

27th February 2019.

Final Comments: New Zealand Family Court Specialist Psychological Group.

The specialist psychological group which is made up of psychologists who prepare specialised reports for the Family Court and/or undertake specialist counselling and therapy for the Court would like to make the following comments in response to the Panel's consultation document. We would also like to thank the Panel for its interest in and attention to the issues which we have raised.

We would like to commend to the Panel and strongly support the paper prepared by Renuka Wali of the Expert Advisory group. We draw attention to this being the second expert paper prepared by a specialist psychologist on these issues and express our continuing frustration at the inattention by MOJ to our concerns.

The overall view of specialist psychologists was that the Consultation Document was an excellent way to move forward and address (at least as a start) the major issues which have arisen in the Family Court since the 2014 reforms.

Report Writers welcome the panel's interest in the need for a dedicated point of contact within MOJ for specialist psychologists and believe that would be very helpful both for report writers and in giving MOJ access to the specialised expertise it does not presently access in a robust and appropriate manner. This would ultimately benefit the clients of the Family Court

Strong support was noted for the following recommendations

- 1: The resumption of funded counselling. Report writers believe this is a vital change but that counselling (specialised counselling) needs to be available to both adults and children. We believe that there are some areas where, over time, cost effective group based programmes could be developed. For example there are excellent, evidence based group programs developed through AFCC which could work with identified likely high conflict/complex situations which might forestall entrenched Court proceedings (especially when correlated with the suggested triage process and the use of specialised Court staff).

Specialist Psychologists believe there are times when it is appropriate for any counselling to be entirely confidential and there are times when it is essential that the Court receives information about or from counselling.

We believe that could be managed through the Court and its authority and processes (perhaps with access to expert opinion about the use of such information and how children in particular can be protected).

2. The development of specialised Court staff, both at the level of the Registry (the proposed Senior Family Court Registrar) and the proposed Family Justice Service Coordinators. Specialist Psychologists believe that everyone has been disadvantaged by the loss of specialised staff within the Family Court and by the loss of administrative focus. We believe the two suggestions are both sensible and urgently needed. We believe MOJ should be encouraged to seek to use those staff who formally fulfilled many of these roles (under different titles) and who already have the expertise and experience that is necessary for these roles.
3. Safety Checklist or Screen. The Specialist Psychologists believe that the use of a safety screen or checklist is an excellent resumption of 'good practice'. We believe that all professionals working within the Family Court should demonstrate 'best practice' which is to use screening processes for a range of the issues which are central to Family Court proceedings. As experts we are aware of a number of excellent models for assessing 'risk'. We believe that a consultation process which included specialist report writers would easily identify a best practice model. We note however that such suggestions (assessing risk) are often focused on adult parties and immediate and more easily identifiable areas of risk and not on the more complex issues of 'risk' for children in these situations.
4. Legal Aid. Specialist Psychologists believe that the Court and our community would be better served by there being proper and fair access to legal advice for all those involved in Family Court proceedings. We believe that most parties are more likely to achieve an acceptable outcome with appropriate legal representation and that the self-represented litigants often cause unnecessary delays and other problems. We support the Panel's proposal to allow a party the opportunity to rescind Without Notice Applications if they wish to.
5. Triage. We strongly support the idea of the development of a triage model for the Family Court and believe that properly done this is likely to reduce delay in the Courts. We again believe (as experts) that triage systems are not difficult to develop and again believe that a consultation process would easily identify a best practice model. This model could involve the use of Court experts at an early stage to review the data

available and make recommendations.

6. Complex cases. We support the use of early identification, case management, confidentiality waivers for therapists reporting back to the Judge and the Judge asking, if it is considered as helpful in determining the matter, for a psychological assessment of the parties as it relates to their parenting. We note that (generally) psychological/psychiatric assessments are not appropriate screens for assessing parenting or children's care arrangements because professionals who undertake them are not experts in assessing the individual within this particular context. Again we note that there are evidence based and effective models for assessments and interventions in complex cases.
7. Critiques-Second Opinions. We believe this is extremely well covered both in Renuka Wali's paper and that previously prepared by Dr Suzanne Blackwell. We note that most report writers are satisfied with the process governing critiques outlined in the Practice Note and Psychology and the Law in Aotearoa¹. Difficulties do arise, however, associated with many of the new provisions associated with the 2014 reforms.

We agree that a critique writer should be a specialist psychologist report writer formally accredited to the Court.

Members noted that as Family Law has become more contentious there is increasing use of these provisions in COCA despite them being 'adult/party driven' rather than child focused. We would like to reiterate that the lack of consultation means that there are no adequate definitions of these aspects of the legislation (for example what is meant by 'materials' in Sec 133 (15:b))².

Members were also concerned about the implicit release of materials about a child who has not given consent (and may not even know that this is to happen). Again many changes seem to focus on adult concerns (which may be very valid) but without consideration being given to the issues arising for the Court's client, the child or children.

8. Timeliness for provision of a specialist report. We believe that reports are

¹ Seymour, F; Blackwell, S. and Tamatea, A.2018. *Psychology and the Law in Aotearoa New Zealand*. The New Zealand Psychological Society. Wellington.

² **materials** seems to mean—

- a. The *psychological report* (which is about the child/ren) and
- b. the report writer's notes (undefined) and
- c. other materials (undefined) the report writer used in preparing the psychological report. Given the very extensive use of clinical and academic research, supervision, consultation and analysis such reports involve the simple use of the word 'materials' is unhelpful.

most useful when they are provided as early as possible in a conflicted and complex situation. We believe this is something that the proposed triage system and the special recognition of complex cases will assist. However in reality this issues will only be addressed by efforts to address the significant shortage of specialist report writers.

9. Obtaining a report. We believe that the current 'test' exceptional circumstances is poorly defined (as we point out with other parts of the changes to the legislation) and used differently (or not at all) by different Judges. We believe that best practice would suggest that an 'identified issues' screen would give better guidance as to the value of and need for specialist reports.
10. Complaints. We note that the Court is always asked for it's view of the report writer's work when a Complaint is made to the Board. However if a matter has settled prior to a Court hearing, the Court is limited in the views it can express because evidence (including that of the report writer) has not been tested. We thank the panel for its attention to this issue and hope that we can refer the concern of the panel about this as reflected in the final report to the New Zealand Psychologists Board for it to consider what might be done to address these issues.

Further notes:

General Comment.

- a. Specialist Psychologists welcome the clear awarness by the Panel that the Family Court deals with very complex and contested situations with a high emotional content. We urge the panel to remember that the work of the Court is about 'families' and that regardless of what has happened in their family what children, the clients of the Court, want (in the vast majority of cases) is to be able to have safe and appropriate relationships with their parents, firstly, and their extended families/whanau. We note (using our expertise as scientist practitioners) that there is support for this statement in literature in a diverse set of areas which clearly indicates that children, both as children and as the adults they will become wished for their relationships with their parents to be protected. Broken relationships are clearly damaging for children and for the adults those children become. The dilemma for the Family Court is always that the adults may wish to (and may need to) totally sever all connection with each other but that is almost never helpful for the children and potentially removes from them the right of choice as an adult about their significant relationships.

MOJ to hold list of approved report writers.

- b. We believe as a matter of urgency there needs to be the development of an appropriate national list of report writers held by MOJ (and kept current). This appears to us to be vital, especially given the current shortage of report writers, the need to maintain high standards and communicate effectively about the area and allow Court staff to obtain reports from those with specific expertise. Such a list would enable communications about training and allow the engagement of all report writers in the development of good practice.

Parenting Through Separation.

- c. We believe that PTS, in an updated form should be compulsory (but that parties not be required to attend together).

Cross-over cases.

- d. We note that throughout the world Family Court jurisdictions are noting the inter-relationship between statutory welfare services and Family Court process and we note the increasing professional and research literature which speaks to entrenched parental conflict being a form of child abuse (given the identified negative outcomes for children). We believe that any Family Court Reforms need to consider how Oranga Tamariki interfaces with the Family Court both in respect to its own legal requirements and in terms of attention to the needs of children who are clients of the Court. Oranga Tamariki is often the last resource for the Court in trying to address issues in complex cases but usually lacks the expertise (and the resources) to do so in a professional and appropriate manner.

Release of Raw Notes.

- e. Specialist Psychologists continue to be very disturbed by the changes to legislation which govern this. As the panel knows no consultation was had with our profession about this, either when it was introduced in 2014 or more recently. We are not satisfied with the inclusion of this issue in the legislation. There are many many problems around this matter. Our notes are not verbatim, they include facts, hypotheses, aide memoirs, information about others, relevant and non relevant information. There are issues of privacy of information, consent and the safety of clients, children, other professionals consulted and ourselves. There are ethical considerations that if ignored, may lead to an increase in the number of professional complaints

made about individual practitioners.

Recruitment, Retention, Training.

- f. We would like the Ministry of Justice to compile a National list of Report Writers and to provide a direct pathway of communication for specialist psychologists so that issues can be respectfully attended to. We believe that MOJ having access to the level of expertise held within our group would enhance their work for the Family Court.

We believe that MOJ has some responsibility to support processes orientated to the recruitment, retention and training of specialist psychologists. We believe MOJ needs to engage actively about issues such as reviews of the Practice Note and the processes by which psychologists are approved to work for the Family Court (for example looking at a move towards an apprenticeship model as one pathway).

The skill set contained in the Practice Note has not helped. It is too broad and is obstructive of recruitment. If one is selected as a Report Writer there is little in place to support the learning of how to operate in the legal environment. There is a fear of being the subject of a complaint to one's professional body. There is a valid concern that working with high conflict litigants gives rise to more complaints than if one was working in other areas of Psychology. The complaint process has been used by parties who have been advised by their lawyer to settle after a negative report on their parenting by the Psychologist.

We note small but ongoing frustrations which we believe MOJ needs to address. This includes the release of Judgments where a specialist Psychologist has had an involvement in a matter. We are still not sent a copy of the Judgment issued after a hearing. Being informed of an outcome would contribute to psychologist's ability and enthusiasm for the training and supervision of others. It would contribute greatly to one's own professional development.

Finally we would like to draw to the attention of the Panel the recently published paper Carne, S., Rees, D., Paton, N. and Fanslow, J. (2019) *Using systems thinking to address intimate partner violence and child abuse in New Zealand*. New Zealand Family Violence Clearing House. Issues Paper 13. January 2019 which provides (specifically in respect to family violence) the need to consider more systemically complex issues which come to the Family Court if genuine change is going to occur.

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