



# Family Dispute Resolution



## Strengthening the Family Justice System

### Supplier Submission to Independent Panel February 2019

We have addressed the Panel questions where they are relevant to FWRS – see below. We have also listed five key critical issues that we feel needs consideration .

### Key messages to the Panel

**A. Children’s Rights:** FWRS are committed to ensuring that young people and children have their wishes and feelings taken into account in all aspects of the Family Justice Process. We take a Children’s Rights approach and honour the **UN Convention on the Rights of the Child**. We believe that children are active participants in the family and have the right to express their thoughts and feelings while being protected from the burden of decision making. This is reflected in **Article 12 of the Convention**. We are further committed to this being addressed in a robust, safe, consistent and professional way. As such we have ensured a Children’s Voice approach is integrated into Mediation – using a model developed in collaboration with key stakeholders – including the Office of the Children’s Commission, UNICEF, MOJ and experienced Mediators and Child practitioners. This was achieved through a grant from the Todd Foundation. We have a training programme for Mediators and Children’s Voice practitioners and a competency framework. We are aware that suppliers and providers have a wealth of experience to offer in respect of this component of the mediation process. FWRS in particular draws from its mission and Kaupapa within PSC Family Works and 100 years history of providing family support in the community. This work has been delivered with a clear child centres approach whereby the child sits at the front and centre of all our work.

We welcome the Panel’s elevation of this issue and are keen to see a national position in relation to key practice standards and a recognition of the additional required to resource to respond to families where there are multiple children to be considered. We would be happy to share our learning with the Panel.

**B. Community and Cultural Responsiveness:** A key barrier has been identified for many whanau and families in a reluctance to take up mediation as an option. For Māori whānau and those from a range of non – NZ European backgrounds - we are mindful of the need to be responsive and creative in our approaches to FWRS delivery.

For us this means three key things:

- i) Recruitment of mediators, PFM coaches and CV practitioners from a range of backgrounds relevant to the community. We have focussed on gaining accreditation for our appropriately qualified internal Māori staff. We are keen for the panel to consider promoting the ability of ADROS to apply a broader criteria for accessing the accreditation process. Having a broad range of disciplines, professional and cultural backgrounds and community connections is for us the key to breaking down some of the barriers identified.
- ii) Integration of cultural background and needs as a proactive part of the Assessment process so that there is an up front understanding that this is central and critical to how the Mediation is conducted. At this point we can acknowledge and value cultural processes e.g. use of karakia.
- iii) Training. At PSC Family Works we have Cultural Competency framework that all staff is obliged to work on. All FWRS staff is included in this and contracted mediators are required to meet cultural competency. We have secured additional funding from the Tindall Foundation to deliver three workshops for mediators exploring cultural competency in this context. We would welcome the panel to consider these approaches as a solution to some of the barriers identified.

**C. Promotion of Mediation:** Critical in achieving community understanding and confidence in Mediation is promotion – with the general public - of the full range of Family Justice options and resources. We are aware that this has been hampered since 2014 through reluctance from some parts of the system to promote, understand and facilitate referrals and access to services. A robust and positive approach to promoting the benefits of Mediation and PTS is a considerable task and requires a government drive backed with nationwide resourcing and profile – including cross Ministry activity. Suppliers and providers can act regionally and locally but cannot take on a nationwide high level brief effectively or with up significant cost implications.

**D. Quality and consistency of front end assessment and signposting:** Many of the issues raised within the Consultation document in respect of managing risk - we believe can be addressed through robust and consistent *assessment* processes within mediation. In FWRS we have a risk assessment approach that manages this at the outset. This covers family violence including child safety and mental health and wellbeing issues for vulnerable adults. Signposting within the current set of resources is efficiently achieved (coaching and children’s voice) plus referral onto other agencies / services where required- internal and external, where required. Additional provision of counselling and family support funded by MOJ could easily be assessed in addition at this stage ( and later by allocated mediators in the community if required)

**E. Strengths Based and Solution Focussed Theoretical base and approach :** PSC Family Works across all services – has a strong kaupa that ensures we are always enhancing and strengthening whānau and family orientated solutions for family issues and difficulties. With the weight of our experience in delivering a sustainable and community focussed approach – we have found that this approach is effective and respectful and has good outcomes. It further ensures that we are meeting our Treaty obligations – with participation and partnership being central to this. We are able to do this with

while ensuring that children’s needs and safety is paramount and not compromised. For us, the Family Dispute Mediation fits into this kaupapa by ensuring that a community solution is promoted and achieved as first principle. It is important, in our view to have providers who have the skills workforce and resources to deliver FDR in this way. The following table is taken from a Journal Article that outlines the Strengths based approach.

What strengths-based social work is	What strengths-based social work is not
An approach	An outcome
Holistic and multidisciplinary	About reductions in packages
Collaborative, proportionate and flexible	About signposting and providing less support
Appropriate to individual circumstances	About not helping
Focused on what matters to the individual and what is strong	Focused on what is the matter with the individual and what is wrong
Identifying personal, family and community strengths and supporting the individual to link with them	About shifting responsibilities to carers and friends
Applicable to any intervention, setting, type or level of need or profession	One size fits all
Supporting community development	About avoiding talking about problems

<https://www.communitycare.co.uk/2019/02/24/senior-leader-buy-critical-success-strengths-based-working-says-government-guidance/>

### Response to specific Questions

#### **Focus on Children**

1. Safety check list: We would promote a holistic approach to considering a risk for children. This should include culture and identity / physical emotional and educational needs / quality of relationships / child’s age, gender and background and developmental needs / any harm that has been disclosed or alleged / ascertainable wishes and feelings of the child concerned. This is standard practice within Family Works. We are happy to share with the Panel if this is useful.
2. Information sharing. This are should mirror best practice in other child care contexts. Gaining information from those directly involved (school / health and other agencies who may have a role currently / recently – Police and Oranga Tamariki) Information sharing can occur with consent – or where there are concerns of harm then this can be waived – using the welfare of the child is a paramount principle.
3. Role of specialist family violence workers in court. There are many agencies and professional in the community with this role and function. If information sharing is working and Court staff are aware of the local resources / have training in recognition and responses to FV then an additional worker in the court would not be needed. Each Family Court will have providers delivering the Ministry of Justice Family Violence Contract.

4. Child Responsive Processes: Please see Issue A raised above.

## Te Ao Maori in the Family Court

5. Improve outcomes for Te Ao Māori: See Issue B above.  
Review with attention to Treaty obligations. Ensure that Mediation can be delivered flexibly and responsively. Encourage Family Court processes to allow whanau, hapu and iwi to be central decision makers.
6. Build relationships: On all levels. Strategic / organisational / local. Suppliers with cultural competency in place. Evidence of local iwi connections.

## Quality, accessible information

- 9: Information: See Issues above. Fliers / on line / promotion / integration into other well being strategies. Public information. Well promoted in Family Court. Cross Ministry activity.

## Counselling and therapeutic Intervention

10. Types of counselling: Counselling as described in 2 and 3 to be available at the mediation stage. Thus enabling a more successful mediation. Support for children may also be useful – some extension of the Children’s Voice function where complexity of needs and family relationships are identified. This would require further funding allocation. This could be identified easily at the assessment stage and indeed this is what currently happens on occasion. We refer to our suite of services within PSC Family Works and with partner Family Works Centres in the South Island. Mediators who undertake the assessments are in a good position to triage need and manage a finite resource. Note: These are funded by other agencies / Ministries and are always over subscribed. Once allocated to mediators in the community – further identified need could be located and again counselling services brought in.
11. Referring; We would advocate the ability of all to refer at any stage. Parties can be made aware of the services and a discussion and consideration of need made to together with a referral to follow.
12. Confidentiality: The usual best practice approach should apply. See above.

## Parenting Through Separation

13. Mandatory: As with FDR, we believe that having this resource as a required essential step prior to a court application is positive. In some ways the requirement to undertake the course prior to mediation would be helpful. The course is an essential precursor for parents and carers to be primed and supported to manage the parenting relationship in a sustainable and collaborative way going forward through their children’s lives. We have had parties attend ‘under duress’ to afterwards state that the course has been critical and instructive,. They may not have attended if the mandatory element was removed. How the mandatory nature of the course is articulated and explained is important so as to avoid a feeling that self determination has been waived.

## Family Dispute Resolution

15. A rebuttable presumption: Yes we agree. As indicated above the way that this is articulated is important. However, a clear message that mediation is the best approach unless there is high level risk or complexity is an important message to come from the Judge and Family Justice system if this has not been 'heard' or accepted at an earlier stage. With the Judges oversight of the case issues – additional confidence will be present for parties to participate as a requirement.
16. Promotion: Yes this is critical and pivotal for mediation to be considered a real and viable option for families to resolve issues.
17. Stream lined : The current system could work better if there was a clear responsibility for Family Court officials to track and monitor where the mediation goes. It is important to keep a choice for parties in which supplier / mediator they want. Supplier details can be outlined on one leaflet / website page. As long as the case is tracked by the Court and there is good communication back from Suppliers then this should not be a problem. We are aware this this is a problem highlighted by many. We believe that with improved ownership and promotion of FDR within the Court and an improved tracking process that Providers and Court sign up to – this can be resolved.

### Triage

22. Integrated Assessment, screening and Triage. / Interconnection: The most appropriate pathway should always be mediation first unless there is specific reason as outlined in the legislation. Resolving disputes should continue to start from here with additional focus on promotion of mediation at all levels. If a case gets through to Judges then a triage process is then applied. The criteria for risk needs to be consistent safe and child focussed. For those parties who have declined further information needs to be supplied on request indicating reasons and again triage process applied. In order for Judges time to be protected – these triage decisions could be made by the proposed Registrar position. The professional making triage decision needs to minimally an accredited mediator or a Family lawyer.

### Complex cases

23. Powers. Consistent safe and child focussed criteria for deciding what cases are deemed 'complex' would be helpful. Requiring information - as per the checklist for determining risk so that the Judge has access to a holistic understanding of the child's and family needs.
24. Therapeutic intervention: These needs to be responsive rather than prescribed and reflect the children and family's needs. It also needs to take into account the current agencies involved in the child's / family's life and their perspectives.

### Cultural Information in Court

27. Cultural Information: With assessment of this central issue at the mediation stage if this is relevant, and with improved Family Court processes that are culturally intelligent this issue will be addressed early and we suspect the need for formal cultural reports needed less.

### New role of Family Justice Service Coordinator

28. Role: We would consider the clarity of this role as critical. It would be important for them to be seen as independent and their function focussed on ensuring that all services were promoted

appropriately. While based in Court a community presence would be crucial with the tack of promoting 'out of court resources' as well as in Court options. If the Coordinator was over aligned with the Family Court this would bring the resolving of family dispute too close to a court context.

We would not see this role as being a decision maker with triaging responsibilities as in our view this needs to sit where it is – with Suppliers / providers and with Judges (see comments above)

## Costs

40. Fully Funded Mediation: We agree that the cost of FDR should be free for all. Split costs are difficult for parties and can cause additional conflict and barriers. Where there are costs it would be hugely beneficial for suppliers if there were collected by MOJ as defaults are costly and delay to mediation time lines inevitable.

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