

Save the Children New Zealand

2nd Consultation Round: Family Justice Review – In addition to comments made in our original submission

Organisation Name:	Save the Children New Zealand (SCNZ)
Geographical location	National and international
Target group/focus	Children
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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.

Introduction

Thank you for the opportunity to meet with the Independent Panel and discuss elements of the proposed changes to the Family Justice system. We are pleased to share our submission based on the proposed changes and points specifically discussed in our meeting with the Panel.

We broadly support the Korowai of the Family Justice Service concept and proposed changes that would see Family Justice be more child centred and become a joined-up system that supports families toward positive resolutions. It is very positive that the review is taking child related issues seriously and seeks genuine change to improve the experiences of children in the Family Justice system. In this submission, we make a number of points that we believe would strengthen the Family Justice system, and in particular, the experiences of children in the system.

We support the potential change of legislation to greater support the participation and protection of children in the Family Justice system

We agree that children's safety and participation are critical issues. We support changes to the current law that would strengthen participation and protection of children in the Family Justice system. Participation and protection of children are child rights issues with many articles in the United Nations Convention on the Rights of the Child¹ (the Convention) targeted toward these issues. Legislative change also provides a valuable opportunity to embed the Convention into our domestic law giving greater effect to children's rights in policy and practice. Further to this, embedding the Convention into our domestic law would adhere to recommendations that have been consistently made by the Committee on the Rights of the Child² to progress the implementation of the Convention in Aotearoa New Zealand.

Family Justice to become more child centred

For Family Justice to become more child centred, Save the Children recommends taking a child rights approach where children are recognised as citizens, entitled to have their rights upheld, and capable of expressing their own views that should be considered by those making decisions on their behalf including their parents, judges or other justice professionals.

Key to enabling a child rights approach in practice, is to ensure the rights of the child are explicitly referenced in legislation and supporting documentation, in processes and procedures, and to ensure that professionals working for or with children are trained in the Convention and what children's rights mean in practice.

Supporting parents to uphold their children's rights is also critically important to an effective child rights approach. Parents could learn more about their children's rights and how decisions made in their regard will affect their rights through specific family justice programmes such as PTS or FDR. Other avenues would include easy to understand information that can be sourced online, FLAS, or through community providers that support the Family Justice system.

Yet of the proposed changes there is no reference to the Convention, child rights or training for professionals and parents on children's rights, nor how their rights should be protected and upheld in the Family Justice system.

We have some apprehension due to comments made that seem to assume that endorsing a child rights approach may undermine the right or ability of parents to make decisions in the best interests of their children. However;

- Children's rights and parent's rights are not oppositional, there are many good reasons to include children in the decision-making process as they are greatly affected by any decisions made in their regard.
- Whilst parents are the best people to make decisions for their children, there may be times when this is difficult due to their situation, such as being overwhelmed themselves by family separation, financial hardship or strain, or external influences such as alcohol or drug dependence.

¹ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

² <https://www.refworld.org/docid/587ceb574.html>

- An inability for parents to come to an agreement on the care of their children is often what leads to court intervention.

It is our view that taking a child rights approach can support adults to consider wider implications of the decisions they are making on behalf of children and can see children feel included in the process so they have some agency in the decisions that will have a significant impact on their lives.

Counselling for Children

We are aware of some resistance to counselling for children. However, we see counselling for children as being very important in providing support, for those who need it, in dealing with a situation beyond their control.

We have some concern around comments that counselling would pathologise children, whereas it is seen as a positive option for parents and children would be supported by default through their parent’s counselling.

- In our view children are part of a family but should also be seen as individuals who have their own views, experiences and needs. Therefore, ‘fixing’ parents will not necessarily flow on to ‘fix’ children, some children may need targeted support themselves such as therapeutic counselling to resolve the issues they are experiencing due to family separation.
- There are many options or models for providing children with therapeutic support, some examples include; counselling, group therapy, play therapy, support from existing supporting adults such as guidance counsellors, or child friendly spaces.

Child Advocates

Save the Children is supportive of the concept of establishing a child advocate role that would support children through the process particularly in the most difficult cases. This may not be necessary for most cases, but there should be options that include a judge appointed child advocate in particularly complex cases that may include family violence or serious acrimony between the parents making it difficult for parents to come to agreements or decisions. Preliminary findings of the panel stated in the proposal document ‘Strengthening the family justice system’ (p 28)³, show that in complex cases parties can struggle to focus on the child or children’s best interests and are likely to be in high conflict. A child advocate would be incredibly useful in supporting children in the court process, but also in connecting the child with other supportive community services.

There should also be the opportunity for a parent or parents to request a child advocate if they feel their children are being seriously and adversely affected by the family separation and justice process.

Response to questions from Justice Review proposed changes

1. What should be included in a comprehensive safety checklist?	Yes, agree a checklist similar to S61 would support assessment of children's safety, important to consider how this is implemented so
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³ <https://www.justice.govt.nz/assets/Documents/Publications/Strengthening-the-family-justice-system.pdf>

	<p>it is a genuine process and not just an auto check box process.</p> <p>Also, should consider an assessment of the environment; suitable living arrangement, exposure to substance abuse, or abusive relationship with a new partner, awareness of all adults living in the household.</p>
<p>2. What information should be available to the court to assess children's safety and in what circumstances?</p>	<p>Where needed; medical reports psychological report S123 report - although how will this process be improved; the delays and backlogs prove to be serious barriers to the efficacy of this report? Interviews/affidavits submitted by adults close to the child including professionals such as teachers, etc.</p>
<p>3. What role should specialist family violence workers have in the Family Court? Should there be separate support workers for adults and children?</p>	<p>Yes, there should be separate support workers for adults and children. This is to ensure children receive the expertise and care they need specific to their ages and stages. Also, separate care may ensure there is no conflict of interest between the adult and child patients/clients. For example, if a child is to disclose harm from the parent that is also a patient, to which patient does the carer owe loyalty or perceive to owe loyalty?</p>
<p>4. Do you have any other suggestions for more child-responsive court processes or services?</p>	<p>Yes. The specialists and court staff working with or representing children, should be trained in the rights of the child and understand how the process, treatment of, and decisions made regarding children, will affect their rights.</p>
<p>5. Should obligations be placed on the Ministry and/ or the Government to improve family justice outcomes for Māori? What would these obligations be?</p> <p>6. How could the Ministry of Justice or the Government partner with hapū, iwi or Māori organisations to deliver services?</p> <p>7. How would you incorporate tikanga Māori into the Family Court?</p> <p>8. Do you have any other suggestions to improve the Family Justice Service for Māori, including any comment on the examples provided above?</p>	<p>We agree these are important questions.</p> <p>We reference Article 30⁴ of the Convention according indigenous children the right to practice their culture.</p> <p>Children and whanau being respected for and supported in their culture is empowering. It is our view that the Family Court should be culturally inclusive and support Maori whanau and tamariki to practice their culture whilst participating in Family Court processes.</p> <p>Training court staff and support professionals in tikanga and Te Ao Maori is a good start toward</p>

⁴ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

	<p>ensuring court staff have the capacity to work in ways that support and respect tikanga Maori.</p>
<p>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?</p>	<p>Information that is rights based for adults and children, that informs parents and children of their rights, and what they should reasonably expect to experience in out of or in court processes.</p> <p>Clear one-pagers of the process to expect at different stages.</p> <p>Easy to find information about how to access the out of court resources, including information about what to expect at each stage.</p> <p>Clear information about access to legal representation.</p> <p>Clear information about reports to the court that may be required and how they may be used.</p> <p>Information that is clearly appropriate for children and young people.</p> <p>The ability to request a pack to mailed to the recipient that contains all relevant information.</p> <p>A complaints process that clients can access if they feel they have treated unfairly or discriminated against in the court process – this should not be confused with an appeal process.</p>
<p>10. Would the three proposed types of counselling meet parties' needs, or are there other gaps in the counselling services that need to be filled? For example, should there be counselling available to children?</p> <p>11. Are Parenting Through Separation/Family Dispute Resolution suppliers, Family Justice Service Coordinators and Judges best placed to refer people to counselling? Are there any other service providers who should be able to refer to counselling or should people be able to refer themselves?</p> <p>12. Should confidentiality be waived when parties are directed by the court to therapeutic intervention, in what circumstances and about what matters?</p>	<p>We agree with the proposed counselling options. We also believe that counselling should be available for children and when needed appointed to children.</p> <p>We would like people to able self-refer to counselling and not be solely reliant on a referral process.</p> <p>We agree that in serious cases the outcomes and progress of the counselling should be known to the judge in order to have clear insights into the effectiveness of the counselling and what this may mean to decision making.</p> <p>It is important that the counselling does not become punitive, that it is not seen as a punishment or a threat that needs compliance. For counselling to be effective, people need to willingly engage.</p> <p>In some cases, the outcome and progress of the counselling should be made known, however we believe the person being counselled must consent that to happening, this should also be the case for children.</p>
<p>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?</p>	<p>Yes, we agree with these proposals, however they should have some flexibility where necessary. For example, if someone is fleeing a violent or abusive relationship, they should not be compelled or ordered to participate in this process alongside their abuser.</p>

<p>14. If PTS is not mandatory, how should this expectation of attendance be managed and achieved?</p>	<p>Furthermore, people's circumstances and ability to attend should be considered, ie if they have a disability or health issues, or financially they are unable to attend due to affording fuel if they are traveling quite a distance, maybe there is an online option that can be collaborative and retain the quality delivery of the programme? Blended online learning modules could be considered. Perhaps people could apply for an exemption if they felt they really needed one, simply not turning up is not an acceptable response.</p>
<p>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?</p> <p>16. Do we need stronger obligations on family justice professionals to promote FDR and conciliatory processes generally?</p> <p>17. What could a streamlined process for court referrals to FDR look like?</p>	<p>We don't have the expertise to fully answer these questions as we are not FDR providers. However, child participation should take a rights-based approach and adults and children should be informed of children's rights and how they are applied in practice.</p> <p>The Family Justice process must endorse and support the FDR, so people feel that it is part of the process rather than a side activity. There should be exemptions especially where abuse and violence have occurred in a relationship and may be the very reason for the separation.</p>
<p>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? For example:</p> <ul style="list-style-type: none"> - Should it be part of a legal aid grant, or could there be an enhanced role of FLAS 1 (giving a person initial information and advice on the out-of-court processes), including the creation of a solicitor-client relationship? 	<p>If FLAS is to continue, the issues with FLAS must be promptly and thoroughly resolved. Potentially it could operate as an information service, however even as this level of service it must be adequately resourced.</p> <p>Legal aid should be allowed even for those that just want advice in the early stages. This may help to resolve issues and could support out of court resolutions to take place. Legal representation should not be limited to in court situations/cases.</p>
<p>19. How do you think we could improve the efficiency of court processes?</p>	<p>We agree with the proposals.</p> <p>To support Maori, could there be legal proceedings that take place in customary/Maori court situations?</p> <p>We agree with the reduced track options and reduced number of family conferences. These both appear to sources of significant tension and have greatly contributed to slowing the court processes.</p>
<p>20. Will reinstating legal representation be enough to reduce the number of without notice applications? Or would other interventions be required? For example, are sanctions required</p>	<p>We support the proposal for parties to be entitled to have legal representation at all stages of the process.</p> <p>We believe there is a place for sanctions to be imposed for unnecessary without notice applications, particularly if there is evidence that</p>

<p>for unnecessary without notice applications? If so, what sanctions would be appropriate?</p> <p>21. Do you think there is value in clarifying that parenting orders made without notice can be rescinded?</p>	<p>a party has used this process in an adversarial way. Further, there could be a place for sanctions for parties that continually undermine the process through false allegations or not turning up to conferences or hearings or failing to submit required documentation on time.</p> <p>Sanctions may include part or full cost recovery or taking highly toxic or adversarial behaviour into account in decision making, for example a party that refuses to engage or takes actions that are harmful to the other parties including children, should be held accountable for their actions.</p> <p>Yes, clarifying processes are essential, it will help to reduce confusion and may help with more positive resolutions.</p>
<p>22. How best should integrated assessment, screening and triaging be implemented? What other measures would you like to see implemented in order to improve the interconnection of the Family Justice Service?</p>	<p>The Family Justice Service Coordinator that would be responsible for triaging, should be trained in child rights and be trained to recognise abuse that may be non-physical.</p> <p>We agree there should be multiple entry points to the Family Justice system. We believe robust and effective training to support multiple actors to undertake triaging and assessment is essential if there is to be quality and consistency in the delivery of these functions. If a community provider feels out of their depth, they should be able to make a referral that is quickly acted on by another more capable provider.</p> <p>The ways information may be shared by providers and various court systems should be considered. People don't want to feel they are being pushed around and starting new with every new provider, ie starting their story/process from scratch each time.</p>
<p>23. What other powers do you think might be helpful to enable judges to better manage complex cases?</p> <p>24. What types of therapeutic intervention would be useful in complex cases? For example, should a judge have the power to direct a party for psychological or psychiatric assessment or alcohol and other drug assessment?</p>	<p>Yes, we agree that a judge should have powers to direct a party to a therapeutic, psychological, or substance abuse intervention. However, care must be taken around confidentiality, what will be made public and to whom?</p> <p>Judges being able to call on targeted specialist support is important as much of this sits outside of their expertise.</p>
<p>25. What could be done to encourage lawyers and judges to make better use of s133 cultural reports? For example, should there be a different threshold for cultural reports? If yes, what would be an appropriate threshold?</p> <p>26. Do you think greater use of section 136 of the Care of Children Act 2004 would prove</p>	<p>Children have a right to practice and have their culture respected, Article 30 of the Convention⁵. Therefore, it is important that capacity to request and receive cultural reports is strengthened, including developing the capacity of those who produce the reports.</p>

⁵ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<p>more valuable than presenting cultural information in a report format? If so, what type of information and guidance would be needed to support parties to use section 136? What barriers are there for parties to use section 136 of the Care of Children Act 2004?</p> <p>27. Do you have any other proposals for improving the quantity and quality of cultural information available to the court?</p>	<p>The importance of cultural reports should be recognised, court staff training – including of judges, may be necessary to develop this.</p>
<p>28. What do you think of the proposal to create a new role; the Family Justice Service Coordinator (FJSC)?</p>	<p>We support the creation of the FJSC. We support the role to be established in law and that it must be adequately resourced so it does not default to an administrative role due to poor resourcing. We recommend the FJSC is trained in children's rights and understands the impact of the various process on children and their rights. Is trained and resourced to recognise and appropriately act on family violence issues and provide key support to complex cases.</p>
<p>29. What do you think of the proposal to establish a Senior Family Court Registrar position?</p> <p>30. What powers do you think Senior Family Court Registrars should have in order to free up judicial time?</p> <p>31. What sorts of competencies should Senior Family Court Registrars have?</p>	<p>We agree with the proposal to establish a Senior Family Court Registrar.</p> <p>We support the need to reduce time judges are spending on administrative processes so their time can be prioritised for judicial hearings. Competencies should include child rights and family violence training to support children and families most in difficulty.</p>
<p>32. Do you agree with the proposal to introduce new criteria for appointment of lawyer for the child to make sure of the best fit?</p> <p>33. What are the core skills for the role of lawyer for the child, and what training and ongoing professional development do you see as necessary to develop those skills?</p> <p>34. Do you see a role for an additional advocate with child development expertise to work together with the lawyer for the child, to support the child to express their views and make sure they're communicated to the judge?</p>	<p>Yes, we agree with the proposed appointment criteria. We also support that it aligns with OT appointment criteria to provide consistency and quality of child representation.</p> <p>Core skills should include; communication with child, supporting a child's participation – including those of very young children. Training should include; child rights training including on how decisions made will impact a child's rights, supporting children to participate, child development training – ie First 1000 days, adolescence, how to effectively communicate with children including listening to children.</p> <p>Yes, there is a role for an additional child advocate or development specialist to work with the lawyer for child, this may be appropriate in complex cases, where there may be issues of abuse, neglect, harm, children or parents with disabilities, where relationships between parent and child have completely broken down.</p> <p>Lists should be regularly updated, and training should be regularly undertaken.</p> <p>Lawyer for Child should be adequately resourced so as not to undermine the role.</p>

	Information that clarifies the role and expectations of LFC should be made available, including to children.
<p>35. Does the definition of ‘second opinion’ reports need clarifying?</p> <p>36. What improvement do you think could be made to the process for obtaining critique reports?</p> <p>37. At what stage in the court process would psychological reports be most helpful?</p> <p>38. Do you have any other comments about section 133, for example the threshold test for obtaining a report?</p>	<p>The process of obtaining the reports is crucial. If parents feel the process is rushed or insufficient, they are less likely to feel supportive of the report.</p> <p>We agree there is work to be done to strengthen the processes and the resourcing of these reports. These reports are extremely important, particularly where cases are complex, and decision making is crucial to the wellbeing of the child.</p>
<p>39. Do you agree with the Panel’s proposal that cost contribution orders are modified? For example, do you think a judge should order a party to contribute to the cost of professionals when making final orders based on the party’s behaviour during proceedings?</p> <p>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?</p>	<p>Yes, we agree with these proposals.</p> <p>It is reasonable to use a financial deterrent and seek cost recovery in a case where one party is clearly unnecessarily dragging out the process. The eligibility threshold should be raised to make FDR more accessible.</p> <p>Also, judicial discretionary around cost application should occur rather than automatically applying costs.</p> <p>To help reduce late and overbearing costs, cost recovery should take place or at least be forecast during the process, not quite some time after, adding to the burdens some families may be under.</p>

This submission has been produced by Jacqui Southey, Child Rights Advocacy and Research Manager for Save the Children New Zealand. If you have any queries or would to further discuss the content of this submission, contact Jacqui Southey via [s 9\(2\)\(a\)](#)