

## Save the Children New Zealand: Family Justice Review Submission

Organisation Name:	Save the Children New Zealand (SCNZ)
Geographical location	National and international
Target group/focus	Children
Contact Person Name:	Heidi Coetzee, Chief Executive Officer Jacqui Southey, Director of Child Rights Advocacy and Research
Phone number:	[REDACTED]
Email address:	[REDACTED]

**Our Organisation:** Save the Children was founded in 1919 and is the world’s leading independent organisation for children. We work in 120 countries to save and improve the lives of children around the world.

**Vision:** Save the Children’s vision is a world in which every child attains the right to survival, protection, development and participation.

**Mission:** We work to inspire breakthroughs in the way the world treats children and to achieve immediate and lasting change in their lives.

Save the Children New Zealand was established in 1947 in Christchurch. We work to uphold the rights of children both in New Zealand and overseas.

**Our Ambition:** We want the world to put children and young people at the heart of its action to reduce poverty; to strengthen the low and insecure incomes that prevent children surviving, learning and being safe; and thereby stop the transmission of poverty to future generations.

This submission has been prepared by Jacqui Southey, Child Rights Advocacy and Research Director, Save the Children New Zealand.

In developing this submission, we have consulted with experts in the field of child rights and the Family Court, Dr Nicola Taylor, Rachel Cardoza family lawyer and partner of Cardoza Staley Law firm, we have reviewed the ‘Background Paper, Overview of the 2014 family justice reforms’<sup>1</sup> on the 2014 changes to the Family Court system, reviewed the Ministry of Justice report ‘Family Justice, An administrative Review of Family Justice System Reforms’<sup>2</sup>, reviewed reports compiled by the Backbone Collective<sup>3</sup>, and spoken to a person that is currently within the Family Court system – see Frances’s Story Appendix One<sup>4</sup>.

<sup>1</sup> [https://consultations.justice.govt.nz/policy/rewriting-family-justice-reforms/user\\_uploads/background-paper-overview-of-the-2014-family-justice-reforms.pdf](https://consultations.justice.govt.nz/policy/rewriting-family-justice-reforms/user_uploads/background-paper-overview-of-the-2014-family-justice-reforms.pdf)

<sup>2</sup> <https://www.justice.govt.nz/assets/Documents/Publications/Family-Justice-Administrative-review-2017-FINAL.pdf>

<sup>3</sup> <https://www.backbone.org.nz/reports/>

<sup>4</sup> Frances’s Story; Frances is not her real name to protect her identity.

## Introduction

The Family Court is intended to be a place where parents who can no longer resolve their own issues particularly in agreeing to the care arrangements of their children, can be supported by the Court to resolve these issues in a private and less adversarial way. Sadly, it appears the Court is increasingly unable to solve these problems, and in too many cases actively contributing to or exacerbating these problems<sup>5</sup>.

The Family Court has a direct impact on children and their rights. Furthermore, there is a legal imperative to include children's voices in family decision making in the United Nations Convention on the Rights of the Child (UNCROC)<sup>6</sup>, ratified by New Zealand in 1993<sup>7</sup>. Articles directly related to children in the Family Court system include:

- Article 3: Mandates that the best interests of the child be a primary consideration in all actions concerning children.
- Article 12: State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child should in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rule of national law<sup>8</sup>.
- Article 13: The child has the right to freedom of expression and to seek and receive accurate information.
- Article 16: The child has the right to protection of their privacy.
- Article 19: The child has the right to protection from all forms of harm.

Personal story – as part of our submission we have included Frances's Story, see Appendix One (p 8). This story shares the current experiences of a person trying to navigate the Family Court process. Frances's story shares important insights into what it is like for a parent and their child when the Family Court process itself becomes extremely negative. Her story shares insights into how the Family Court process is able to be manipulated by one parent to the extreme detriment of the other parent, also causing harm to their child or children. It shows the difficulty that the Family Court has in dealing with psychological abuse, emotional abuse and less obvious physical abuse (when there are not obvious injuries to be seen or when this abuse happened in the past behind closed doors) and how the actions of the Court and court professionals – including judges, can exacerbate this.

Frances has bravely shared her story with us despite her very real fear of speaking out about her Family Court experiences. She has been able to share her story on the condition her identity is protected. This highlights how fearful some people are within this system and that avenues for court participants to speak up without fear of recrimination do not currently exist.

---

<sup>5</sup> Backbone Collective

<sup>6</sup> The United Nations Convention on the Rights of the Child, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>7</sup> Goldson (2009), retrieved from <http://thefamilymatterscentre.co.nz/wp-content/uploads/2009/02/Child-Inclusion-in-The-Family-Court.pdf>

<sup>8</sup> Goldson (2009), retrieved from <http://thefamilymatterscentre.co.nz/wp-content/uploads/2009/02/Child-Inclusion-in-The-Family-Court.pdf>

It is stories like Frances's that show how urgently practises of the Family Court need to be reviewed to be able to cope with cases such as Frances's which is sadly not unique.

Save the Children is seriously concerned about the detrimental effects on those involved in Family Court proceedings that are protracted and acrimonious. We are particularly concerned for the children at the heart of these disputes.

**Our Concerns:**

The long delays within the in-court processes, the negative consequences of long wait times, and the impact of these consequences on families and children.

The lack of visibility of children in Family Court process both in and out of court. Care arrangements of children are often at the heart of the most difficult family court cases, yet the process appears to be predominantly adult centric.

Limited knowledge of children's rights and the Convention on the Rights of the Child, and impact of the Family Court processes and decisions made in the Family Court on children and their rights.

The participation of children in the mediation or out of court process appears to be ad hoc, and reliant on adult's permission to be included.

The ways children can engage with legal representation are quite limited. For example, the Lawyer for child representation for children is not available in the pre-proceedings phase of the court process.

The options for state funded legal representation of children and adults, is very limited and is having an impact on some people's right to access justice, particularly if they are reliant on that funding.

The links between family violence and abuse and complex cases where family violence is involved and the Court's ability to effectively identify continuing behaviours of psychological abuse within the court process and respond appropriately.

There is evidence the Without Notice track is being misused, in some cases intentionally, in others as clients feel the alternative options do not suit the needs of their family.

## **Our Recommendations**

Our recommendations focus on improving the process for children. Children are deeply affected by what happens to their parents, therefore it is important to note that how parents are treated is also of concern.

### **External and Impartial Oversight**

We recommend the establishment of a mechanism that enables independent external oversight of the Family Court to ensure external checks and balances exist, and there is a genuine avenue for complaint when a user of the court feels they have been treated badly, let down, and or harmed by their Family Court experience and or decisions made that harmfully impacts on their lives and or the lives of the children involved. This is not to be confused with appealing a Family Court decision.

In the current situation, if a client of the Court makes a complaint about a judge, the complaint is referred back to the judge involved – in our view this system does not support complaints to be made without fear of recrimination, or complaints to be independently and fairly resolved.

### **Anonymous Family Court Evaluation Process**

We recommend there is a well-publicised, anonymous process that allows users of the Family Court to submit their views on their experience of the Family Court process. This would allow ongoing monitoring of the way the court is working and whether it is effectively meeting the needs of those who rely on it.

### **Therapeutic counselling for children in cases that are extremely acrimonious and protracted.**

When situations become extremely acrimonious between parents and children are in the middle of the conflict, it is highly likely they will be suffering as a consequence of the situation. This is even more likely when the situation is protracted through numerous court delays<sup>9</sup>. We recommend that funded therapeutic counselling is provided to assist children in dealing with the traumatic situation. Whilst the children in these situations have a lawyer for child appointed to them, the lawyer is not there to provide therapeutic counselling to support them in dealing with the psychological impacts of the situation.

Furthermore, we recommend the option for funded therapeutic counselling for children be available for children who may need it in the out of court settlement processes such as Family Disputes Resolution.

### **Compulsory child rights training for all professionals working with or representing children in the Family Court system including judges.**

We have not been able to find any evidence that training on the Convention on the Rights of the Child, or how court processes and decisions affect children's rights, is required for professionals working with children in the in court or out of court processes. Decisions made by the court, and the way the court treats or includes children, have direct impact on

---

<sup>9</sup> Goldson (2009), retrieved from <http://thefamilymatterscentre.co.nz/wp-content/uploads/2009/02/Child-Inclusion-in-The-Family-Court.pdf>

children and their rights<sup>10</sup>. It is essential that professionals are trained to understand this impact and be cognisant of this in the way they treat children in this system, and the decisions they make on behalf of children in this system.

### **Authentic support for child voice and participation in out of court processes such as Family Disputes Resolution (FDR) and Parenting Through Separation (PTS).**

In the current out of court system – FDR and PTS, the processes involved are very adult focussed. We would like to see children provided for and included in these processes.

In the current system participation of children in out of court resolution processes are ad hoc, and completely reliant on adult permission or provision to participate. In the out of court processes, children are not guaranteed legal representation through Lawyer for Child. The Secretariat to the Independent Panel examining the 2014 Family Justice Reforms (the Secretariat) has found that although FDR was intended to include child-inclusive processes, it is reliant on the provider having the requisite skills and is not supported by formal models to foster children’s participation to ensure their views are heard and taken into account.<sup>11</sup>

We recommend formal models are developed that are culturally responsive and take a child rights approach to ensuring all children have the opportunity to participate in out of court processes. We further recommend that in cases that need it, children can be supported by legal representation, rather than limiting Lawyer for Child to in court proceedings.

### **A review of the tracks system to ensure they are flexible enough to meet the various needs of families.**

Currently around 70% of applications are filed without notice<sup>12</sup>. Without notice cases are causing considerable delays across the Family Court system. The Secretariat has found, ‘Without notice applications can also have a negative impact on the future conduct of proceedings, including worsening existing tensions between the parties with flow on effects for the children.’<sup>13</sup> Evidence of this can be found in the Backbone Collective reports and in the experience of Frances (see Appendix One). Furthermore, our discussions with Dr Taylor and input from Rachel Cardoza, confirm there are concerns about the ways the tracks work, the overuse of the Without Notice track, and the limitations of the tracks in supporting complex family situations to be resolved. The effectiveness of all tracks is undermined by the long delays that are becoming increasingly common in the system.

---

<sup>10</sup> Doughty, J. (2010). Opening up the Family Courts-what happened to children’s rights? *Contemporary Issues in Law 10 (1)* 50-75. Retrieved from <https://orca.cf.ac.uk/17058/1/doughty10.1.pdf>

<sup>11</sup> [https://consultations.justice.govt.nz/policy/rewriting-family-justice-reforms/user\\_uploads/background-paper-overview-of-the-2014-family-justice-reforms.pdf](https://consultations.justice.govt.nz/policy/rewriting-family-justice-reforms/user_uploads/background-paper-overview-of-the-2014-family-justice-reforms.pdf)

<sup>12</sup> [https://consultations.justice.govt.nz/policy/rewriting-family-justice-reforms/user\\_uploads/background-paper-overview-of-the-2014-family-justice-reforms.pdf](https://consultations.justice.govt.nz/policy/rewriting-family-justice-reforms/user_uploads/background-paper-overview-of-the-2014-family-justice-reforms.pdf)

<sup>13</sup> [https://consultations.justice.govt.nz/policy/rewriting-family-justice-reforms/user\\_uploads/background-paper-overview-of-the-2014-family-justice-reforms.pdf](https://consultations.justice.govt.nz/policy/rewriting-family-justice-reforms/user_uploads/background-paper-overview-of-the-2014-family-justice-reforms.pdf)

**We recommend the recognition of the impact of family violence in complex Family Court cases, and training for all Family Court professionals including lawyers and judges to ensure family violence is recognised and responded to appropriately to minimise further harm.**

We are shocked and concerned about the serious allegations that have been made alleging that the Family Court has ignored or minimised family violence, violence against children and or against the mother<sup>14</sup> of their children, and these practices continue to happen as shared through Frances's Story and voices of women shared through the Backbone Collective Reports<sup>15</sup>. We believe a full investigation should be undertaken to ascertain, 1 – the extent to which this is taking place, 2 - establish processes that hold professionals to account who fail to act on knowledge of family violence, and 3 – ensure greater connection and information sharing between the Criminal Courts and the Family Courts to ensure Family Court judges are aware of criminal proceedings in relation to the family violence and abuse.

**We recommend there are consequences for individuals who wilfully misuse the Family Court processes to cause harm to their ex-partners and affecting their children involved in these cases.**

We are extremely concerned that clients can misuse the court system, in particular the Without Notice track, to cause harm to their ex-partner and manipulate proceedings without consequence for their actions. Frances's story is an example of this taking place where she has been further victimised at the hands of her ex-partner, exacerbated by court processes, and the actions or inactions of court professionals. Furthermore, it is extremely concerning that Frances's story has many similarities with experiences of hundreds of women shared via the Backbone Collective reports<sup>16</sup>.

## Conclusion

Frances's story exposes the very real harm and revictimization of those reliant on using the Family Court to resolve highly unstable family and custody issues. It is shocking that it closely echoes the many experiences of those who have had similarly negative treatment through the Family Court.

It is obvious the Family Court has serious issues to address, and this review is crucial in uncovering why and how the Family Court has become so problematic. Without understanding what is it like for those so negatively affected by the court process and court professionals within the process, it is difficult recognise the fundamental changes not only in process, but also in attitudes and behaviours, that will be required to ensure the Family Court can effectively fulfil its obligations in supporting families to effectively resolve custody arrangements that uphold the rights of the children and their parents.

We reiterate the important connection between the Family Court processes, staff, court decisions, and children's rights. Adults in the court are responsible for supporting and upholding the rights of children, training to support adults in their duty to uphold the rights of children is essential.

---

<sup>14</sup> We acknowledge that fathers can also be subjected to family violence, however statistics show it predominantly mothers that subjected to family violence, <http://areyouok.org.nz/family-violence/statistics/>

<sup>15</sup> <https://www.backbone.org.nz/reports/>

<sup>16</sup> <https://www.backbone.org.nz/reports/>

Finally, it is important to remember that real families and real children are at the heart of this issue, their rights and needs must be considered in decisions made to improve the Family Court processes and practices.

We thank the Government for this important opportunity to submit on the Family Court Reforms.

## Appendix One

### Frances's Story: A personal recount of Family Court Experiences

Frances – not her real name, has shared her story of her experiences of the Family Court. Frances is the mother of a two-year-old child.

In Frances's own words her experiences of the Family Court have been an ordeal, nightmarish, mentally, emotionally, physically and financially draining. She is suffering mental, emotional and financial abuse at the hands of her ex-partner and navigating Family Court process has exacerbated the impacts of this abuse. The judges involved, Lawyer for Child and the poorly functioning Family Court system have contributed to this through their actions, and at times, inactions.

She has recently begun to see a clinical psychologist in an attempt to deal with the trauma she is experiencing as a result of the psychological abuse of her ex-partner, but also due to her experience in having to navigate the Family Court process.

Frances's ordeal began two years ago after separating from her partner with her young child. Family Court proceedings to determine care arrangements of their child began when Frances's partner accused of her physical abuse against him in November 2016 (despite the fact that she had been the victim of physical, psychological and financial abuse by him) and he was granted a 'without notice' protection order, occupation order, ancillary order and furniture order. This meant Frances did not see her 1 year old daughter at all for over two weeks until an interim order could be put in place and she was required to move out of the house that she owned (as separate property), and pay for alternative accommodation for a period of 3 months, whilst her ex-partner lived for free in her house and did not contribute at all to mortgage or household expenses.

Frances's ex-partner was seeking full custody of their young child. Frances's partner is a qualified (though not practising) lawyer, and he is a self-represented litigant in these proceedings. Frances is supported by a lawyer that she is required to pay for. Her legal bill is extreme and is in excess of 100 thousand dollars in order to defend her rights to care for her child.

After approximately three months at the domestic violence hearing, the protection order against Frances was proven to be unfounded and her ex-partner agreed under questioning that a protection order was not required, and this application was subsequently dropped. It was found there was no safety risk to their daughter and Frances was granted day to day care of their daughter, with her ex-partner having 5 nights contact per fortnight. Frances stated the protection order would most likely not have been granted if the request had gone through the standard on notice track. In the domestic violence judgement, the judge found that Frances's partner had misled the court in his evidence about the assault and had also not disclosed his criminal convictions. Despite this, there was no consequence for making untrue accusations, nor the stress and emotional harm these actions had caused. There was also significant financial burden for Frances to find alternative accommodation and continue covering all household costs as a result of the protection order being granted.

Due to the complexities of the case the Judge appointed a Lawyer for Child and requested a specialist Section 132 Report. The report was requested to assess the standard and safety of the living conditions that both parents were providing for their child, and to assist the judge in making decisions on who the child should live with and the final care arrangements for the child. This report took a full year to be completed. In the meantime, despite Frances's concerns for the safety of her young child (an infant at the time) and concerns regarding the suitability of the living conditions of her ex-partner, her ex-partner had unrestricted and unsupervised access of their child during this

time. This was despite a lack of cooperation and obstructing the social worker from assessing his suitability to care for their daughter and inspect his living conditions. Not only did Frances's ex-partner obstruct the proceedings delaying the specialist report, administration errors and issues between Oranga Tamariki and the Family Court further contributed to the delay of this important report.

The Lawyer for Child has also been a difficult and negative experience. Frances's child is nearly three years old and had a Lawyer for Child appointed for these proceedings. Despite the complexities of this case, and Frances's serious concerns for the safety and wellbeing of her child, it took the lawyer close to two years to meet the child they are representing. The lawyer visited the child's day care once, just days before the final hearing and submitted an extremely superficial report to the court. In Frances's view the lawyer for child did not provide support or add any value in resolving any of the issues related to the child's custody, breaches of the interim order, or safety concerns that were raised over the two-year period that this case was waiting to go to a final hearing. It was felt that their contribution was simply a box ticking exercise. Although the parents are expected to pay one third each towards the cost of lawyer for child, and the State the other third, Frances's partner has cited financial hardship and the judge has ruled neither party are required to pay their share.

Delays have been a significant and constant feature of Frances's case. Her ex-partner has been extremely litigious and has filed a number of without notice applications to vary the interim parenting order (which have not been granted), but which have required Frances to respond and causing further delays (thus increasing legal costs and increasing the financial burden for Frances). These applications have resulted in continual 'Directions Conferences' being scheduled to attempt to resolve the issues, which require that additional memos and affidavits must be prepared (at further expense). In many of these Directions Conferences Frances's ex-partner has failed to provide requested documentation and meet timeframes stipulated by the judge, often meaning that further conferences are required to resolve the issue.

Frances's ex-partner has also breached the interim parenting order on numerous occasions and proposed holidays that were not in line with the conditions outlined in the interim order. This has resulted in Frances having to apply on at least three occasions to vary the interim order to clarify the conditions and provide more certainty. Despite this, her ex-partner has continued to push boundaries and breach the interim order. These actions have caused significant delays, significant emotional and mental stress, and significant financial hardship for Frances despite her meeting all requirements of the court. Her partner's actions are without consequence, the court has continually allowed his behaviour despite the harm it is causing and misuse of court resources.

Due to the level of conflict between Frances and her ex-partner they are required by the court to conduct all handovers of their child at daycare (to avoid the possibility of conflict). However, the interim order made no provision for contact to be extended for Frances when handovers were scheduled for public holidays. On a recent handover during a public holiday (conducted in a nearby McDonalds), Frances was physically assaulted by her ex-partner in front of their child. On another occasion, her ex-partner insisted their 2-year-old child run a significant distance to him and when Frances did not allow this to occur, he then refused to enter the McDonalds (where a judge had ordered the handover occur) causing undue stress for both Frances and their child. Despite reporting the assault to police and recording these incidents as evidence of ongoing physical and psychological abuse in her affidavits in Family Court proceedings, there have been no consequences for her ex-partner and her concerns have been minimalised and trivialised. Nor have there been consequences for late handover of contact, even though one incident saw Frances needing to call police and Oranga Tamariki over concerns for the whereabouts and safety of her two-year-old child.

Psychological and emotional abuse has been constant for Frances in these proceedings. Frances has provided evidence to the court of the abuse that she has suffered at the hands of her ex-partner, including lack of cooperation regarding care arrangements, gaslighting, constantly shifting the goalposts, false accusations that Frances has abused their daughter, and creating conflict issues where there were none. Frances also had valid concerns for their daughter being subjected to psychological abuse, including evidence of her young child witnessing domestic violence between her father and a new partner at his house and her ex-partner speaking negatively about Frances to the child. At the final hearing, the judge minimised and trivialised Frances's experiences of psychological and emotional abuse, and the perceived risk of her child being exposed to abuse. During the final hearing Frances felt pressured into admitting that she was responsible and at fault for some of the abuse. This is despite there being sound research that suggests that in abusive relationships, 'provocation causing the abuse' is an outdated theory and that the person being abused cannot be held responsible for the abuser's poor behaviour, nor change the abuser's behaviour by changing their actions. The judge's comments and insinuation that Frances had somehow contributed to the abuse meant Frances felt further invalidated and powerless because the judge was now effectively siding with her abuser and he has still not been held to account for this abuse. In addition to being psychologically and emotionally abused by her ex-partner, Frances now feels bullied and emotionally abused by the judge and found the final hearing to be a traumatic experience.

Still awaiting the final judgment, the inaction, lack of accountability and lack of consequences around her ex-partner's breaches of court orders and failure to meet court requirements / timeframes, and his ability to 'play the system' to cause further delays has contributed to Frances feeling completely undermined by the family court system and processes, feeling that she cannot trust the system and that it is not fair or equitable.

Two years on Frances is still waiting for a Family Court resolution. The final hearing took place in August 2018. At the time, the judge indicated there would be a four week wait on the final judgement due to court case load. Over ten weeks later, Frances continues to wait for the resolution. The stress, emotional and financial toll for Frances is very real. Amongst this is child who is nearly three-years-old, who 'appears to be thriving', but has undoubtedly been seriously impacted by this ordeal through witnessing psychological abuse directly and the indirect impacts of the abuse on Frances. It is also of note that this father has acted in a similar way with an older child and ex-partner in another city. Shockingly, the Family Court has made no connection of this behaviour and have failed to prevent the harm it continues to cause.