court counsellor list" form (available from the Ministry of Justice website) to the Court in which they wish to practise, nominating their area of specific expertise and the particular Court or Courts for which they wish to be on the list.
  - b) The application will be referred to a panel convened by the Registrar, the Family Court Coordinator and/or a Court's Manager.
  - c) Panel members will make such enquiries as may be needed for them to be informed about the applicant's ability to meet the criteria. Panel members will be assisted by the requirement that applicants provide the names of their supervisor and two referees who can provide confidential professional comment.
  - d) The panel will interview each candidate. If the panel has any concerns about a candidate's ability to meet the criteria, these concerns will be put to the applicant, who will have the opportunity to reply.
  - e) Although there is no obligation on the panel to provide reasons for non-selection to the list, it is expected that if an applicant is not selected, the panel will have conveyed their reasons to the applicant.
  - f) It is expected that any recommendation to appoint a counsellor to the list will be by way of a consensus decision.
  - g) The Family Court Co-ordinator or a Court's Manager will forward the panel recommendation to the GM, District Courts for approval.
  - h) The GM, District Courts will advise the applicant and the relevant Court of the outcome of their application in writing.

- i) The National Office of the Ministry of Justice will, on request, make the list available to appropriate professional bodies.
- j) Counsellors may transfer their approval from one Court region to another, subject to that Court region having a need for additional counsellors.

## **7. APPROVAL OF COUNSELLING ORGANISATIONS**

7.1. The Care of Children (Counselling) Regulations 2013 specify the criteria for approval of counselling organisations for the purposes of providing In-Court counselling. As detailed in s 147 of the Care of Children Act 2004, in deciding whether to approve an organisation under section 46H(1) of the Care of Children Act 2004 as an approved counselling organisation, the Secretary (or his authorised delegate) must be satisfied that –

- a) There is a need for an organisation of the organisation's size and other characteristics (including its location) to be available as an approved counselling organisation; and
- b) The organisation will assess all counsellors against appointment criteria before appointing them. The organisation will only refer parties to counsellors who meet the criteria set out in the regulations.

7.2. Applications to be approved as a "Counselling Organisation" must be made in writing, together with supporting documentation to the Secretary (or his authorised delegate).

7.3. If the Ministry is not satisfied that the documentation provided demonstrates that the organisation meets the above criteria, it may request more information or decline the application.

7.4. The Care of Children (Counselling) Regulations 2013 specify the grounds on which an approved counselling organisation may be suspended or cancelled. The Ministry will monitor approved counselling organisations for continued compliance with the regulated requirements. The Ministry may suspend or cancel the approval of an organisation as an approved counselling organisation if the Ministry considers:

- a) that the approval was given on the basis of information that was false or misleading in a material respect;
- b) the organisation does not meet the Ministry's reporting requirements;
- c) the organisation does not have appropriate record-keeping protocols, and quality and service-delivery systems;
- d) that the organisation has requested the suspension or cancellation of the approval;
- e) that the organisation has been wound up, dissolved, or otherwise has ceased to exist;
- f) the organisation has ceased to provide counsellors;
- g) the organisation no longer satisfies any criteria for approval; or

- h) the organisation has failed to comply with their contract with the Ministry.

## **8. REFERRAL PROCESS FOR IN-COURT COUNSELLING**

8.1. Referrals are made under 46G of the Care of Children Act 2004.

8.2. In allocating a referral to a counsellor, the court staff may consider:

- a) the match of knowledge, skills and experience to case requirements;
- b) the availability of the counsellor;
- c) the current workload of the counsellor;
- d) the culture and the ethnicity of the parties; and
- e) any other factors they may consider relevant to the referral.

8.3. The referral from the Court will comprise the standard engagement letter. The standard engagement letter will include:

- a) the hourly rate of payment;
- b) an allocation of hours for counselling; and
- c) a timeframe for completing the allocation of hours for counselling.

8.4. Where, during the course of the work it becomes clear that the timeframe is insufficient for the counsellor to satisfactorily complete the counselling, the counsellor will seek an extension to the timeframe from the Registrar in writing. Requests for an extension should include a reason why an extension is sought and should be made prior to commencing the additional work.

## **9. RESPONSIBILITIES OF COUNSELLORS**

9.1. Counsellors will:

- a) review assessment information, undertake any further assessment required;
- b) determine suitability for counselling and consider any safety issues involved;
- c) make suitable arrangements for counselling sessions to take place;
- d) describe and explain the counselling process and the purpose of the referral in the initial session;
- e) conduct sessions according to professional standards;
- f) work in culturally appropriate ways;
- g) seek a mutual agreement about the focus and the scope of the work;
- h) monitor safety and manage any safety issues accordingly;

- i) maintain balance and fairness in the sessions and address manipulative or intimidating approaches by one party towards another;
- j) work to enhance positive communications between the parties;
- k) undertake an evaluation of the effectiveness of the service they offer;
- l) complete any required documentation;
- m) adopt a Child Protection Policy; and
- n) be alert to any signs of child abuse or neglect and report any signs of concern to the appropriate authorities to give effect to the above.

## **10. RESPONSIBILITIES OF COUNSELLING ORGANISATIONS**

### **10.1. Counselling Organisations will:**

- a) assess all counsellors against appointment criteria before appointing them;
- b) maintain a database of their appointed counsellors;
- c) co-ordinate with other providers to deliver services;
- d) ensure counsellors engage in ongoing supervision, professional development, and training;
- e) provide a practice framework and professional standards for family court work;
- f) provide a child protection policy and monitor understanding of and adherence to it;
- g) supervise and monitor the quality of services it delivers;
- h) provide timely reports;
- i) meet the legislative and contractual requirements of the service;
- j) have a robust complaints procedure in place and investigate any complaints made in relation to the service;
- k) allocate and case manage all Family Court referrals made to them;
- l) evaluate and report on service outputs, service outcomes and client satisfaction; and
- m) complete any other reporting required.

## **11. ADMINISTRATION OF FAMILY COURT COUNSELLORS**

### **11.1. For the purposes of the administration of the Family Court list of counsellors, on an annual basis each counsellor will provide the Ministry:**

- a) evidence of their current membership of, or affiliation to, an appropriate professional body;
- b) a copy of their current practising certificate (when applicable);
- c) a recent report from their supervisor;
- d) a copy of their child protection policy and a statement regarding adherence to and regular review of this policy; and
- e) a statement regarding any complaints.

11.2. The Ministry will confer with the relevant court on information that may be relevant for administering the Family Court list of counsellors.

11.3. If a counsellor fails to provide information as part of the annual review, they will need to be re-assessed for appointment under the criteria outlined in Section 5 of these Guidelines.

## **12. PRIVILEGE**

12.1. Counsellors are subject to the confidentiality requirements as stated in Section 46(L) of the Care of Children Amendment Act (No 2) 2013:

(1) This section applies to a statement a party makes to a counsellor for the purpose of enabling the counsellor to provide counselling services.

(2) No evidence of the statement is admissible in any court or before any person acting judicially.

(3) A counsellor commits an offence and is liable on conviction to a fine not exceeding \$500 who discloses to any other person a statement made to the counsellor for the purpose of enabling the counsellor to provide counselling services.

## **13. TIMEFRAMES**

13.1. The timeframes for In-Court counselling will be determined by the Court.

13.2. If counselling is not going to be completed within the required timeframes the counsellor should contact the Court to advise on the status of the counselling. If, at that time, the counsellor advises that counselling is unlikely to be successful, the referral should be terminated.

13.3. Where clients are not engaging, or in the counsellor's professional opinion, they are unable or unwilling to meaningfully participate in the counselling process, counsellors should immediately terminate the referral and report back to the Court.

## **14. COMPLAINTS**

14.1. Complaints about a counsellor or the service will be made in writing to:

- a) the relevant Counselling Organisation if the service is being delivered by a Counselling Organisation; or
  - b) to their professional body, the Psychologists Board, or the Health and Disability Commissioner if the service has been provided by a Family Court list counsellor.
- 14.2. The relevant Counselling Organisation, relevant professional body, Psychologists Board, and the Health and Disability Commissioner will have complaint management processes in place that will ensure the fair and timely processing of complaints.
- 14.3. If, at any time following appointment to the list, a counsellor is the subject of a complaint to their professional body, the Psychologists Board, or the Health and Disability Commissioner, or is the subject of a criminal conviction, the counsellor will advise the relevant Family Court and their Manager (if providing a service for a Counselling Organisation).

## **15. CEASING TO BE A FAMILY COURT COUNSELLOR**

- 15.1. A Family Court Counsellor may cease to be appointed at any time if it is considered that the person no longer meets the qualification and competency requirements for appointment set out in the Care of Children (Counselling) Regulations 2013, and also if the person:
- a) does not hold a current professional membership;
  - b) is not affiliated to an appropriate professional body;
  - c) has an upheld complaint to their professional body;
  - d) does not have a child protection policy in place;
  - e) is considered not being of good character; or
  - f) is considered to not being a fit and proper person to be a Family Court counsellor i.e.
    - i. has a conviction (the Ministry may consider to waive this criteria if, in its opinion, the offence was minor)
    - ii. has a protection order or restraining order against the person.