

Submission to the Independent Panel on the Family Justice System Reforms

Auckland Disability Law – 1 March 2019

Introduction

Auckland Disability Law (ADL) supports the Independent Panel's consultation process around rewriting the 2014 Family Justice System Reforms because improvements are needed in this area of family law.

ADL is a community law centre (CLC). We are the only CLC in Aotearoa New Zealand which provides legal services and activities solely to Deaf and Disabled People on their disability related legal issues. This includes client casework, legal education and law reform work. We have experience in advising and assisting Deaf and Disabled People who are the focus of our submission and who often the current law and associated processes fails to protect and provide access to justice.

During the first round of consultation, ADL met with the Independent Panel, provided a written submission, and promoted the Family Justice System submission process through our national disability community network. We are now submitting a second submission on the Independent Panel's January 2019 Consultation Document. Within our second submission we focus on key parts of the Consultation Document. We also discuss the urgent improvements needed to the legal aid system within the family justice system.

Korowai of the Family Justice Service and Accessibility

The Independent Panel has recognised the systemic access barriers and lack of accommodations for Deaf and Disabled People trying to access the Family Justice system. ADL supports the proposal to develop an integrated Family Justice Service, which would be responsible (among other tasks) for ensuring appropriate accommodations for Deaf and Disabled People.

The following measures will significantly improve accessibility. These measures are not limited to Family Justice Service staff, but also apply to lawyers, Court staff, and anyone else delivering Family Justice-related services.

- The Family Justice Service needs to proactively provide accessible information (discussed further below), resources and services.

- We support the establishment of the Family Justice Service Coordinator. We also believe there is a need to establish the role of a Disability Supports Coordinator. This Disability Supports Coordinator role would support the service's staff interaction with Deaf and Disabled People, and also assist service users to navigate the system.
- As people enter the Family Justice Service proactive enquiry needs to be made about any specific accessibility needs and supports required. This proactive enquiry should be undertaken via accessible written material and application forms, and person to person.
- There should be a variety of ways to access services. This includes contact and setting up appointments to be available online, over the phone, via email, text message or in person.
- Regular Deaf, Disability, and Mental Health awareness training needs to be compulsory for all staff and providers, including office staff who will book appointments and otherwise interact with service users. Staff and providers need to be familiar with technology and services available to assist Deaf and Disabled People, including NZSL interpreting services and NZ Relay service, Braille and screen readers, Easy Read format and reader-writers.
- All services need to be funded to provide assistance where required, including NZSL interpreters, communication assistants, and reader-writers. The source of funding should not be a problem to be addressed by the service user.
- The system should allow considerably more time to unpack the situation and the legal concepts when working with Deaf People, people with learning disabilities, people who experience mental health problems, and other Disabled People who may need it. This means more funding may be required to extend sessions and time spent with service users as needed.

Accessible Information and Resources

The Independent Panel has recognised that there are many issues with accessibility of information. ADL supports the proposal to develop a cohesive set of accessible resources in a variety of formats.

Question 9. What information do you think would help service providers, community organisations, lawyers and family justice professionals to achieve a joined-up approach to the Family Justice Service?

Development of all resources should include consideration of Deaf and hearing-impaired people, blind and visually-impaired people, people with learning disabilities, and other Disabled People. This includes child appropriate

resources for Deaf and Disabled children, whose families go through the Family Justice system.

The resources and forms will need to be available online and in hardcopy, in plaintext or Microsoft Word documents that can be read by screen readers and other technology. These resources need to include videos with decent subtitles and clear sound, translated and adapted resources including NZSL, Easy Read, Braille and other languages.

In many cases, people are likely to need more help to understand the information. Staff should be trained, resourced and encouraged to spend the extra time necessary to assist these service users, and avoid simply directing people to the website or other resources such as Community Law Centres in cases where access and understanding about the process is an issue.

Parenting Through Separation (PTS)

The Independent Panel recognised that many PTS users reported access barriers related to language, culture and disability. The Panel recommends that the Ministry of Justice look at accessibility solutions, and review PTS content and delivery every three years.

Question 13. Do you agree that there should be an expectation on parties to attend PTS, rather than having it as a compulsory step for everyone?

ADL believes that encouragement to attend PTS would be more appropriate than the existing compulsion.

Question 14. If PTS is not mandatory, how should this expectation of attendance be managed and achieved?

While we strongly support PTS we emphasise again that accessibility needs and supports must be proactively enquired about and offered to parents by providers in order for PTS to work effectively. Rather than an expectation or compulsion, PTS should be available and accessible, with families notified of its availability at different stages in the process. It could be recommended to families that would benefit from it, without it causing an additional burden. For example, there can be significant challenges in organising extra childcare for Deaf and Disabled Children who have high and complex needs around their disabilities and impairments.

ADL fully supports the recommendations about accessibility and reviewing content and delivery. We hope the review would consider how all aspects of accessibility and relevance of material affect Deaf and Disabled People, and parents with Deaf and Disabled Children. The online version would help many

people to attend, but again it must be in accessible formats for Deaf and Disabled People to be able to participate.

Family Dispute Resolution (FDR)

The Independent Panel has recognised that Disabled People find it hard to access FDR and are not always adequately accommodated. We would add that Deaf People find it extremely difficult to access information about FDR, and get the accommodations they require to then participate in this dispute resolution process.

Question 15. Do you agree with the idea of a rebuttable presumption? If so, how might it be worded to make sure that parties take part in Family Dispute Resolution unless there are compelling reasons not to?

A rebuttable presumption with a requirement of compelling reasons is a risk for people who might be in vulnerable positions, especially those who cannot advocate for themselves easily. This applies especially to people in situations of family violence, and vulnerabilities can be exacerbated if a family member is Deaf or Disabled. Any referral process must take this into account, and put the person's safety (whether adults or children) first.

Question 17. What could a streamlined process for court referrals to FDR look like?

As we stress above, accessibility needs and supports must be proactively enquired about and offered to parents. Deaf service users in particular can also require very labour intensive and hands on guidance and follow up when scheduling timetables and arranging appropriate NZSL interpreters. We see a Disability Supports Coordinator as necessary to ensure a streamlined process for Court referrals that works for Deaf and Disabled service users. This role would be a go-to person who will remove or minimise accessibility barriers in the process with staff and service users.

Family Legal Advice Service (FLAS)

The Independent Panel proposes allowing representation at all stages of proceedings. They are considering what advice to give around the future of FLAS in a system that allows representation at all levels.

Question 18. Is there a place for more accessible provision of funded legal advice for resolution of parenting disputes outside of Court proceedings? What would the key elements of this service be and how could it be achieved?

Access to representation is a key component in access to justice. We strongly support the proposal to allow representation at all levels of proceedings. It

follows that representation and advice need to be available to all parties. For this reason, ADL supports the option to retain and enhance FLAS 1. In terms of enhancing FLAS, both the Ministry of Justice and FLAS providers need to be flexible and make accommodations for Deaf and Disabled People and others who struggle to access the support they need.

We envisage that coordinating barrier-free access to FLAS would lie within the newly established role of Disability Supports Coordinator we propose on page 2 of this submission. Furthermore, in order to improve accessibility of representation, legal aid lawyers need to be capable and willing to take on the cases of families with disabled adults and/or children. We address this further in the “Access to Representation” section on page 7 of this submission.

Without Notice Applications

The Independent Panel is concerned about the misuse of without notice applications. They expect allowing representation at all levels will decrease the number of without notice applications.

Question 20. Will reinstating legal representation be enough to reduce the number of without notice applications? Or would other interventions be required?

ADL would be concerned about implementing sanctions for making inappropriate without notice applications. The risk of penalties for mistakes and misunderstandings within a system that is already difficult to access is too high. It would be more appropriate to remove incentives, for example, access to representation only being available for without notice applications, and ensure information is clear and accessible to help people choose the most appropriate option.

Sanctions are likely to disproportionately affect Deaf and Disabled People and others who don't fully understand the process. Often we find people who have not been able to understand the system through lack of supports and accommodations, including adequate time being given, do struggle to know and provide all the information required of them. Sanctions would have an unfair and disproportionate impact on these people and their children.

Lawyer for Child

Question 32. Do you agree with the proposal to introduce new criteria for appointment of Lawyer for Child to make sure of the best fit?

ADL strongly supports this proposal, however, in order for it to be meaningful, there need to be lawyers available who are trained and experienced in accommodating the access needs of Deaf and Disabled Children and Adults.

There must be a clear and efficient process available for parties to follow where there is a complaint that the appointed Lawyer for Child does not understand a child's (or their parent's) disability and the relationship has broken down as a result.

Question 33. What are the core skills for the role of Lawyer for Child, and what training and ongoing professional development do you see as necessary to develop those skills?

Often ADL sees a child with disabilities whose care is under dispute and who may require different treatment by Lawyer for Child. This may involve the need for communication supports and other access-related accommodations as we have outlined above. We receive complaints about lack of disability awareness and supports for these children.

There are often situations where both child and one or both parents have disabilities. These families experience additional distress going through the Family Justice process where Lawyer for Child does not understand and accommodate disability needs. Basic training in disability awareness, communication and supports should be mandatory for lawyers appointed to this role. There should also be mandatory continuing professional development in the disability awareness area for Lawyer for Child.

Question 34. Do you see a role for an additional advocate with child development expertise to work together with the Lawyer for Child, to support the child to express their views and make sure they're communicated to the judge?

ADL believes an additional advocate with child development expertise to work together with the lawyer for the child would be very helpful. It is our experience, as has been noted in relation to psychologists, that advocates with such specialisation are rare.

Costs

The Independent Panel investigated costs associated with FDR, cost contribution orders, and application fees.

Question 39. Do you agree with the Panel's proposal that cost contribution orders are modified?

Any costs based on a service user's behaviour and delays attributed to that person carry a risk of becoming sanctions based on Deafness, mental health problems (diagnosed or undiagnosed, as the case may be) or other disability.

Question 40. Should FDR be fully funded by the government for everybody, or should FDR be free for both parties where one party is eligible for government funding? Should the eligibility threshold be raised?

As FDR reduces the strain on the Family Court, ADL recommends that FDR be free for all parties. If this is not possible, we think the funding eligibility threshold should be raised and it should be free for both parties if one is eligible for funding. These costs and funding eligibility thresholds affect families with Deaf and Disabled Adults or Children more than other families. This is because, on average, their costs of living are higher and incomes lower.

We strongly recommend that the Independent Panel look at other ways to make preparation for mediation and FDR more accessible to Deaf and Disabled People, with consideration for families with Deaf and Disabled Children too.

Access to Representation

Access to justice is meaningless without access to representation. For this to occur, significant improvements to legal aid are required. The current eligibility income and asset levels is so low that many people fall in the gap between qualifying for legal aid and being realistically able to afford private lawyers' fees. The income and asset testing thresholds need to be lifted significantly.

The Application for family or civil legal aid form is inaccessible, lengthy and very difficult to complete. It needs to be simplified and made available in accessible formats.

There is very limited access to Legal Aid lawyers for Deaf and Disabled People. This is because very few lawyers can be found who are prepared to take instructions from people who require extra supports and time as described above. We are increasingly seeing clients trying to access legal services, and get their unmet legal problems addressed within the family law area, and encountering problems with being able to access the Legal Aid process.

Legal service will sometimes take time to provide because of the person's access or communication needs. This is because of cognitive, physical or sensory impairments which make accessibility a barrier for a lawyer not used to working with Disabled and Deaf clients. One reason we have heard from the lawyers who decline to assist our clients on Legal Aid is that such work is not worth taking. These cases do take large amounts of time and are workload intensive, and Legal Aid payments do not cover the amount of time it takes to work with these clients. The other reason is that there are fewer lawyers doing Legal Aid work in family law which may be because of the limits on Legal

Aid hours payable. We are increasingly dismayed at the unavailability in Auckland and elsewhere of lawyers who will take relationship property work on Legal Aid.

There is the need to provide incentives for lawyers to take these cases, or even to make it mandatory to take cases, if one is approved to take instructions on Legal Aid. This is partly about approving realistic Legal Aid hours to lawyers, which reflect the actual hours required to work with these clients and to accommodate the client's communication and access needs within the legal service. We understand this currently allows one extra payment of only \$150 to meet extra needs, and this is not adequate for the reasons given above.

Family Law Service to Provide Access to Justice

Furthermore, we believe there is need for a Family Law Service provided along the lines of the Public Defence Service, so that no one is left without access to adequate representation. There is a mistaken belief by the Ministry of Justice that Community Law Centres (CLC) will step into this breach. This is not the case. We know of only a very small number of CLCs which take instructions in family law matters, let alone relationship property, on Legal Aid.

Staff within the Family Law Service would need to be provided with Deaf and Disability awareness professional development. As mentioned above, service users' communication and access needs that require supports and accommodations would need to be provided by the Service.

When a person with a learning or other disability is unable to access a lawyer through Legal Aid or for any other reason and is left to represent themselves we believe that at a minimum the Court should provide access to and fund a litigation guardian for that person. At ADL we have been asked for referrals to litigation guardians, usually in complex care of children cases where the parent or parents have a disability and there is nobody who can or will assist. Under the current system, these litigation guardians do not exist. This is also why a Family Law Service is so important.