



Te Korowai Ture ā-Whānau:

**The final report of the Independent Panel
examining the 2014 family justice reforms.**

May 2019

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Cover image sourced from the Taonga Māori Collection at Te Papa Tongarewa. The image depicts a korowai hihimā woven by an unknown weaver (1800/1900).

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Foreword

This report recommends a raft of changes to strengthen and connect family justice services, including the Family Court, so that children, parents and their whānau are treated with dignity and respect, listened to, and supported, to make the best decisions for them.

It proposes the development of a joined-up family justice service, to be called Te Korowai Ture ā-Whānau, to ensure that processes are no longer separated into in and out of court. This service will form a korowai: protecting, supporting and empowering children, their parents, and their whānau as they work through parenting and guardianship issues.

In August 2018, the Minister of Justice, Hon. Andrew Little, appointed us “to consider the 2014 family justice reforms as they relate to assisting parents/guardians to decide or resolve disputes about parenting arrangements or guardianship matters ...”

Our terms of reference required us to consult widely in our examination of the effectiveness of the 2014 reforms. Family justice services involve children and young people, parents, caregivers, guardians, grandparents and other whānau, often when they are at their most vulnerable. We are deeply appreciative of those who were prepared to share their experiences with us. We acknowledge that for some it took considerable courage, fearing that even talking to us in confidence could be used against them.

What we learnt from children, parents and whānau was reinforced by our engagement with those who work in the community. We heard from Māori, Pacific peoples and new migrant communities; we were told about barriers to access to justice for children and adults with a disability, and about the impact of poverty.

Those who work in family justice services – judges, lawyers, mediators, psychologists, family counsellors, workshop facilitators, court and other Ministry of Justice staff – contributed generously, as did their professional organisations. We drew on the expertise of the office of the Children’s Commissioner; on the research of academics, both domestic and international; and on the experiences of other countries. We were fortunate to have access to the preliminary results of a major study by the University of Otago Children’s Issues Centre, and we commissioned further research by UMR, a specialist market research company. An expert reference group and a secretariat established by the Ministry of Justice have provided us with outstanding support.

What we have heard, seen, read and researched has convinced us that elements of the 2014 reforms must be changed. But law reform alone will not address the myriad of issues that undermine confidence in family justice services, nor reduce delays that can be so damaging for children and young people.

This report recommends changes to the law, policy and practices that currently govern family justice services. We have found, however, that equal access to justice for all the diverse whānau that seek assistance requires more than legal changes. The other equally important factors are:

- improving resourcing, administrative and operational processes and infrastructure, and
- building capability and capacity within the Court and family justice services to allow for children's participation, recognise te ao Māori, provide for diversity, accommodate disability and better respond to family violence.

This report stresses that additional resources are essential to strengthen the family justice service. Where possible, we have included an initial estimate of the resources required to implement the changes we recommend.

The development of Te Korowai Ture ā-Whānau will:

- improve the well-being of children and young people
- enhance access to justice for children, parents and whānau
- strengthen respect for and fulfilment of human rights for all who engage with the family justice services.

Te Korowai Ture ā-Whānau should be a model for the justice sector as a whole, in being child centred, in how te ao Māori is recognised, in its responsiveness to diversity, accommodation of disability and the handling of family violence.

Strengthening the family justice service will take time, commitment and the collaboration and open-mindedness of everyone involved at all levels. There is widespread agreement that change is urgently needed, and that agreement gives us confidence in the future of Te Korowai Ture ā-Whānau.



La-Verne King
Panel member



Rosslyn Noonan
Chairperson



Chris Dellabarca
Panel member



Executive Summary

Terms of reference

In August 2018, the Minister of Justice, Hon Andrew Little announced the establishment of an independent panel to examine the 2014 family justice system reforms.

As that panel, we were asked to consider:¹

- the effectiveness of out of court services, such as Family Dispute Resolution (FDR)
- the effectiveness of Family Court processes, particularly given the significant increase in the number of urgent (without notice) applications coming to the Court
- the roles of the professionals, for example, lawyers, lawyer for child, Family Dispute Resolution providers and psychologists
- whether the system as a whole is producing outcomes that are upholding the welfare and best interests of children, and particularly tamariki Māori.

To answer these questions, we had to consider the accessibility, coherence, flexibility and cost efficiency of the system, along with the extent to which it is child centred and evidence based.

We were required to consult widely with those involved with family justice services, as well as those working in them. The Minister of Justice asked that we talk with children and young people, Māori, Pacific peoples and disabled people, along with academics, community organisations, interest groups, the legal profession and the judiciary.

The terms of reference focused on the 2014 changes to services that help with care of children disputes, including the Family Court, the FDR service, Parenting Through Separation (PTS) parenting courses and counselling.

¹ The Terms of reference can be found in Appendix One.

It became clear early in our consultations that the impact of the 2014 reforms could not be considered in isolation from other areas of family law, such as legislation governing family violence, care and protection, and relationship property. Our work is not a first-principles review of the Family Court or family justice services as a whole. However, we have considered and made recommendations on all the matters that impact directly on the effective functioning of family justice services that deal with a child's care, contact and guardianship.

The 2014 reforms

The 2014 reforms were meant to shift the emphasis away from in court to out of court processes. The goals were to have a modern and accessible family justice system that:

- was responsive to children and vulnerable people
- encouraged individual responsibility, where appropriate
- was efficient and effective.

Process

We conducted two rounds of public consultation. Each involved publishing a discussion document and online tools for anonymous submissions as well as face-to-face meetings.²

The first, between September and November 2018, enabled us to hear the experiences of those who have used and worked in family justice services. The second, in February and March 2019, allowed us to test our ideas for change.

We travelled extensively from the far north to the deep south.

We were supported by an 11-person expert reference group of professionals from across the sector. The membership of the expert reference group can be found in Appendix Two.

We commissioned a report from an independent research company, UMR, to talk with children, Māori and Pacific parents and whānau, and disabled parents. The UMR report is now publicly available on the Ministry of Justice website.³

The Children's Issues Centre at the University of Otago shared with us their initial findings from the major research they are currently undertaking. We also reviewed other national and international research, including the Ministry of Justice's early evaluations of aspects of the 2014 reforms.

Te Korowai Ture ā-Whānau

Our principal recommendation is the proposal to introduce a joined-up family justice service, Te Korowai Ture ā-Whānau, bringing together the siloed and fragmented elements of the current in and out of court family justice services. The Korowai provides a variety of ways for people to access the right family justice service at the right time for them.

² A summary of submissions from the second round of consultation is available at: <https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-te-korowai-ture-a-whanau.pdf>

³ UMR's main report is available at: www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-main-report.pdf
UMR's appendices report is available at: www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-appendices-report.pdf

The Korowai symbolises the mana of the family justice service; it affirms that all who draw on it for protection, support and empowerment will be treated with dignity and respect.

Te Korowai Ture ā-Whānau will be child and whānau centred, timely, safe, responsive and accessible. It will provide for diversity; understand the impact of family violence; and will be cohesive, collaborative and cost effective.

Terminology

The terms of reference use the word “system”. Generally, in this report, the terms “Family Court and related services” and “family justice services” are used. The term “family justice service”, in the singular, refers to Te Korowai Ture ā-Whānau.

It has also been a challenge to find the right words to refer to the many and diverse people who play an important role in the lives of our children.

We’ve settled on using the phrase “parents and whānau” throughout this report for consistency. This is by no means intended to exclude those who identify themselves differently, including caregivers, guardians, grandparents, family and friends.

The report

Following the introduction, this report is divided into four parts. Part One discusses issues that flow through all family justice services. Part Two covers encouraging early agreement, while Part Three focusses on strengthening Family Court processes. Part Four contains recommendations on monitoring and development.

These four parts outline what is required to enable Te Korowai Ture ā-Whānau to protect, support and empower children and their whānau, whatever their heritage and circumstances. They canvas what is required for children and their whānau to be listened to, heard and treated with dignity and respect.

Key findings

In this executive summary, we summarise what we learnt and provide our recommendations for change.

System-wide issues

Family justice services and the people who engage with them represent a microcosm of New Zealand. The services involve children and young people, parents and whānau at times of distress, crisis and conflict. For many, the barriers to accessing justice reflect the barriers they encounter throughout the justice sector and in New Zealand society more generally.

Children’s participation in decisions that affect them is a fundamental right in the United Nations’ Convention on the Rights of the Child (CRC) and is still not widely recognised or valued.

The case for recognising te ao Māori in law, policies and practices has been made repeatedly in reports on the justice sector and others dating back to the 1980s and even earlier.

Responding to diversity and accommodating people with disabilities are clear requirements in the international human rights standards to which New Zealand has committed.

Knowledge of family violence in all its forms is still not widespread and its impact on children, including on their safety, is still poorly understood.

Delay is endemic and impacts on almost every other issue in family justice services.

Recommendations

Children's participation

Amend the Care of Children Act 2004 and the Family Dispute Resolution Act 2013 to include children's participation as a guiding principle, modelled on the new section 5(1)(a) of the Oranga Tamariki Act 1989. The provisions should make express reference to the United Nations' Convention on the Rights of the Child.

Amend the Care of Children Act 2004 to require parents and guardians to consult children on important matters that affect them, taking account of the child's age and maturity.

Direct the Ministry of Justice, in conjunction with relevant experts and key stakeholders, to undertake a stocktake of appropriate models of child participation, including in Family Dispute Resolution as a priority. The stocktake should also include:

- a. consideration of key principles for children's participation including requiring professionals to promote children's participation
- b. consideration of how children's views should be taken into account in cases where there is family violence
- c. development of a best practice toolkit co-designed with children and young people.

Te ao Māori

Amend the Care of Children Act 2004 to include a commitment to te Tiriti o Waitangi (the Treaty of Waitangi).

Until sufficient Māori judges are appointed to the Family Court, invite the Chief District Court Judge to:

- a. appoint some Māori Land Court judges to sit in the Family Court
- b. require all new Family Court judges to spend one week observing Māori Land Court proceedings
- c. require all Family Court judges to attend the tikanga Māori programme delivered by the Institute of Judicial Studies.

Direct the Ministry of Justice, in partnership with iwi and other Māori, the Court and relevant professionals, to develop, resource and implement a strategic framework to improve family justice services for Māori. The strategic framework and subsequent action plan should include:

- a. appointing of specialist advisors to assist the Family Court on tikanga Māori
- b. supporting kaupapa Māori services and whānau centred approaches
- c. developing a tikanga-based pilot for the Family Court
- d. providing a Mana voice to ensure the Family Court has access to mana-whenua and wider Māori community knowledge
- e. phasing in the presumption that Māori lawyer for child is appointed for tamariki Māori
- f. considering how the Family Court Registries can better identify and support mana whenua relationships with the Court
- g. Providing adequate funding for culturally appropriate FDR processes.

Diversity

Amend the Care of Children Act 2004 to:

- a. lower the threshold for obtaining a cultural report
- b. allow a lawyer for child to request the court hear from a person called under section 136, and
- c. allow a judge, of his or her own motion, to call a person under section 136.

Direct the Ministry of Justice to develop:

- a. in consultation with Ministry for Pacific Peoples, Office of Ethnic Communities and other relevant community organisations and professionals, a diversity strategy for Te Korowai Ture ā-Whānau with the objective of improving the responsiveness of family justice services to the diverse needs of children and whānau
- b. information and guidance about section 136 for parties, lawyers and the community
- c. an improved operational framework to properly resource cultural reports.

Direct the Ministry of Justice to undertake further work on how to facilitate the participation and recognition of grandparents and other wider whānau in Care of Children Act proceedings.

Request that Oranga Tamariki align the level of legal funding available to grandparents and whānau under the Care of Children Act 2004 with the support available under the Oranga Tamariki Act 1989, where Oranga Tamariki support the children being placed in the care of those grandparents and whānau.

Accommodating disability

Direct the Ministry of Justice, in partnership with the disability sector, the judiciary and other key stakeholders, to develop a disability strategy to improve access to justice for disabled people using Te Korowai Ture ā-Whānau.

Direct the Ministry of Justice to:

- a. ensure all information resources are accessible to disabled people
- b. include questions relating to disability and required disability supports on the Care of Children Act forms to identify accommodation and support needs for disabled people
- c. fund disability awareness training for all client-facing court staff (an invitation to attend this or similar training should be extended to the Family Court Judges)
- d. undertake further work to address the systemic barriers to affordable and specialised legal advice for disabled people.

Direct the Ministry of Justice to collaborate with the New Zealand Law Society and the disability sector to develop best practice guidance for lawyers working with disabled clients and for lawyer for child representing disabled children. The best practice guidance should be based on research and evidence about what works for disabled clients.

Invite the New Zealand Law Society to include disability awareness in the training programme and ongoing professional development requirements for lawyer for child.

Direct the Ministry of Justice to work with the Family Court and the New Zealand Law Society to develop a system of specialist endorsement for lawyer for child who are trained to work with children with disabilities to support better matching of disabled children to a lawyer with suitable experience and skills.

Family violence and children's safety

Amend the Care of Children Act 2004 so that judges may:

- a. make findings of fact in a timely way, where there is a disputed allegation of violence or abuse
- b. undertake ongoing risk assessment, recognising that risk is dynamic and can be unpredictable.

Amend the Care of Children Act 2004 to include a checklist of factors the Family Court may take into consideration relevant to a child's safety, including:

- the nature, seriousness and frequency of the violence used
- whether there is a historic pattern of violence or threats of violence, for example coercive and controlling behaviour or behaviour that causes or may cause the child or their carer cumulative harm
- the likelihood of further violence occurring

- the physical or emotional harm caused to the child by the violence
- whether the child will be safe in the care of or having contact with the violent person
- any views the child expresses on the matter
- any steps taken by the violent party to prevent further violence occurring
- any involvement or oversight by a community or other organisation relating to a child's welfare
- any serious mental health condition that impacts on a party's ability to ensure a child's safety, and the steps taken to address this condition
- any drug or alcohol issues that impacts on a party's ability to ensure a child's safety, and the steps taken to address these issues
- any other matters the Court considers relevant.

Amend the Family Court Rules 2002 to specify Care of Children Act documents to include information about the safety needs of victim-survivors when attending court.

Amend the Care of Children Act 2004 and relevant Rules to enable the Family Court to request relevant information about family harm or family violence incidents from Police and reports from supervised contact providers.

Direct the Ministry of Justice, in consultation with key stakeholders, to develop a risk assessment tool for use with children, victim-survivors and perpetrators of violence.

Direct the Ministry of Justice to work with judges and relevant professional bodies to ensure family justice professionals receive consistent, ongoing training about family violence.

Amend the Family Violence Act 2018 (as it will be called from 1 July 2019) so that children who are the subject of Care of Children Act proceedings are able to access safety programmes available under that Act.

Encouraging early agreement

The evidence is compelling that it's in the best interests of children and young people to make arrangements about their care and other decisions about their lives with the least conflict and without having to go to court, which is inherently adversarial.

The 2014 reforms exacerbated the divide between in court and out of court services and professionals. Family Court counselling was removed; a new service, Family Dispute Resolution (FDR), was established and made mandatory before a person made an on notice application to the Family Court; Parenting Through Separation (PTS) was extended and made mandatory; and access to legal advice and representation was limited.

Despite such significant law reform, there was no public awareness campaign to inform and educate whānau and the general public about the changes.

To encourage and support parents and whānau to settle care arrangements for their children with the least conflict and at the lowest cost, parents and whānau must be able to access the right service at the right time in the right way.

High-quality, accessible information, offered in a range of community languages and formats, is crucial.

Targeted counselling should be available to assist parents or other whānau to focus on the best interests of their children.

Services that reflect and are responsive to the diversity of New Zealand's children and whānau are required.

Counselling, PTS programmes and FDR services should be fully funded without a user-pays contribution to encourage early agreement.

Equal access to justice requires parents and whānau to have the right to legal advice at the early stages of separation, with those eligible having access to a pre-court grant for legal assistance.

There is little data to show whether more whānau have been able to resolve their issues out of court since 2014 or whether children's wellbeing has been better secured.

Recommendations

Quality, accessible information

Direct the Ministry of Justice to:

- a. develop an information strategy to establish a cohesive and consistent set of resources in a range of formats including:
 - A stand-alone website specifically for separation and care of children disputes
 - A children's section of the website containing a range of interactive, engaging information resources for different age groups, co-designed by children
 - Information explaining the role of various family justice service professionals
 - Information for grandparents and whānau seeking care or guardianship
 - Information on care of children matters for victims of family violence
 - A review of the 0800 2 AGREE helpline
 - Information in languages other than English, including te reo Māori, and resources relevant to all cultures
 - Information that is accessible for people with disabilities and low literacy
 - Information on help or support outside of the Government-funded system
 - Information about the role of different professionals within Te Korowai Ture ā-Whānau
- b. develop an ongoing public awareness campaign to encourage parents to resolve issues as early as possible and provide information on the range of family justice services available and how to access them
- c. reformat the existing parenting plan workbook to enable it to be used digitally
- d. work in conjunction with the judiciary, the New Zealand Law Society and representatives of self-litigants, develop a workbook (in digital and hard copy) for self-represented litigants to navigate Te Korowai Ture ā-Whānau.

Counselling

Amend the Care of Children Act 2004 to make three hours of targeted, government-funded counselling available to a parent or caregiver at an early stage of a dispute about care of children to work through their personal emotions and focus on reaching agreement.

Parenting Through Separation

Amend the Care of Children Act 2004 to:

- a. Allow a party to apply to the Family Court for a parenting or guardianship order without requiring prior attendance at PTS.
- b. Allow the Court to direct a party to PTS if it has not been completed unless there is a good reason not to.

Direct the Ministry of Justice to develop a centralised online PTS booking system (as part of the FDR portal referred to in recommendation 36).

Direct the Ministry of Justice to develop an online version of PTS.

Direct the Ministry of Justice to:

- a. strengthen the contractual requirements (and provide appropriate support, including funding) for PTS providers to offer a range of facilitators from different cultures
- b. reconsider its procurement process and encourage kaupapa Māori and other cultural organisations to contract to deliver PTS.

Direct the Ministry of Justice to evaluate PTS every three years.

Family Dispute Resolution

Amend the Care of Children Act 2004 to:

- a. allow a party to apply to the Family Court for a parenting or guardianship order without requiring prior attendance at FDR
- b. require a party to provide evidence about genuine attempts made to reach agreement before filing an application
- c. require the Family Court to direct a party to FDR if it has not been attempted already, unless there is good reason not to (rebuttable presumption)
- d. allow the Family Court to refer to FDR on more than one occasion if appropriate
- e. provide a process for the Court to direct a party to FDR, set a timeframe and receive a report on the outcome
- f. allow for lawyer for child to attend court-directed FDR.

Fully fund FDR for all participants to encourage increased use.

Amend FDR regulations to provide for a wider range of dispute resolution models.

Direct the Ministry of Justice, in partnership with iwi, hapū and Māori organisations, to undertake work to ensure FDR kaupapa Māori services are delivered for, by and to Māori.

Direct the Ministry of Justice, in partnership with Approved Dispute Resolution Organisations (ADROs), suppliers and providers, to:

- a. assume responsibility for a comprehensive information strategy and public awareness campaign to promote and support FDR
- b. improve access to FDR through stronger connections and collaborations between FDR suppliers and the Family Court via the Family Justice Coordinator
- c. work to improve pathways into FDR training for practitioners from culturally and linguistically diverse backgrounds
- d. establish an online portal to enable easy, streamlined access to FDR.

Direct the Ministry of Justice to undertake an initial review of FDR after two years, and then evaluate every three years thereafter.

Access to early legal advice

Direct the Ministry of Justice to:

- a. Repurpose the Family Legal Advice Service (FLAS) to transform the current two-stage process into a single grant of up to six hours to cover pre-proceedings legal assistance, up to and including FDR
- b. Engage with the Legal Services Commissioner to ensure that an ongoing lawyer/client relationship can exist for those people who are eligible for both FLAS and legal aid.
- c. Recognise all family legal aid lawyers as approved FLAS providers.

Amend the Care of Children Act 2004 to introduce an obligation on lawyers to facilitate the just resolution of disputes according to the law, as quickly, inexpensively, and efficiently as possible, and with the least acrimony in order to minimise harm to children and families.

Recognising community engagement

Direct the Ministry of Justice to:

- a. develop relationships between community organisations and the Family Court to encourage a more integrated approach to service delivery in local communities
- b. work with Whānau Ora and community organisations to develop a navigator model for whānau who engage with Te Korowai Ture ā-Whānau.

Strengthening the Family Court

Changes in 2014 to processes and procedures in the Family Court were intended, amongst other things, to streamline proceedings, reduce delays and progress cases to timely resolution.

The changes included:

- removing lawyers from the early stages of non-urgent cases
- changes to the appointment criteria for lawyer for child and mandating that lawyer for child is to represent both a child's welfare and best interests, and views
- changes to the way that children's safety was assessed
- changes to court case tracks and conferences
- tightening criteria for psychological reports
- introducing cost contribution orders.

The Family Court has the most complex of mandates, especially in relation to care of children, where the decisions deal not only with the past and the present but also the future.

A number of submitters expressed serious concern at the way they experienced their treatment in the Family Court, and such concerns have led to the development of community groups who publicly question the soundness of Family Court decisions.

There is little data to show whether the 2014 changes as a whole, or any individual changes have led to a reduction in applications to the Family Court or speedier resolution of those applications. The data is clear, however, about the massive increase in without notice applications since 2014: from 30% to 70% of all applications.

Delays are a significant factor in undermining confidence in the Court and can contribute to deepening parent and whānau conflict. Family Courts are not meeting their statutorily prescribed timeframes. The judges' administrative workload impacts significantly on the availability of judicial sitting time.

There has also been an increase in self-represented litigants, requiring increased court time. There is little useful information to help self represented litigants understand and navigate the process, and what there is can be hard to find and varies from region to region.

Families often appear in the Family Court on a raft of matters. There may be multiple applications to the Court including about parenting and guardianship, family violence, care and protection, relationship property, and spousal and child support. These applications are considered by many different judges, frequently without access to the full history of the case.

Having one judge case manage a file ensures consistency and familiarity, and is likely to promote better judicial decision making.

Similarly, it was suggested that having one judge manage all Family Court and, where relevant, criminal matters regarding a family, is likely to promote better outcomes for children.

Recommendations

Family Justice Coordinator

Amend the Family Court Act 1980 to establish the role of the Family Justice Coordinator (with appropriate administrative support) whose key functions will include:

- providing information and guidance on process, next steps and options, including by electronic means, for example, webchat
- encouraging people to use, and connecting them to, services such as counselling, PTS, FDR and other community services
- triaging all on notice applications to the Family Court
- establishing and maintaining links with the family justice community.

Senior Family Court Registrar

Amend the Family Court Act 1980 to establish the position of the Senior Family Court Registrar and the areas of responsibility for that role.

Direct the Ministry of Justice to ensure that a clear plan and appropriate training is put in place for training to enable registrars to exercise the full extent of their powers.

Judicial resourcing

Direct the Ministry of Justice, in conjunction with the Principal Family Court Judge, to take immediate steps to identify and transfer appropriate areas of existing judicial responsibility to existing court registrars to increase judicial hearing time.

Invite the Chief District Court Judge to:

- a. consider an immediate increase in the number of Family Court judges available in order to reduce delays and address the backlog
- b. advocate for greater cultural diversity among judicial appointments.

Legal representation in court

Amend the Care of Children Act 2004 by repealing section 7A, to allow people to have legal representation at all stages of proceedings.

Amend the Legal Services Act 2011 by repealing section 7(3A) and providing for legal aid for Care of Children Act 2004 applications.

Lawyer for child

Amend the Family Court Act 1980 to:

- a. Incorporate as appointment criteria for lawyer for child, the criteria in section 159 of the Oranga Tamariki Act 1989
- b. place a duty on lawyer for child to explain proceedings to their clients as set out in section 10(2) of the Oranga Tamariki Act 1989.

Invite the New Zealand Law Society to strengthen the professional development and supervision requirements for lawyer for child.

Invite the Principal Family Court Judge to amend the 'Family Law Practice Note - Lawyer for the Child: Selection, Appointment and Other Matters' to:

- a. strengthen the criteria for approval of lawyer for child
- b. require that any lawyer for child appointment panel include:
 - a child development expert, and
 - a kaumātua, kuia or other respected community representative from within the area, appointed by the local Administrative Family Court Judge following consultation with the Chair of the Chief District Court Judge's Kaupapa Māori Advisory Group.
- c. require that, where possible, Māori children be represented by a Māori lawyer for child
- d. make the Family Justice Coordinator responsible for reviewing the lawyer for child lists, including requiring the local branch of the New Zealand Law Society to advertise the reviews.

Direct the Ministry of Justice to review remuneration rates for lawyer for child.

Psychological report writers

Direct the Ministry of Justice to work with the judiciary, the New Zealand Psychological Society and the New Zealand College of Clinical Psychologists to improve recruitment and retention of specialist report writers, including from diverse backgrounds. This should include an agreed approach to job shadowing by less experienced psychologists.

Amend section 133 of the Care of Children Act 2004 to consolidate the terms 'critique report' and 'second opinion' into one term - 'critique report'.

In relation to psychological report writers' notes being released for cross examination:

- a. **Invite** the Principal Family Court Judge to review the judicial practice note, in consultation with psychological report writers and the New Zealand Law Society, to include standard conditions for the releasing notes and materials to a psychologist assisting with preparation for cross-examination
- b. **Direct** the Ministry of Justice to remunerate report writers for their time where redaction of notes is required.

Court-directed counselling

Amend section 46G of the Care of Children Act 2004 to:

- a. allow judges to make up to two directions for counselling
- b. allow children to attend counselling with one or both parents/parties
- c. require the Family Court, when directing section 46G counselling, to clarify purpose and stipulate a report back from the counsellor to inform the Court of progress.

Promulgate regulations to set an upper limit of 10 sessions for section 46G counselling.

Direct the Ministry of Justice to undertake further work as a matter of urgency, in consultation with the Family Court, counsellors, relevant professional bodies, child development experts, social services and children/young people to determine:

- a. best practice guidelines for when children should be eligible for funded counselling in their own right
- b. key settings around parent and child consent
- c. scope and purpose
- d. required amendments to the Care of Children Act 2004.

Identifying and responding to complex cases

Amend the Family Court Rules 2002 so:

- a. a second judge is identified as a back-up judge for complex cases so that momentum is not lost if the designated judge is ill or on leave
- b. all applications, in particular, without notice applications or applications for a warrant to uplift are dealt with by the designated judge(s) and not on e-Duty
- c. administration/oversight of a complex case file is the responsibility of the Senior Family Court Registrar, to ensure that all judicial directions are complied with
- d. A case may be classified as a complex case if:
 - there are serious allegations of violence and abuse or serious risk of violence or abuse
 - it has novel or difficult legal, cultural, technical, or evidential issues.

Invite the Chief District Court Judge, Principal Family Court Judge and Ministry of Justice to explore the development of an integrated approach to management of rostering and scheduling, with the goal of having one judge manage all Family Court and, where relevant, criminal matters regarding a family.

Direct the Ministry of Justice to:

- a. collect and analyse relevant data concerning complex cases to improve practice and procedure in these cases
- b. after two years, undertake an analysis of the extent and effectiveness of referrals to section 46G counselling in complex cases and recommend any immediate changes required
- c. undertake research to identify the nature and extent of complex cases in the Family Court, appropriate responses to those cases and specialist professional development required for lawyers, judges and other professionals involved in these cases.

Case tracks and conferences

Amend the Family Court Rules 2002 to:

- a. provide for two case tracks (standard and without notice) and three types of conferences (judicial, settlement and pre-hearing).
- b. where appropriate and practicable, encourage and prioritise video and telephone conferences over requiring parties and lawyers to attend court.

Without notice applications

Amend the Family Court Rules 2002 to:

- a. clarify that Rule 34 applies to proceedings under the Care of Children Act 2004 to allow an application to be made to rescind a without notice order
- b. specify a timeframe within which the Court must allocate a hearing/conference where an order to abridge time has been made and service has occurred
- c. require represented parties and self-represented litigants to answer the following specific questions when applying without notice to the Family Court:
 - Why would an on-notice application with an application to reduce time not be more appropriate (bearing in mind a reduction of time can shorten the period for response to 24 hours or less, at the judge's discretion)
 - Why should an order be made without notice to the other party
 - Does the respondent or their lawyer know of the intention to file
 - Is there likely to be any hardship, danger or prejudice to the respondent/a child/a third party if the order were made
 - What kind of damage or harm may result if the order were not made
 - Why must the order be made urgently.

Cost contribution orders

Amend section 135A of the Care of Children Act 2004, replacing it with a provision giving judges the discretion to order a party to pay up to a set amount of the costs of lawyer for the child, lawyer to assist the Court and specialist report writers appointed only in those cases where a party has behaved in a way that intentionally prolongs proceedings, is vexatious or frivolous.

Monitoring and development

Management and operational decisions have impacted almost as significantly as the 2014 law reforms. A decade or more of under-investment has contributed to the endemic delay. Financial pressures have led to decisions that prioritise the interests of the system, rather than being responsive to the needs of children, parents and whānau. The Care of Children Act forms have been widely criticised.

Ensuring Te Korowai Ture ā-Whānau is fit for purpose and responsive to te ao Māori and embraces New Zealand's ethnic and social diversity requires a fresh approach to open and transparent accountability.

Recommendations

Technology in the Family Court

Allocate sufficient new funding to enable the Ministry of Justice to strengthen the technology platform that supports case management in the Family Court, to facilitate robust data collection for monitoring and development.

Family Court Rules 2002

Direct the Ministry of Justice to initiate and coordinate a review and rewrite of the Family Court Rules 2002 in consultation with the Principal Family Court Judge and the New Zealand Law Society.

Care of Children Act forms

Direct the Ministry of Justice introduce the new Care of Children Act forms as soon as possible and review them after 12 months.

Monitoring

Direct the Ministry of Justice to develop a monitoring and development strategy for Te Korowai Ture ā-Whānau. The strategy should involve a comprehensive data collection plan, with particular focus on improving the data collection on gender, ethnicity, language and culture and the prevalence and management of complex cases. The strategy should also contain an evaluation plan to ensure, among other things, that:

- a. PTS is evaluated every three years
- b. FDR is initially reviewed after two years, and then evaluated every three years thereafter
- c. changes made to section 46G counselling are reviewed after two years
- d. the new Care of Children Act forms are reviewed 12 months after their introduction.

Establish a children's advisory group to provide advice and insight into children's experiences of care of children matters in Te Korowai Ture ā-Whānau to inform policy and practice.

Establish a ministerial advisory group to advise on, and make recommendations about, implementation of changes arising from this report, and any other matters specified by the Minister of Justice.

Final thoughts

The development of Te Korowai Ture ā-Whānau will:

- improve the well-being of children and young people
- enhance access to justice for children, parents and whānau
- strengthen respect for and fulfilment of human rights for all who engage with the family justice services.

Te Korowai Ture ā-Whānau should be a model for the justice sector as a whole, in being child centred, in how te ao Māori is recognised, in its responsiveness to diversity, accommodation of disability and the handling of family violence.

If taken and implemented as a whole, the recommendations in this report will reduce the damaging delays endemic throughout the present services, enable the Family Court to meet its statutory deadlines and most significantly ensure decisions are made in a timeframe that reflects a child's development.

Monitoring and development are crucial to the effective functioning of Te Korowai Ture ā-Whānau. They are essential to building a collaborative, evolving family justice service; and to avoid a situation where unintended consequences and perverse outcomes emerge.

Relatively modest increases in funding are required to implement the recommendations in this report. The one exception is the cost of the technology renewal.

Transition from a siloed family justice system to Te Korowai Ture ā-Whānau will require sustained leadership at the political level, within the judiciary, the legal profession, from all other family justice services and from the Ministry of Justice.

We recognise there is a significant degree of consensus about the recommendations in this report. That consensus provides a sound basis from which to make the changes that are so urgently required to restore pride and confidence in the family justice services, services where children and their whānau are treated with dignity and respect, listened to and supported to make the best decisions for them.

Introduction

In August 2018, we were appointed to “consider the 2014 family justice reforms as they relate to assisting parents/guardians to decide or resolve disputes about parenting arrangements or guardianship matters...”.

Terminology

The terms of reference use the word “system”. Generally, in this report, the terms “Family Court and related services” and “family justice services” are used. The term “family justice service”, in the singular, refers to Te Korowai Ture ā-Whānau.

It has also been a challenge to find the right words to refer to the many and diverse people who play an important role in the lives of our children.

We’ve settled on using the phrase “parents and whānau” throughout this report for consistency. This is by no means intended to exclude those who identify themselves differently, including caregivers, guardians, grandparents, family and friends.

1. This report outlines the steps we took in response to that brief: our consultations and research. It summarises what we heard and what we learnt. It identifies the themes and issues that emerged most strongly and consistently.
2. It then sets out our principal recommendation, the proposal to introduce a joined-up family justice service, Te Korowai Ture ā-Whānau, bringing together the siloed and fragmented elements of the current in and out of court family justice services. The Korowai provides a variety of ways for people to access the right family justice service at the right time for them.
3. In addition to this introduction, this report is divided into four parts. Part One discusses issues that flow through the entire family justice services. Part Two covers encouraging early agreement, while Part Three focusses on strengthening Family Court processes. Part Four contains recommendations on monitoring and development. These four parts outline what is

required to enable Te Korowai Ture ā-Whānau to protect, support and empower children and their whānau, whatever their heritage and circumstances. They canvas what is required for children and their whānau to be listened to, heard, and to be treated with dignity and respect.

4. During the course of our work, it quickly became evident that the 2014 reforms are not the sole source of issues that undermine access to justice for many children and their parents and whānau. We consider systemic issues, some societal or justice sector-wide, particularly impact how people experience family justice services.

What we did

5. We consulted with children (including tamariki Māori), Māori, Pacific peoples, disabled people, academics, the judiciary, the legal profession, other relevant professional groups, community organisations, interest groups, court users and the public to inform our conclusions and recommendations.
6. In addition, we were asked to look to international, and domestic research (including kaupapa Māori research) and best practice.
7. To get the best input from the children most affected by the 2014 reforms, we contracted UMR, a specialist external research provider to collect information via in-depth one-on-one discussions with young people about their experiences. UMR also interviewed parents and caregivers. The University of Otago's Children's Issues Centre also provided valuable initial findings from its research into the 2014 reforms.⁴
8. We conducted a two-phase consultation process. This allowed us to hear from a wide range of individuals and groups, who, in the first round shared their experiences and opinions with us and in the second round, provided their feedback on the changes we were considering.
9. In total, we travelled to 15 towns and cities between Kaitaia and Invercargill. It was a privilege to hear the views and experiences of this cross-section of people, and we thank all who took the time to share their thoughts on what are often emotionally raw issues.
10. The need for comprehensive data, on which to assess previous and current trends and to accurately forecast and assist with recommendations, is crucial. Unfortunately, we found that the data collected by Ministry of Justice systems for case management purposes could not always give us the information we sought.
11. Nor was there clear, accessible, system-wide information to allow us to analyse people's paths through family justice services. An example of the difficulties faced arose in relation to assessing whether Māori children experience differential outcomes in family justice services, and, if so, the extent and nature of the differences (as required by the terms of reference). Unfortunately, poor and inconsistent collection of ethnicity data meant it was not a useful source of information.

⁴ We are aware of the Law Commission's Review of relationship property law and note that while both reviews deal with different aspects of the law, there may be significant overlaps in both reports in terms of the need to place a greater emphasis on the needs and interests of children on family breakdown by encouraging early resolution of disputes in the least adversarial way possible and better recognition of a te ao Māori perspective.



3 Panel members



645 written submissions
RECEIVED



more than
130 MEETINGS
with submitters



15
Locations



What we found

12. Strong and consistent themes and issues emerged from consultations, submissions and research.



Delay is pervasive at every stage. Delays can be experienced accessing the now-mandatory PTS programme and FDR service. Delays may occur for a variety of reasons, including infrequent and uneven geographical provision, lack of linguistic and cultural diversity and no comprehensive accommodation of disability. Access to early legal advice is limited and is generally unavailable for people who cannot afford a lawyer. Delays in the Family Court include:

- the demands placed on limited judicial resources by, among other things, without notice applications and the subsequent impact on on notice applications
- judges having a heavy administrative workload
- the limited availability of court psychologists and, in some areas, lawyer for child.

Cumulatively, these delays prevent decisions being made in a timeframe consistent with that required by law.



There is **limited participation by children** in issues that affect them and concern as to whether their voices are heard and their views taken into account. Child-inclusive practises in FDR are variable, and there are different views on the extent to which children should be involved. In court, lawyer for child represents both the child's views and best interests. There is considerable variation in how lawyer for child approach this task. We heard that a number of children would like to participate more than they are currently able to. They would also like some means of being sure that their voices have been heard and taken into account, whether or not the decision is consistent with what they wanted.



Family justice services **fail to recognise te ao Māori or incorporate tikanga Māori** in care of children procedures and processes. Unlike some other legislation, the Care of Children Act 2004 does not provide for explicit recognition of Te Tiriti o Waitangi. There is an absence of a Māori family justice workforce. Concepts such as whānau are poorly recognised. The introduction of FDR services in the 2014 reforms missed the opportunity to introduce Māori dispute resolution models.



New Zealand whānau are highly diverse, and family justice services are insufficiently responsive. More than 25% of New Zealanders (and 50% of all Aucklanders) are born overseas. 15% of the population identifies as Māori, 12% as Asian, 7% as Pacific peoples and 1% as Middle Eastern/Latin American/African. The youthful age profile of these groups, means that these numbers underestimate the proportion of children who identify with non-European ethnicities.⁵ We heard that greater flexibility and skills are needed to move beyond monocultural services, processes and procedures to meet the diverse needs of whānau in a manner that respects children's cultural identity.

5 Statistics New Zealand "Major ethnic groups in New Zealand" (2015) www.stats.govt.nz/infographics/major-ethnic-groups-in-new-zealand



Family norms are changing. Between 30% and 50% of all babies, and over 50% of Māori babies, are now born to parents who are not married or are in a civil union. Roughly 28% of all babies are born to parents who live together in de facto relationships, 5.4% to mothers who were not in a relationship at the time of the birth and 4% to parents who were in a relationship but not living together.

There is considerable fluidity in people's family and household arrangements, and we need to rethink our assumptions that being raised in a solely nuclear heterosexual family is the norm for children in New Zealand. Data indicates that stepfamilies are becoming more common, with 18% of non-Māori children and 29% of Māori children living in a stepfamily before they reach the age of 17 years. Nearly 30% of secondary school students are reported to live in two or more homes. More people are living in extended family households, and a large number of grandparents and other whānau are acting in a parental role for children (that is, the children's parents are not living in the same household).⁶



Poverty is a significant issue for single parents. Where a separation occurs, both adults are likely to experience a short-term decline in their income and wealth, although the effects are, on average, worse for women than for men. Over the medium term, men's average equivalised earnings recover and grow to exceed their pre-separation earnings: women's remain low.⁷ Separation of assets, or difficulties meeting mortgage payments with only one income, can place the family home at risk. In the current housing climate, this often results in moving into insecure rental accommodation. The pressures are increased by having to pay for lawyers.



Family justice services **lack systemic accommodation for people with disabilities.** 24% of people in New Zealand identify as having a disability. We heard that people with disabilities find it difficult to access information and help, cannot easily access appropriate support to participate fully in family justice processes, are disadvantaged by the way in which funding for legal services is provided, and at times experience discrimination from justice system professionals, including judges, and lawyers for the parties and for children. By failing to provide adequate access to justice, many argued that New Zealand is breaching its obligations under the Convention on the Rights of Persons with Disabilities, and family justice services are failing in its implementation of the New Zealand Disability Strategy.



Family justice services **do not fully understand or respond well to family violence** and its impact on children. Some victim-survivors of family violence told us their experiences of family violence were minimised and their actions to protect their children were not seen as legitimate. The family justice workforce lacks an understanding of the effects of trauma in the aftermath of violence, and its impact on how people engage in Care of Children Act disputes.

⁶ Law Commission, Relationships and Families in Contemporary New Zealand He Hononga Tangata, He Hononga Whānau i Aotearoa o Nāianeī, (NZLC SP 2017) 30-32

⁷ Ibid.



Much of the information to assist children, parents and whānau to understand family justice services and options to resolve issues around the care of children is inaccessible and of poor quality. We heard that people want information that will allow them to navigate the services confidently and make informed decisions. Information needs to be provided in formats that are accessible to people with disabilities and non-English speakers. The information should reflect diverse cultures, family types and living circumstances.



While some people felt that they had been treated with respect and dignity, there were many examples of **people who felt disrespected**. We were told about lawyers who were empathetic and respectful, but we also heard that some lawyers for child interacted with children and their parents and whānau in a manner that people felt was disrespectful. People expressed similar views about the Family Court. People were often not prepared for the objectivity of the legal approach to resolving issues, which could be interpreted as cold, or for the experience of being cross-examined. Self-represented litigants could feel looked down upon, although we also heard of judges and lawyers going out of their way to put those who were self-represented at ease.



Family justice services are **siload and fragmented**. The current model of in court and out of court services fails to provide for children and their whānau in a joined-up way. Services operate independently, and there is little opportunity for a collective approach where professionals can learn from each other.



The current services are **inflexible and linear**. Requiring whānau to follow a formulaic process (e.g., being required to attend PTS and FDR before filing an application in the Family Court) denies a flexible approach to resolving care issues and can lead to unnecessary delays and resentment. There is limited ability to provide a more nuanced solution to the particular needs of a specific child and whānau.



There has been a **system-wide lack of resourcing and investment**. FDR was not well publicised when it was introduced in 2014. The Ministry of Justice's budget for marketing FDR was underspent. Family Court filing still relies on a paper-based system and is outdated. There is no online portal to obtain easy access to PTS or FDR, and the specialised skills of Family Court staff are being eroded. There has been no long-term increase in judicial resourcing despite the increased workload following the 2014 reforms (we discuss judicial resourcing further at paragraph 263).



While a person who can afford to pay is able to instruct a lawyer and receive legal advice at any stage of their dispute, there is **limited access to state-funded legal advice for those who are unable to afford a lawyer**, particularly in the early stages of a separation when timely and robust legal advice can assist with early resolution. Even when the Family Court is involved, there are only certain instances where a person can be represented by a lawyer (e.g., without notice applications or where a person has been given permission by the Court). This means that people are often having to represent themselves in court and navigate through a complex and fragmented system.



The exacerbation of the in court and out of court divide has resulted in a **lack of trust between family justice professionals**. This silo mentality creates unnecessary barriers to providing the best outcome for children and whānau.



There is an increase in cases involving family violence, mental ill health, drug and/or alcohol addictions or a combination of any of these factors. Similarly, cases involving a high level of conflict between parents who are unable to agree on even the most simple parenting issue all take extra time and require a tailored and potentially therapeutic approach. Failure to do so results in the ongoing cycling through the courts and an inability to properly resolve disputes. International research suggests that 10% of all Family Court cases are complex and can take up 90% of the court's time.⁸ Yet, in New Zealand only 1% of Family Court cases are categorised as complex. This suggests that the New Zealand Family Court is significantly underutilising the benefits that are available to the Court to deal with such cases.



The **removal of a separate Family Court counter** in some courts has led to a loss of privacy and left people feeling unsafe. Concern was expressed that a staff member with specific family expertise was not always available at the court counter. Even where staff have the expertise, they might not have the time to provide comprehensive help due to the pressured environment they work in.

⁸ Ron Neff and Kat Cooper, 'Parental Conflict Resolution: Six, Twelve and Fifteen-month follow-ups of a High Conflict Program', (2004) Family Court Review, Vol 42, No 1, 99-114 at 99.

Te Korowai Ture ā-Whānau: the family justice service

The tapestry of understanding: Our guiding whakataukī

<p>E kore e taea e te whenu kotahi ki te raranga i te whāriki kia mōhio tātou ki a tātou.</p>	<p>The tapestry of understanding cannot be woven by one strand alone.</p>
<p>Mā te mahi tahi o ngā whenu, mā te mahi tahi o ngā kairaranga, ka oti tēnei whāriki.</p>	<p>It takes the working together of strands, the working together of weavers, to complete such a tapestry.</p>
<p>I te otinga, me titiro ki ngā pai ka puta mai.</p>	<p>When it has been completed, let us look at the good that comes from it.</p>
<p>Ā tana wā, me titiro i ngā raranga i makere, nā te mea he kōrero anō kei reira.</p>	<p>In time, take a look at those dropped stitches, for there is a message there also.</p>

Composed by Kukupa Tirikatene (Ngāi Tahu, Kāti Māmoe, Waitaha and Ngāti Pahauwera o Te Rōpu Tūhonohono o Kahungunu)

Principal recommendation

1. **Direct** the Ministry of Justice to develop a joined-up family justice service, Te Korowai Ture ā-Whānau, bringing together the siloed and fragmented elements of the current in and out of court family justice services. The Korowai should provide a variety of ways for people to access the right family justice service at the right time for them.
13. The recommendations in this report knot together to form Te Korowai Ture ā-Whānau, a family justice service that protects, supports and empowers parents, whānau and their children as they work through and decide on parenting and guardianship issues. A description of a korowai and the work that goes in to creating one can be found on the following page.
14. Korowai are taonga, treasured cloaks. The word 'korowai' symbolises the mana of the family justice service and affirms that all who draw on it for protection, support and empowerment will be treated with dignity and respect.
15. Te Korowai Ture ā-Whānau will be child and whānau centred, timely, safe, responsive and accessible. It will provide for diversity; understand the impact of family violence; and be cohesive, collaborative and cost effective. The service will enable people to access the right service, at the right time, in the right way, rather than having to follow a rigid, linear process.
16. Te Korowai Ture ā-Whānau will be made up of the Ministry of Justice, Family Court, PTS and FDR providers, lawyers, counsellors, specialist report writers, iwi and kaupapa Māori organisations, social services and community agencies. Each of these components of the service would remain independent. However, they would come together on a regular basis nationally and locally to share knowledge, experience and professional development and interact with each other to better serve children, parents and whānau.

Te Korowai Ture ā-Whānau

Whatu aho rua (two-pair twining) is a weaving technique used to produce intricately-woven, treasured korowai (cloak). A korowai is begun by stretching a cord between two turuturu (weaving pegs). From this cord, the whenu (warp threads) hang downwards, and the finer aho (weft threads) run horizontally between the whenu from left to right. As the work progresses, it is hung over a second pair of pegs to keep it off the ground. A pona (knot) secures the threads of the finished garment.

The protective elements of a korowai can be reflected in the mahi (work) of the panel as weaving together domestic legislation and reforms with its community. The continuous aho thread represents the Family Court legislation, which interlaces with the whenu – the people and support services involved with family justice services.

Seeking to improve on the 2014 reforms, this report symbolises the second pair of pegs, or the rewrite, that elevates the mahi. The recommendations can be seen as the pona at the bottom that tie everything securely together.



Part One:

System-wide Issues

17. The terms of reference required us to consider the effectiveness of in court and out of court processes and, whether, amongst other things, they are “consistent with the welfare and best interests of children”.
18. The terms of reference also required us to consider the extent to which the family justice system is child-centred, accessible, coherent, flexible and evidence based. They directed us to consider research about what works best for children within the context of family violence; including children with disabilities and/or disabled parents.
19. We were also instructed to “consult with children and young people (including Māori children and young people), Māori, Pacific peoples, disabled people, academics, the judiciary, the legal profession, other relevant professional groups, court users and the public ...”.
20. During consultations, submissions and in other research, we identified issues that impact on every stage of family justice services. This section covers the most significant of those system-wide issues. It reports on children’s participation, recognition of te ao Māori, responding to diversity, accommodating disability, family violence and children’s safety, and endemic delays. Each of these is a human rights issue; and each is a barrier to accessing justice.

The 2014 reforms

21. Although they were all issues at the time, the 2014 reforms did not deal directly with the majority of these systemic issues. They did not mention children’s participation, Māori or a te ao Māori perspective, New Zealand’s increasingly diverse population or people with disabilities.
22. There were some changes to the law that affected how children’s safety was assessed and the reforms had a stated intention of reducing delays.

Key findings and conclusions

23. We learnt that:

- Family justice services and the people who engage with them are a microcosm of New Zealand. The service involves children and young people, parents and whānau at times of distress, crisis and conflict.
- The barriers to accessing justice for many of the people who engage with the service reflect the barriers they encounter throughout the justice sector and in New Zealand society more generally.
- The case for recognising te ao Māori in law, policies and practices has been made repeatedly in reports on the justice sector, as well as other sectors, dating back to the 1980s and earlier.
- Responding to diversity and accommodating people with disability are clear requirements in the international human rights standards to which New Zealand has committed.
- Children's participation in decisions that affect them is a fundamental right in the United Nations Convention on the Rights of the Child (CRC) but is still not widely recognised or valued.
- Knowledge of family violence in all its forms is still not widespread, and there appears to be limited understanding of its impact on children.
- International and domestic human rights standards are still not consistently incorporated into the development of family law and policy.
- Family justice services should recognise and implement human rights standards. Those standards are essential if children and their whānau are to be treated with dignity and respect, listened to and supported to make the best decisions for them.

1.1 Children's participation

24. The welfare and best interests of the child are the first and paramount consideration in decision making under the Care of Children Act 2004.⁹ There are guiding principles.¹⁰ The law puts a child's safety first¹¹ and requires that children be given reasonable opportunities to express their views and that their views be taken into account.¹²

Children's participation in decision making that affects them

25. The 2014 reforms were intended to be more responsive to the needs and interests of children caught up in disputes over their care or contact. However, there were no specific proposals about children's participation in decision making.
26. FDR was introduced to provide parents and/or whānau with help in making or resolving disputes about care arrangements for children in a less stressful, problem-solving environment. It was envisaged that FDR would enable child-inclusive mediation, but this was not a legislative requirement, and no formal models were developed.
27. Children's participation in decisions about them is a developing area. It is reflected in social sciences (a shift in social perceptions of the child and childhood), ratification of the CRC and changes to the law, through both the legislature¹³ and the courts.¹⁴

What we learnt

28. Consultations, submissions and research have established that:
- child inclusive practice is developing in an ad hoc way, and there has been no resolution of critical issues relating to children's participation, such as how they might be involved, models for child-inclusive mediation and appropriate professional development and experience requirements for practitioners working with children
 - children's right to participate in decision making that affects them, as guaranteed by the CRC, is not expressly provided for in the Family Dispute Resolution Act 2013 or the Care of Children Act 2004
 - decisions about children's care arrangements are decisions made about children not decisions involving children
 - there is no requirement for parents to consult children on decisions about their care
 - there is a lack of child participation in the early stages of decisions about their care, reducing their influence and input
 - the benefits of participation to children and to decisions made about them are clear in the academic literature but not adequately reflected in practice
 - the provisions in the Care of Children Act 2004 and the Oranga Tamariki Act 1989 are inconsistent and should be the same.

9 Care of Children Act 2004, s 4.

10 Care of Children Act 2004, s5.

11 Care of Children Act 2004, s5(a) and s5A.

12 Care of Children Act 2004, s6.

13 Care of Children Act 2004, s6.

14 Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112, 186.

Recommendations

2. **Amend** the Care of Children Act 2004 and the Family Dispute Resolution Act 2013 to include children's participation as a guiding principle, modelled on the new section 5(1) (a) of the Oranga Tamariki Act 1989. The provisions should make express reference to the United Nations' Convention on the Rights of the Child.
3. **Amend** the Care of Children Act 2004 to require parents and guardians to consult children on important matters that affect those children, taking account of the children's age and maturity.
4. **Direct** the Ministry of Justice, in conjunction with relevant experts and key stakeholders, to undertake a stocktake of appropriate models of child participation, including at FDR as a priority. The stocktake should also include:
 - a. consideration of key principles for children's participation, including requiring professionals to promote children's participation
 - b. consideration of how children's views should be taken into account in cases where there is family violence
 - c. development of a best-practice toolkit co-designed with children and young people.

Case for change

Taking a human rights-based approach

29. The Children's Commissioner has suggested that the rights of children should be a "golden thread, which runs through all Care of Children Act provisions". Other submitters have also said that there should be a more visible reference to the CRC in the Care of Children Act 2004 to give better effect to children's rights.
30. Section 6(2) of the Care of Children Act 2004 adopts the language of the CRC and says that a child must be given "reasonable opportunities to express views on matters affecting" them, either directly or through a representative, and for those views to be "taken into account". This provision gives effect to article 12 of the CRC.
31. The CRC was a key factor influencing the Care of Children Act 2004. One of the Act's purposes is to recognise certain rights of children¹⁵ and, in doing so, to respect children's views.¹⁶ More can be done to provide clarity about what this means for children in Care of Children Act proceedings.
32. Recent amendments to the Oranga Tamariki Act 1989 have sought to clarify the position for children. Section 5 of the Act, which is due to come into force on 1 July 2019, makes children's participation one of the guiding principles in the Act and sets out the key principles about a child's participation in decision making.

¹⁵ Care of Children Act 2004, s 3(1)(b).

¹⁶ Care of Children Act 2004, s 3(2)(c).

Listening to and learning from children

33. Studies show that children want to participate in family life. They want to be consulted, have a say and have an opportunity to make known their feelings about family breakdown. They want to ensure that any decisions will work for them. Older children, and children who are frightened of a parent, want to have input into, or make their own decisions about their relationship with that parent.¹⁷
34. Children experience better outcomes by being involved in decision making. There is evidence to suggest that children cope better with the effects of separation if they have been consulted and have had a say in the process.¹⁸ There can be immediate and long-term consequences for children who are not listened to, including feelings of isolation and loneliness, anxiety and fear, sadness, confusion, anger and difficulty coping with stress.¹⁹ Research also indicates that children's perception of their own control over decision making is related to their mental health.²⁰ This supports what children told us. They spoke of a sense of powerlessness and of poor or no communication leaving them feeling worried and confused. They want to be better heard and have more opportunities to express their views.²¹
35. Studies also show that there are benefits to having children participate in decision making and reframing the issues from the child's perspective. This may deflect parties from adopting a confrontational stance and instead focus them on the decisions that need to be made.²²
36. The Care of Children Act 2004 does not place any obligation on parents or caregivers to consult children about important matters that affect those children. Parents and whānau should be the first people to talk to their children and encourage their children's participation in decision making. The Children (Scotland) Act 1995 obliges parents to consult with their children. A positive obligation to consult shifts the focus away from the dispute and back to the best interests of the child and acknowledges and respects children's views.²³
37. Family justice service professionals also play an important role in ensuring children's participation in decision making about their care.
38. It's important that children's views about contact with a parent where there has been family violence are heard and inform decisions about that contact.
39. There are a range of practices for child participation both in and out of court. It's important those practices meet the rights of children to participate. A stocktake should be undertaken of existing models and practices to identify key principles and best practices for children's participation, including cases involving family violence.

17 Carol Smart and Bren Neale "It's my life too" - Children's Perspectives on Post Divorce Parenting (2000) *Family Law* 163-169; Anne B. Smith and Megan Gollop *What Children Think Separating Parents Should Know* (2001) 30 *New Zealand Journal of Psychology*, 23-31; Anne B Smith, Nicola J Taylor and Pauline Tapp "Rethinking Children's Involvement in Decision-Making After Parental Separation" (2003) 10 *Childhood*, 201.

18 Judith Wallerstein & Joan Berlin Kelly "Surviving the Breakup - How Children and Parents cope with Divorce (Basic Books, Inc., New York, 1980); Joan Kelly "Psychological and Legal Interventions for Parents and Children in Custody and access disputes - Current research and Practice" (2002-2003) 10 *Virginia J Soc Policy*, 149; Lisa Lauman-Billings and Robert E. Emery "Distress among young adults from divorced families" (2000) 14 (4) *Journal of Family Psychology*, 672-687; Smith & Gollop above n 13.

19 Wallerstein and Kelly, above n 14.

20 Joan Kelly "Psychological and Legal Interventions for Parents and Children in Custody and access disputes - Current research and Practice" (2002-2003) 10 *Virginia J Soc Policy*, 149.

21 A recent study by the Australian Institute of Family Studies supports these views: Rachel Carson, Edward Dunstan, Jessie Dunstan and Dinika Roopani *Children and young people in separated families: Family law system experiences and needs* (2018) Australian Institute of Family Studies, Research Report.

22 Robert Ludbrook and Lex de Jong *Care of Children in New Zealand: Analysis and Expert Commentary* (Thomson Brookers, Wellington 2005) p 236.

23 Jane Fortin *Children's Rights and the Developing Law* (Lexis Nexis UK 2003), 87.

1.2 Recognition of te ao Māori

40. For over 30 years, there have been calls for changes in how the New Zealand justice service, including the Family Court, recognises the Māori world view.
41. The 2014 reforms made no mention of Māori and did not provide for a te ao Māori perspective in any of the new law, policy or practices.

What we learnt

42. Consultations, submissions and research have established that:
 - family justice services are monocultural
 - frustration and scepticism is widespread and deep seated amongst Māori whānau, hapū and iwi, and kaupapa Māori organisations
 - the way many family justice services operate does not align with tikanga Māori or Māori views of whānau, particularly the role grandparents and extended whānau play in caring for children and mokopuna
 - there is knowledge and expertise in the community about what works for tamariki and whānau Māori, but this knowledge is not recognised or valued in family justice services
 - the Family Court would benefit from enabling a Mana voice to ensure access to mana whenua and wider Māori community knowledge
 - there is no official requirement for the Family Court to build and maintain relationships with mana whenua
 - there is little or no engagement with kaupapa Māori services by Māori for Māori in family justice services
 - some community organisations and professionals provide tikanga-based services (e.g., tikanga-based dispute resolution), but these are an exception
 - Māori whānau, support workers and lawyers report that the Family Court can be a foreign, isolating and intimidating experience
 - the Māori Land Court is responsive to whānau Māori, encourages the use of te reo Māori and incorporates tikanga Māori in court proceedings
 - the Institute of Judicial Studies has te reo and tikanga Māori programmes, however, these are not compulsory for Family Court judges.

Recommendations

5. **Amend** the Care of Children Act 2004 to include a commitment to te Tiriti o Waitangi (the Treaty of Waitangi).
6. Until sufficient Māori judges are appointed to the Family Court, **invite** the Chief District Court Judge to:
 - a. appoint some Māori Land Court judges to sit in the Family Court
 - b. require all new Family Court judges to spend one week observing Māori Land Court proceedings
 - c. require all Family Court judges to attend the tikanga Māori programme delivered by the Institute of Judicial Studies.
7. **Direct** the Ministry of Justice, in partnership with iwi and other Māori, the Court and relevant professionals, to develop, resource and implement a strategic framework to improve family justice services for Māori. The strategic framework and subsequent action plan should include:
 - a. appointing specialist advisors to assist the Family Court on tikanga Māori
 - b. supporting kaupapa Māori services and whānau-centred approaches
 - c. providing a Mana voice to ensure the Family Court has access to mana-whenua and wider Māori community knowledge
 - d. developing a tikanga-based pilot for the Family Court
 - e. phasing in the presumption that Māori lawyer for child are appointed for tamariki Māori
 - f. considering how the Family Court registries can better identify and support mana whenua relationships with the Court
 - g. providing adequate funding for culturally appropriate FDR processes.

Case for change

Te Tiriti o Waitangi

43. In 1986, a 12-member advisory committee published the report *Te Whaingā I Te Tika – In Search of Justice*. The committee had been appointed by the Minister of Justice to inquire into and report on access to justice issues, specifically the community need for legal services. The report proposed a framework to “guide and actively advance the transition from a mono-cultural, disempowering system of law to a bi-cultural, empowering process of justice and of making equal access to justice a reality”.²⁴
44. The advisory committee recommended improving access to justice for Māori and providing legal services that reflect a commitment to the guarantees embodied in Te Tiriti o Waitangi. They recommended immediate attention be given to Family Court “structures, procedures and

²⁴ Advisory Committee on Legal Services *Te Whaingā I Te Tika – In Search of Justice* (Department of Justice Wellington New Zealand 1986) at 1.

values”.²⁵ This was in response to concerns raised about the confrontational and intimidating nature of the Family Court, particularly for women and children experiencing violence.

45. They also recommended that a Māori legal service be established. Part of the role of that service was to coordinate a Māori mediation, counselling and referral service “to ensure Māori mediators and methods are used where Māori families are involved”.²⁶
46. In 1988, the Department of Social Welfare published a major report, *Puao-te-Ata-Tu: The report of the ministerial advisory committee on a Māori perspective for the Department of Social Welfare*.²⁷ Puao-te-Ata-Tu called for “direct [Māori] involvement in Social Welfare policy, planning and service delivery at the tribal and community level”²⁸ and the implementation of unique Māori practices and values in social welfare practice for the betterment of Māori. The report’s findings led to the Children, Young Persons and Their Families Act 1989 (now the Oranga Tamariki Act 1989) and the introduction of Family Group Conferences.
47. Thirty-three years later, family justice services are still monocultural and alienating for many Māori. This must change. It is essential that the Care of Children Act 2004 recognise Te Tiriti o Waitangi and the entire family justice service commit to meaningful change.

Changes within the Family Court

48. There are steps that can be taken now to improve the experience of the family justice service for tamariki Māori and whānau.
49. Family Court judges could learn from the Māori Land Court how to respond, in culturally welcoming and inclusive ways. Many Māori have contact with both the Māori Land Court and the Family Court but have very different experiences in each. The practices of the Māori Land Court could be brought into the Family Court by appointing some Māori Land Court Judges to sit in the Family Court. The judges appointed would be those with the training, experience and personality required to be a Family Court Judge.²⁹
50. Two further capacity building steps could be introduced:
 - All Family Court Judges to spend one week observing Māori Land Court proceedings
 - All Family Court Judges be required to attend the tikanga Māori programme delivered by the Institute of Judicial Studies.

²⁵ Ibid, p 47.

²⁶ Ibid, p 47.

²⁷ Māori Perspective Advisory Committee Puao-te-Ata-Tu: The report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare (Department of Social Welfare Wellington 1988).

²⁸ Ibid, p 18.

²⁹ Family Court Act 1980 s 5(2).

The ability for whānau, hapū and iwi to participate in the Family Court

51. In te ao Māori, the role of extended family and grandparents is a significant factor in the wellbeing and sustainability of whānau, hapū and iwi. Whānau, particularly grandparents, play a significant role in caring for their mokopuna. We heard from some grandparents and wider whānau who were frustrated at their lack of recognition in the Family Court.
52. In view of the significant role that grandparents and wider whānau have in Māori society, and in many other communities, it is timely to explore how their role and connection to mokopuna could be better recognised, respected and protected in the Family Court.
53. In a family justice service which is based on the nuclear family and prioritises individual rights of parents, guardians and children, such a development would affirm the significant role of whānau, hapū and iwi in caring for Māori children and align better with tikanga Māori.

Delivery and funding of kaupapa Māori Family Dispute Resolution services

54. Māori dispute resolution processes are subject to tikanga Māori. The emphasis on relationships in Māori culture contrasts with family justice services, which prioritise the individual rights of parties.
55. Wider whānau and hapū involvement in decision making often requires more time than Western models of dispute resolution. FDR providers expressed concern about their ability to accommodate extended whānau participation at mediation within the current funding model. A hui with multiple parties and wider whānau can take up to 20–30 mediation hours.
56. More funding is needed to support FDR processes that align with tikanga Māori. A funding model for culturally appropriate FDR should include: additional FDR hours for wider participation and culturally appropriate processes; discretionary funding so providers can provide koha (e.g., to kaumātua and kuia who participate or for hosting at a marae); funding to allow for co-mediation (e.g., where a kaumātua or kuia will assist the mediator).
57. See also recommendations 32 – 37, which relate to FDR.

Strategic development

58. Family justice services must evolve into Te Korowai Ture ā-Whānau – a korowai (cloak) protecting, supporting and empowering children and whānau as they work through parenting and guardianship issues. This is particularly important for tamariki Māori and whānau.
59. A strategic framework could form the basis of partnership and collaboration between the Court, the Ministry of Justice, Te Puni Kōkiri, iwi and other Māori organisations to improve family justice services and outcomes. Whakapapa, whānau and whānaungatanga are essential concepts to understanding the Māori world view. These concepts should form the basis of a strategic framework.
60. A strategic framework and subsequent action plan should include:
 - the appointment of special advisors to support the Family Court in making culturally appropriate decisions
 - support for kaupapa Māori services
 - the ability for whānau to hold their own whānau hui independent of an FDR supplier and have the outcomes of such hui recognised by the Court

- registries that provide better support for the relationship between the Court and local mana whenua
- ways for FDR to better support a tikanga-Māori approach
- inclusion of a Mana voice, which would include consideration of who is able to attend and address the Court and the type of information provided to the Court
- a pilot of a culturally appropriate, tikanga-based Family Court model that builds on the lessons from Ngā Kōti Rangatahi (the Rangatahi Courts) and Te Whare Whakapiki Wairua (the Alcohol and Other Drug Treatment Court). This could include using te reo more in court, holding hearings on marae, making court processes more inclusive of wider whānau and enabling a “Mana voice” in the form of someone with knowledge of tikanga Māori or from the local community who has the standing to speak to the Court.

1.3 Responding to diversity

61. New Zealand whānau are highly diverse. More than 25% of New Zealanders (and 50% of all Aucklanders) are born overseas. 15% of the population identifies as Māori, 12% as Asian, 7% as Pacific peoples and 1% as Middle Eastern/Latin American/African. The youthful age profile of these groups means that these numbers underestimate the proportion of children who identify with non-European ethnicities.³⁰
62. The 2014 reforms did not make specific changes to address how family justice services respond to New Zealand’s increasing cultural diversity. However, the changes are likely to have had a disproportionate impact on children and whānau from diverse backgrounds.

What we learnt

63. Consultations, submissions and research have established that:
 - most parts of family justice services do not adequately respond to whānau with diverse cultural backgrounds
 - people’s cultural values and experiences were not acknowledged or understood
 - Pacific and other cultures hold people in authority in high regard and feel uncomfortable addressing, questioning or challenging them
 - language and cultural barriers place parents and whānau at a disadvantage, including being able to participate effectively in out of court processes, such as PTS and FDR
 - many cultures value having a support person to give them more confidence to talk and state their requirements
 - for Pacific peoples, the extended family is very important, and the layers of family need to be recognised and included in any discussions and decision making. The current family justice services do not explicitly accommodate extended family engagement
 - parents for whom English is not their first language, who have dyslexia or who find reading and interpreting information difficult, need help to read, process and understand court documents
 - professionals who work in family justice services do not adequately reflect New Zealand’s cultural diversity

³⁰ Statistics New Zealand “Major ethnic groups in New Zealand” (2015) www.stats.govt.nz/infographics/major-ethnic-groups-in-new-zealand.

- many grandparents and whānau caregivers who stepped in to care for their mokopuna had frustrating experiences within family justice services and did not feel well supported financially or socially
- members of the LGBTQI+ community felt that the family justice professionals they dealt with didn't understand their family or their experiences
- the Family Court receives little information about a child's culture.

Recommendations

8. **Amend** the Care of Children Act 2004 to:
 - a. lower the threshold for obtaining a cultural report
 - b. allow lawyer for child to request the court hear from a person called under section 136, and
 - c. allow a judge, of his or her own motion, to call a person under section 136.
9. **Direct** the Ministry of Justice to develop:
 - a. in consultation with the Ministry for Pacific Peoples, Office of Ethnic Communities and relevant community organisations and professionals, a diversity strategy for Te Korowai Ture ā-Whānau with the objective of improving the responsiveness of family justice services to the diverse needs of children and whānau
 - b. information and guidance about section 136 of the Care of Children Act 2004 for parties, lawyers and the community
 - c. an improved operational framework to properly resource cultural reports.
10. **Direct** the Ministry of Justice to undertake further work on how to facilitate the participation and recognition of grandparents and other wider whānau in Care of Children Act proceedings.
11. **Request** that Oranga Tamariki align the level of legal funding available to grandparents and whānau under the Care of Children Act 2004 with the support available under the Oranga Tamariki Act 1989, where Oranga Tamariki support the children being placed in the care of those grandparents and whānau.

Case for change

64. Cultural, religious and social diversity is set to increase in New Zealand, and the diversity of family justice service users will increase in response. A range of changes are necessary to ensure that the family justice service is fit for purpose and responsive to the changing and diverse needs of the people who use it.
65. The entire family justice service needs to commit to recognising and providing for diversity in a meaningful way. We recommend the development of a diversity strategy and action plan, as well as provision for cultural reports and support for grandparents and other whānau.

Cultural reports

66. Parents and whānau can include cultural information in their evidence to the Court. In addition, the Care of Children Act 2004 provides for cultural information to be made available to the Court through cultural reports, under section 133, and a speaker on the child's cultural background, under section 136.
67. However, both provisions are currently underutilised. Very few cultural reports are obtained, and there are few report writers to provide them. Judges are reluctant to request a cultural report if it is not clear that there will be anyone available to complete such a report. Most submitters, including family lawyers, were unaware of section 136 or did not recall it ever being used.
68. The Court can request a cultural report if it is satisfied that the information is "essential for the proper disposition of the application".³¹
69. More use of cultural reports should be encouraged by lowering the threshold for when a cultural report might be requested and amending the definition of a cultural report to include a standard brief. In addition, the Ministry of Justice, in consultation with the judiciary and cultural report writers, should develop a standard template for cultural reports.
70. These changes should be supported by an improved operational framework to properly resource cultural reports, including:
 - the process to recruit, train and brief cultural report writers
 - appropriate professional development, peer review or supervision requirements
 - remuneration of cultural report writers with consideration given to the complexity of the case and a desire, if any, for consistency across report writers
 - the opportunity to form partnerships with iwi/Māori and other community organisations to provide cultural report writing services.
71. Section 136 provides a way for whānau, hapū, iwi, other family groups and community members to provide information to the Court about the child's cultural background. It appears that the main barrier to using section 136 is knowledge about the existence of the section and how it can be used, and also the fact that only parties can request it. Information and guidance should be developed for parties, lawyers and the community to explain how information about a child's cultural background can be helpful and provide guidance about the process for giving that information to the Court as a speaker under section 136.

³¹ Care of Children Act, s133(6) (a).

Diversity strategy and action plan

72. Family justice services are monocultural and do not accurately reflect the diverse backgrounds and experiences of the children and whānau who use them.
73. The Ministry of Justice, in consultation with key stakeholders, should develop a diversity strategy and action plan with a view to improving how the service responds to diversity. Diversity should be considered in its broadest sense, including cultural, linguistic, religious and socio-economic diversity and diverse family types, including grandparent and whānau caregivers and LGBTQI+ parents.
74. As part of this strategy, the Ministry of Justice should ensure that all information and resources are accessible for people from a diverse range of cultural and linguistic backgrounds and reflect the diversity of children and whānau.
75. The Ministry of Justice should also improve how and what data is collected relating to the ethnicity, language and cultural background of children, parents and guardians who use the family justice service. This data should be used to form a better understanding of who is using the service and whether the service is meeting their needs.

Grandparents and other whānau

76. Grandparents and other whānau play an important role in caring for children when their parents are unable to do so. It's vital that the family justice service values the contribution grandparents and whānau make.
77. As with whānau Māori, grandparents and other extended family members have a significant role in a child's life. Currently, unless they are seeking care of the child (with leave of the Court), there is no right for them to participate in, or contribute to, Care of Children Act proceedings. It is timely to explore how their role and connection to their grandchildren could be better recognised, respected and protected in the Family Court.
78. When grandparents and other whānau are seeking the care of their grandchildren, the cost of Care of Children Act proceedings can cause significant hardship and stress. Even when they are appointed as a guardian, the matter may not be over. It is difficult to remove a parent's guardianship status, which means the grandparents or other whānau will have an ongoing requirement to consult with the parents on guardianship matters.
79. Oranga Tamariki should align the level of legal funding available to grandparents who are supported by Oranga Tamariki to take on the long term care of their grandchildren by way of application under the Care of Children Act 2004, to that which is available for grandparents under the Oranga Tamariki Act 1989.
80. Oranga Tamariki grandparents and caregivers receive a range of social support that is not available to grandparents and other caregivers in Care of Children Act proceedings. This includes payment towards legal fees, access to their own social worker and a 24/7 caregiver guidance and advice line. Often the only difference between Oranga Tamariki caregivers and grandparents or other whānau who are not official Oranga Tamariki caregivers is the point at which they step in. The Ministry of Justice should work with Oranga Tamariki to determine the feasibility of making the 24/7 caregiver guidance and advice line available to all whānau caregivers to help address this inequity.

1.4 Accommodating disability

Terminology

We have chosen to use the term “disabled people” throughout this report, to align with the language used in the New Zealand Disability Strategy.

However, we acknowledge that the term “people with disability” is preferred by some as it recognises the person before their disability.

81. The 2014 changes did not make specific changes to services and accessibility for disabled people.

What we learnt

82. Consultations, submissions and research have established that:
- there are significant barriers for disabled parents and children when engaging with family justice services
 - people felt that negative views of disabled adults could affect whether they were viewed as fit parents
 - there is a lack of disability awareness among professionals
 - accommodation and support is difficult or impossible to arrange
 - information, including court documents, is seldom provided in accessible formats
 - not enough time was available for people who need processes to be explained and advice given
 - it can be difficult to find specialised and affordable legal advice
 - many legal aid lawyers are unable to take on legally-aided disabled people as clients due to the additional time that may be needed to work with those clients and the lack of funding
 - lawyer for child may not have the necessary skills or experience to advocate for disabled children and may not arrange appropriate supports or accommodations to support the children’s full participation.
83. The qualitative study conducted on our behalf by UMR found that “the cost burden is significant for parents with a disability, who may be required to pay for assistants, interpreters, mobility taxis, professionals to oversee day to day visits and for people to read and explain documents to them, on top of standard court costs”.³²

“the cost burden is significant for parents with a disability...”

³² UMR A qualitative study on behalf of the Independent Panel examining the 2014 family justice system reforms (April 2019) at 10.

Recommendations

12. **Direct** the Ministry of Justice, in partnership with the disability sector, the judiciary and other key stakeholders, to develop a disability strategy to improve access to justice for disabled people who are using Te Korowai Ture ā-Whānau.
13. **Direct** the Ministry of Justice to:
 - a. ensure all information resources are accessible for disabled people
 - b. include questions relating to disability and required disability supports on the Care of Children Act forms to identify accommodation and support needs for disabled people
 - c. fund disability awareness training for all client-facing court staff (an invitation to attend this or similar training should be extended to the Family Court Judges)
 - d. undertake further work to address the systemic barriers to affordable and specialised legal advice for disabled people.
14. **Direct** the Ministry of Justice to collaborate with the New Zealand Law Society and the disability sector to develop best practice guidance for lawyers working with disabled clients and for lawyer for child representing disabled children. The best practice guidance should be based on research and evidence about what works for disabled clients.
15. **Invite** the New Zealand Law Society to include disability awareness in the training programme and ongoing professional development requirements for lawyer for child.
16. **Direct** the Ministry of Justice to work with the Family Court and the New Zealand Law Society to develop a system of specialist endorsement for lawyer for child who are trained to work with children with disabilities to support better matching of disabled children to a lawyer with suitable experience and skills.

Case for change

A strategic approach to improving access to justice

84. Family justice services are generally inaccessible to people with disabilities. A strategic, human rights-based approach is crucial to address access to justice issues for people with disabilities and support their full participation in Te Korowai Ture ā-Whānau.
85. Some aspects may breach the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993 provisions, which affirm the right to freedom from discrimination.
86. Barriers preventing access for disabled people must be removed and accessibility comprehensively addressed. Given the extent of the issues, a family justice disability strategy should be developed by the Ministry of Justice in consultation with the disability sector, the judiciary and other relevant experts and professionals. The family justice disability strategy should be informed by research and best practice on what works for disabled people and disabled children and there should be a mechanism for disability advocacy groups to monitor progress under the strategy.

87. The strategy should consider:
- what is required to ensure Te Korowai Ture ā-Whānau meets the requirements of the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993
 - the competency and training requirements for family justice professionals
 - how to raise disability awareness across the family justice workforce, particularly in client-facing roles
 - improved access to supports and accommodations, including the role of a Disability Coordinator to coordinate supports and accommodations for disabled people who are using the Court and family justice services
 - the use of technology to help people with disabilities overcome barriers in accessing justice
 - how data collection can be improved to ensure reliable information on which to base law, policy and practices
 - the barriers faced by disabled women, children and Māori
 - overall consistency of the strategy and proposed actions with the United Nation’s Convention on the Rights of Persons with Disabilities and the New Zealand Disability Strategy.

Improving disabled children’s participation

88. The Convention on the Rights of Persons with Disabilities protects the rights of disabled children to participate in decisions that are being made about them and requires signatories to the convention to ensure that children are provided with “disability and age-appropriate assistance to realize” their right to express their views on all matters affecting them.³³
89. Disability advocacy groups described how disabled children want to have a say in decisions about their care but may need more time and support than other children to do so. Some felt that children with disabilities were treated as if their opinions weren’t important or that lawyer for child lacked awareness of disabilities and the need for disabled children to have appropriate supports.
90. Changes to the training and appointment processes for lawyer for child are needed. All lawyers for child should have disability awareness training, and best practice guidance for working with disabled children should be developed to provide lawyer for child with consistent, best practice knowledge about how to support disabled children’s participation.
91. A specialised pool of lawyer for child with appropriate experience and skills in working with disabled children should be developed. These lawyers would receive a specialist endorsement that would be reflected on lawyer for child lists and allow the Court to match disabled children to a specialist lawyer for child with the requisite skills and experience to represent them. Further work and consultation will be needed to consider how this endorsement could be implemented, including what skills, training and experience would be necessary to receive an endorsement.

³³ United Nations Convention on the Rights of Persons with Disabilities at 7.3

1.5 Family violence and children's safety

92. Family violence is a significant issue in New Zealand. There is extensive cross-government work currently underway to tackle it.³⁴
93. The Family Violence Act 2018³⁵ defines family violence as violence inflicted against a person by any other person with whom they are or have been in a family relationship. Violence can be physical, sexual or psychological. Family violence can occur against children. Psychological abuse of a child can occur when a person allows a child to see or hear, or risks them seeing or hearing, the physical, sexual or psychological abuse of someone else in the child's family.³⁶
94. The 2014 reforms changed the way in which the Family Court deals with allegations of physical or sexual violence in proceedings under the Care of Children Act 2004. Sections 58 to 62 of the Act were repealed. Section 5(e), the child's safety principle, was moved to become section 5(a) to underline the importance of a child's safety. In practice, it meant that rather than having a separate statutory process for dealing with allegations of physical or sexual violence against a child or against the other party to proceedings, the Court considers all of the issues impacting on a child's safety holistically when determining a Care of Children Act application.
95. Section 5(a) states that a "child's safety must be protected and in particular must be protected from all forms of violence as defined in the Family Violence Act". By virtue of the definition of family violence, a child's exposure to and experience of family violence is directly relevant to their safety.
96. Section 5(a) is the only mandatory principle and would likely be decisive over the other principles in section 5.³⁷
97. A new section 5A was inserted that requires the Court, when taking children's safety into account, to have regard to:
- whether there is a protection order in place; and
 - the circumstances in which the order was made, and any written reasons for the decision.
98. The Family Violence Act 2018 which comes into force on 1 July 2019, aims to strengthen the Family Court's response to family violence by:
- making improvements to court orders to keep victims safer and hold perpetrators to account
 - giving greater emphasis to coercive and controlling behaviour in the legal definition of family violence
 - providing principles to guide decision making
 - removing legal barriers to information sharing between agencies to increase victims' safety
 - responding more effectively to safety concerns reported by a stopping violence programme provider, or when there is a breach of a protection order, including varying a parenting order where there are concerns about the safety of children

34 Joint Venture on Family Violence and Sexual Violence. The Minister for Justice is the lead Minister, with the Under-Secretary to the Minister of Justice (Jan Logie) having responsibility for day to day oversight of the work programme for the joint venture.

35 The Family Violence Act 2018 replaces the Domestic Violence Act 1995

36 Family Violence Act 2018, s 9 and s 11.

37 K v B [2010] NZSC 112. The Supreme Court decision was prior to the 2014 reforms and refers to s5(e), now s5(a)

- enabling judges to make a temporary protection order when considering applications under the Care of Children Act 2004, where they have concerns that a parenting order alone will not keep them safe.

What we learnt

99. Consultations, submissions and research have established that:
- many individuals and organisations are concerned about how family justice services deal with family violence
 - some victim-survivors felt re-traumatised and unsafe in the Family Court and FDR
 - victim-survivors felt pressured to agree to arrangements/consent orders
 - the behaviour of victims of family violence when in a heightened state of distress may be misinterpreted
 - there is not enough specialist support and services available to help victim-survivors of family violence who are involved in family justice services
 - perceptions that exaggerated or untrue claims about family violence could be made without consequences
 - respondents in without notice proceedings felt disadvantaged by orders that either stopped contact or limited it to supervised contact
 - there aren't enough supervised contact centres
 - delays in the Family Court prevented timely assessment of a child's safety and often increased the level of conflict between the parents and whānau
 - there are concerns that children's views are often not heard or taken into account when considering contact where violence has been alleged or established
 - the removal of lawyers from some proceedings and inequitable access to legal advice disproportionately affects victim-survivors
 - there is a perception that repealing sections 58 to 62 has resulted in a loss of protection for children and vulnerable adults
 - some submitters wanted the section 61 checklist or similar reinstated – many said it should be expanded to include other risk factors to a child and not be limited to violence
 - “safety hearings” are routinely held but these do not generally include making findings of fact
 - professionals in the Family Court do not understand the dynamics of family violence
 - court waiting room spaces felt unsafe
 - mediation of family disputes where family violence has occurred may not always be appropriate
 - there are concerns about the adequacy of screening for family violence by FDR suppliers and providers
 - people felt that court processes are alienating and disempowering.

Recommendations

17. **Amend** the Care of Children Act 2004 so that judges may:
 - a. make findings of fact in a timely way, where there is a disputed allegation of violence or abuse.
 - b. undertake ongoing risk assessment, recognising that risk is dynamic and can be unpredictable.
18. **Amend** the Care of Children Act 2004 to include a checklist of factors the Family Court may take into consideration relevant to a child's safety, including:
 - the nature, seriousness and frequency of the violence used
 - whether there is a historic pattern of violence or threats of violence, for example coercive and controlling behaviour or behaviour that causes or may cause the child or their carer cumulative harm
 - the likelihood of further violence occurring
 - the physical or emotional harm caused to the child by the violence
 - whether the child will be safe in the care of, or having contact with, the violent person
 - any views the child expresses on the matter
 - any steps taken by the violent party to prevent further violence occurring
 - any involvement or oversight by a community or other organisation relating to a child's welfare
 - any serious mental health condition that impacts on a party's ability to ensure a child's safety, and the steps taken to address this condition
 - any drug or alcohol issues that might impact on a party's ability to ensure a child's safety, and the steps taken to address these issues
 - any other matters the Court considers relevant.
19. **Amend** the Family Court Rules 2002 to specify Care of Children Act documents to include information about the safety needs of victim-survivors when attending court.
20. **Amend** the Care of Children Act 2004 and relevant Rules to enable the Family Court to request relevant information about family harm or family violence incidents from Police and supervised-contact providers.
21. **Direct** the Ministry of Justice, in consultation with key stakeholders, to develop a risk assessment tool for use with children, victim-survivors and perpetrators of violence.
22. **Direct** the Ministry of Justice to work with judges and relevant professional bodies to ensure family justice professionals to receive consistent, ongoing training about family violence.
23. **Amend** the Family Violence Act 2018 (as it will be called from 1 July 2019) so that children who are the subject of Care of Children Act proceedings are able to access safety programmes available under that Act.

24. **Direct** the Ministry of Justice to:
- a. undertake a stocktake of all Family Courts and make improvements (where possible and practicable) to court areas to improve the safety of victim-survivors
 - b. work with key stakeholders to develop best-practice standards for FDR suppliers and providers where family violence is identified
 - c. work with key stakeholders to identify community organisations, including iwi, to increase the pool of supervised-contact providers.

Case for change

Safety in family justice services

100. During consultation, we heard many accounts about the impact of family violence on children and whānau. Family violence is pervasive, and its effects on children and whānau are seriously damaging.
101. We heard that people's experiences of the Family Court and related services can be alienating and disempowering. Professionals raised concerns about how the behaviour of victims of family violence, usually mothers, may be misinterpreted when they are in a heightened state of distress. When experiencing extreme distress, some victim-survivors find it difficult to distinguish between fear and risk, and they may appear to be unreasonable, exaggerating, manipulative or destructive. We heard also about the distress experienced by parents, usually fathers, who lose contact with their children for long periods of time.
102. This report cannot deal comprehensively with all of the issues raised. It recognises the critical importance of timely and appropriate responses for children, their parents and whānau. This is the focus of our recommendations.

Children's safety

103. Amongst the issues most often raised was the Family Court's response to allegations of family violence and its relevance to children's safety. Some people felt that the 2014 repeal of sections 58–62 of the Care of Children Act 2004 had diminished a thorough assessment of children's safety.

Findings of fact

104. A critical issue when contested allegations of family violence are made, often on a without notice basis, is the Family Court's ability to determine or make findings of fact about those allegations.
105. We agree that it is imperative that the court make its findings of fact promptly when allegations of violence or risk to a child are made. Parents as well as professional bodies, including the New Zealand Law Society, consider findings of fact should be made, where possible, to protect children and/or their carers from violence and to protect the other party from false allegations.

106. Agreements reached by parties, sometimes following a “roundtable meeting” may result in consent orders being made. There is a perception that these orders may not have the same level of scrutiny that apply to other orders and that one party may feel pressured into agreeing to consented arrangements even when they may have concerns for a child’s safety.
107. Before consent orders can be made, the Court should satisfy itself that the child will be safe. Findings in relation to the child’s safety should be made and form part of the court record.
108. The Court should not be required to hold a separate hearing or make any inquiries of its own initiative in order to make those findings of fact. Findings may be made on the papers (as was intended by section 60) or at a hearing. A judge now can hold “any other hearing”³⁸ and strictly control the length of a hearing if it is considered necessary. If the position of Senior Family Court Registrar were established (see our discussion beginning at paragraph 251), they would be ideally placed to provide a judge with advice on whether a hearing was necessary, or the matter could be dealt with on the papers.
109. Section 133 psychological report writers also agreed that findings of fact were necessary in providing the Court with a proper assessment of the risks to the child.

Information gathering

110. The Family Violence Act 2018 will improve information sharing between the criminal and family courts. It is important for the Family Court to have access to as much relevant information as possible, for example, sentencing notes, presentence reports, and findings of fact in defended hearings.
111. What is now required is explicit provision to allow the Family Court to obtain information directly from the New Zealand Police and providers of supervised contact to assist the Court in determining allegations of family violence.

Safety checklist

112. There were submissions both in support of and opposed to repealing sections 58-62, including suggestions for a new approach to improve the process.
113. Many submitters spoke very strongly in favour of including a checklist as part of the Court’s consideration of safety. They saw it as an important tool that all professionals would have to have regard to.
114. Conversely, other submitters felt that a checklist limited the nature of the safety inquiry and provided a too formulaic process that could potentially lead to delay.
115. We have reviewed how well current laws, policy and practices under the Care of Children Act 2004 protect children and promote their safety. The current approach has some positive aspects, but there is room for improvement.
116. An explicit checklist will provide a clear and transparent guide for the Court and for others involved to assess a child’s safety. The Court should be able to consider all matters that are relevant to a child’s safety and not in a formulaic manner.
117. We support the inclusion of a checklist in the Care of Children Act 2004.

³⁸ Family Court Rules 2002 r 416(1)(d).

Risk assessment tools

118. Currently, a number of risk assessment tools are being used in parts of family justice services. Greater consistency and coverage is required across Te Korowai Ture ā-Whānau. Consistent risk assessment tools should be evidence-based and validated for New Zealand.
119. Appropriate people should be tasked with conducting risk assessments at each stage of engagement with family justice (where safety issues may arise for any child, parent or whānau). Judges should have access to appropriate information on how to use reports on these assessments to assist their decision making.

Professional development

120. Some victim-survivors of family violence feel that an unconscious bias may influence the attitudes of professionals towards them and impact negatively on their credibility and ultimately on the decisions that are made. They did not believe the Family Court fully understood or acknowledged the harm caused to children and their carers by family violence, and they felt that contact with a violent parent was prioritised over considerations of children's and their parent's safety.
121. Some studies show that children are believed when they say they want contact with a violent parent, but they are more likely to be ignored or over-ruled if they say they do not want contact.³⁹ This is an area where further work is required on a comprehensive review of available literature, New Zealand-specific research and further work to develop policy. We have suggested that this work be completed as part of the stocktake of models of children's participation (see recommendation 4).
122. All professionals should be required to participate in ongoing professional development for specialist family violence training. The training should be undertaken by all those working in the Family Court, with core competency models being compulsory. Specialist knowledge and training builds best practice, improves victim experience and reduces secondary victimisation.

Safety programmes

123. Victim-survivors and children in Care of Children Act proceedings should also be able to access safety programmes available under the Family Violence Act 2018.

³⁹ Christine Harrison "Implacably hostile or appropriately protective? Women managing child contact in the context of domestic violence (2008) *Violence Against Women* 14 (4), 381; Stephanie Holt "Domestic Abuse and child contact: positioning children in the decision-making process" (2011) *Child Care in Practice*, 17(4), 327.

Safe court environments

124. It is essential that court spaces and courtrooms are safe for victim-survivors. Currently some court buildings have little space, and there can be restrictions on altering them. This makes it difficult to ensure all court waiting areas can be made safe. Some practical steps can be taken now however. All court forms (application or response) should include a question about any safety concerns a victim-survivor has about coming to court. This will enable court staff to ensure that appropriate arrangements are made while recognising the limitations of some courthouse facilities. All plans for new court buildings or those being renovated should incorporate specific features to provide for the safety and privacy of people attending the Family Court.
125. Specialist family violence support workers should be available at the Family Court to support victim-survivors who attend court. The Family Justice Coordinator has a role in linking victim-survivors with appropriate support services in the community.
126. There needs to be increased awareness, particularly by lawyers, of the availability of indirect protective forms of evidence giving (screens, audio-visual links, etc) and to ask for these. The Court should make parties aware of these options.

Family Dispute Resolution

127. While parties are exempt from attending FDR where there has been family violence,⁴⁰ concern was expressed about family violence, safety or power imbalances between the parties that are not being picked up in screening and assessment or not being safely mitigated during the FDR process.
128. Where a victim-survivor elects to participate in FDR, there should be best practice standards to guide the service they receive. Steps are already being taken to develop appropriate standards. We support the Ministry of Justice working with FDR suppliers, victim advocacy groups and other relevant professionals to finalise best practice standards that are culturally appropriate and address screening and assessment processes as well as child participation requirements. Suppliers and providers should use these standards to provide a safe, robust and consistent service for victim-survivors.

Supervised contact

129. The lack of providers of supervised contact, and the lack of adequate, accessible and affordable supervised contact centres were a constant theme in consultations. Children need to have safe contact and child-friendly spaces for that contact with a non-carer parent. Parents who are required by the Court to have supervised contact should not be denied it because of the current lack of providers or appropriate facilities.
130. More investment is required in supervised contact providers and facilities and exploration of alternative models of service delivery of supervised contact. This may include partnering with community organisations and iwi to achieve better accessibility.

40 Care of Children Act 2004 s 46E(4)(b).

1.6 Delays

131. Delay is pervasive. Delay is felt more profoundly by children than adults as their sense of time is slower than adults. For example, the time between birthdays often appears short for adults but seems an eternity for children.
132. At various places through this report, there is reference to delay. This section summarises the various stages at which delay occurs, demonstrating the relationship between each element of family justice services. It provides evidence of why no single change to the 2014 reforms will make any meaningful difference to reducing delay.
133. Decisions about the care of children are the most important decisions parents and whānau make. The Care of Children Act 2004 clearly states that any decisions are to be made having regard to the particular circumstances of the child. The Care of Children Act 2004 also states that those decisions are to be made in a timeframe that is appropriate to a child's sense of time.⁴¹
134. Just as each child's circumstances are different and require individual consideration, the appropriate timeframe for making decisions about a child is also individual. Some decisions can be made promptly following a dispute arising, others will take longer, but it is generally understood that delay has a negative effect on children and whānau.
135. Cost is closely associated with delay. The former affects the latter, with cost measured not only in financial terms but also in the emotional impact on children and whānau.
136. One objective of the 2014 reforms was to reduce delays. Despite a reduction in the number of cases being filed, there has been no reduction in delay. In fact, delay has increased. For example, data shows that delays in the Family Court have persisted and worsened. The time it takes the Court to resolve each Care of Children Act case has increased between 2014/15 and 2017/18 from an average of 284.7 days per case to 307.9 days per case, despite the total number of cases resolved decreasing from 9,668 in 2014/15 to 8,481 in 2017/18.⁴²

What we learnt

137. Consultation, submissions and research have established that delay occurs across all areas of family justice services:

Out of court

- Information is not easily accessible for parents and whānau in making arrangements for the care and guardianship decisions about their children
- PTS is not always readily available and is not suitable for the diversity and circumstances of whānau who care for children
- Accessing FDR can be confusing. Engaging both parties can be difficult. Making arrangements for payments may lead to further delay
- Limited legal advice (namely the Family Legal Advice Service), in lieu of legal aid, denies parents and whānau the benefit of timely (and robust) legal advice

⁴¹ Care of Children Act 2004, s 4(1) and s 4(2).

⁴² Ministry of Justice data, National summary - 12 monthly volumes and average ages of 12 monthly disposals, as at 30 June 2018.

- The requirement for compulsory attendance at PTS and FDR before filing a court application delays access to the competencies of the Family Court.

In court

- A significant increase in the number of without notice applications has resulted in increases in resolution times for both without notice and on-notice cases
- There is insufficient judges to deal with cases in a timely manner, and a resultant backlog that requires resolution
- Removal of lawyers at early stages of on-notice applications can result in a lack of focus in progressing proceedings in the Court
- An increase in self-represented parents and whānau requires a greater time commitment
- Lack of triaging of applications has prevented cases moving through the Court in a more timely way
- Simple track cases, often where orders were sought by consent, take on average eight months to conclude
- Lack of classification of cases as complex has meant more difficult matters are not progressed in a timely way
- There is a lack of psychological report writers and, in some places, lawyer for child.

Operational

- IT systems are not fit for purpose
- Much of the system remains paper-based.

Recommendations

138. We have made a number of recommendations throughout the four parts of this report, which, if implemented, will go some way to addressing the issues of delay. We have not repeated those in detail in this section but summarise them broadly as follows:

- Accessible information for parents and whānau
- Streamlined processes to engage in PTS and FDR
- Access to early legal advice
- Removal of preconditions to court applications
- Creation of new positions in the Family Court to ensure more timely progression of cases
- Greater availability of professionals
- Greater judicial resourcing
- Improved operational matters (IT, electronic filing).

Case for change

139. We present the examples below as common examples supporting the case for change. They are actual cases in the Family Court that have had changes made to ensure confidentiality.

Example 1

140. This example illustrates the delays that can occur at various stages of a case in the Family Court. There was a **six-month delay** in convening a settlement conference, the report from Oranga Tamariki took **twelve months**, there was a delay of **seven months** in directing the psychological report and a further **eight months** for the report to be received. It then took another **six months** for the final hearing to take place.
141. Katie⁴³ had been living with her whānau caregivers since she was born, through a whānau agreement. There was a history of violence between Katie's parents, and her father was in prison. When Katie was ten months old, her father was due to be released from prison, and he advised her caregivers that he intended to collect Katie upon his release. Concerned about Katie's safety, the caregivers filed a without notice application for a parenting order.
142. The Family Court made an interim order, which meant Katie continued living with her whānau caregivers and had supervised contact with her parents. **Six months later**, the parents and caregivers agreed that Katie would remain living with the caregivers. The Court issued a final parenting order to reflect this.
143. Due to the safety concerns, Katie's contact with her parents continued to be supervised, and the Court requested a social work report from Oranga Tamariki. By the time all the information was received, **18 months** had elapsed since the settlement conference. By then, Katie's mother had decided she wanted Katie back in her care. This meant the Court had to revisit the parenting order.
144. It took another **year and nine months** from then for the Court to direct a psychological report, the report to be prepared, and the final hearing to take place. The judge issued a new parenting order in favour of Katie's whānau caregivers, with an increasing amount of unsupervised contact with her parents over time.
145. **The Court proceedings had lasted three years and two months**, and by the time they concluded, Katie was nearly five years old. Due to the uncertainty around her future living arrangements, no plans could be made for her school enrolment. The drawn-out resolution of the case also meant that the relationship between the parents and whānau carers had disintegrated.

Example 2

146. Jackson and Liam⁴⁴ are half-brothers who live in different households. Jackson is much older, and had an agreement in place with Liam's mother so that he could see Liam regularly. However, the agreement broke down and contact between the siblings ceased.
147. Jackson and Liam's mother decided to try FDR to resolve the issue. **Three months later**, the FDR sessions took place, but they were unable to reach agreement.
148. Jackson filed an on-notice application to the Court, requesting a reduction in time for Liam's mother to reply. The request for reduced time was declined, and it was **four months** before the first judicial conference took place. The judge requested an initial social work report and set a hearing date for **two months'** time to deal with the issue of interim contact.
149. **By the time the hearing took place, the brothers had not seen each other for ten months.**

⁴³ Names have been changed.

⁴⁴ Names have been changed.

Part Two:

Encouraging Early Agreement

Introduction

150. The terms of reference asked us to consider the effectiveness of out of court processes.
151. The evidence is compelling that it's in the best interests of children and young people for arrangements about their care and other decisions about their lives to be made with the least conflict and without having to go to court, which is inherently adversarial.
152. This part covers the information and services, which are an integral part of a family justice service, that encourage and support early agreement and reduce the harmful effects of parental conflict and adversarial legal processes on children and their whānau.
153. It reports on what we heard from submitters and learnt from research about the PTS programme, FDR, counselling and other community services, and access to legal advice. It explains the importance of recognising those services as essential muka of Te Korowai Ture ā-Whānau, the cloak that forms the family justice service.

The 2014 reforms

154. The 2014 reforms exacerbated the divide between in court and out of court services and professionals.
155. The ability of the Family Court Coordinator to facilitate counselling before proceedings started was removed. Now, counselling can only be directed by a judge once a case is in the Family Court (section 46G of the Care of Children Act 2004).
156. A new service was established, Family Dispute Resolution (FDR). It offered professional mediation to parents and whānau to resolve disagreements about the care of their children.
157. Parenting Through Separation (PTS), a parent information programme of four hours duration usually delivered over two sessions in a group setting, was reviewed and improved.
158. To keep people out of court, the 2014 reforms made it compulsory for applicants to attend both FDR and PTS. Except in urgent cases (without notice applications), where there is family violence, or one of the parties is unable to participate effectively, parents and other caregivers are now required to attend PTS and FDR before being able to apply to the Family Court.

159. The changes also severely limited parties' access to legal advice and representation. This limitation had the greatest impact on low-income people who had been eligible for legal aid and who could not now afford legal advice.
160. Except for those who filed without notice applications, the expectation was that, by making particular out of court services mandatory, more people would resolve their issues without going to court, delays would be reduced and children's wellbeing would be better secured.
161. Despite such significant law reform, there was no public awareness campaign to inform and educate whānau and the general public about the changes. There was little quality, accessible information about the new requirements for separating parents and whānau.

Our key findings and conclusions

162. We learnt that:
- there is little data to show whether more whānau have been able to resolve their issues out of court since 2014 or whether children's wellbeing has been better secured
 - to encourage and support parents to agree care arrangements most effectively with the least conflict and at the lowest cost, parents and whānau must be able to access the right service at the right time in the right way
 - judges, lawyers and all the services whānau turn to for advice must actively encourage, support and incentivise them to use PTS, FDR and other community services
 - high-quality, accessible information in diverse languages and formats is crucial
 - targeted counselling should be available to assist parents or other whānau members to focus on the best interests of their children
 - services that reflect and are responsive to the diversity of New Zealand's whānau are required
 - counselling, PTS programmes and diverse FDR services should be fully funded without a user-pays contribution
 - equal access to justice requires parents and whānau to have the right to legal advice at the early stages of separation, with those eligible having access to a pre-court grant for legal assistance.
163. This part covers quality, accessible information, counselling outside the Court, PTS, FDR, access to early legal advice and recognising community engagement.

2.1 Quality, accessible information

164. For the 2014 reforms to achieve the desired outcome of reducing the number of families having to resort to the Family Court to make the decisions about their children's care and other guardianship issues, access to clear, comprehensive information about the steps to follow and the support available was essential.
165. Although funding was allocated for the development of an information strategy as part of implementing the reforms, an effective information strategy was never developed.
166. As a consequence, New Zealanders generally do not know much about the services that are available and how to access them.

What we learnt

167. Consultations, submissions and research have established that:
- the information that is available is not easy to find. In fact, the Children's Issues Centre's Parenting Arrangements After Separation Study found that 87% of the professionals who responded made negative comments about some aspect of the Ministry of Justice's website (particularly around navigation issues, functionality and layout, and the quality and presentation of the information)⁴⁵
 - information isn't currently provided in formats that can be easily accessed by disabled people
 - there are limited resources for people with low literacy levels and speakers of other languages, including te reo Māori
 - very little information is provided specifically for children to help them understand and cope with their experience of family justice services
 - there is no information specifically for people who are not separating parents, such as grandparents, parents who were never in a relationship and other whānau
 - there is no information for parents and whānau on the effects of parental conflict and family violence
 - information is not readily available for people who live in remote locations and/or do not have access to the internet
 - the 0800 2 AGREE telephone number is not widely known or promoted, and the quality of information provided is variable. We note that the name is also inappropriate for victim-survivors of family violence. Professionals who participated in the Children's Issues Centre research reported that information given to their clients over the phone line was too general and thus unhelpful or, in some cases, was actually incorrect
 - the workbook to allow parents to create their own parenting plan must be printed out and filled in by hand
 - there are an increasing number of self-represented litigants but little information to help them navigate family justice services.

⁴⁵ Parenting Arrangements After Separation Study: Evaluating the 2014 New Zealand Family Law Reforms. Children's Issues Centre, University of Otago. See: www.passnz.co.nz/

Recommendation

25. **Direct** the Ministry of Justice to:
- a. develop an information strategy to establish a cohesive and consistent set of resources in a range of formats, including:
 - a stand-alone website specifically for separation and care of children disputes⁴⁶
 - a children's section of the website containing a range of interactive, engaging information resources for different age groups, co-designed by children
 - information explaining the role of various family justice service professionals
 - information for grandparents and whānau seeking care or guardianship
 - information on care of children matters for victims of family violence
 - a review of the 0800 2 AGREE helpline
 - information in languages other than English, including te reo Māori, and resources relevant to all cultures in New Zealand
 - information that is accessible for people with disabilities and low literacy
 - information on help or support outside the government-funded system
 - information about the role of different professionals within Te Korowai Ture ā-Whānau
 - develop an ongoing public awareness campaign to encourage parents to resolve issues as early as possible and provide information on the range of family justice services available and how to access them
 - reformat the existing parenting plan workbook to enable it to be used digitally
 - work with the judiciary, the New Zealand Law Society and representatives of self-litigants, to develop a workbook (in digital and hard copy) to help self-represented litigants navigate Te Korowai Ture ā-Whānau.

Case for change

An accessible, cohesive, consistent set of resources

168. Not only should information on the family justice service be easy to find and use, it should also be available to everyone. It's clear that the needs of some people are not being met by existing information resources.
169. There needs to be better oversight of all the available resources across all mediums, with a view to usability, accessibility and overall messaging.

46 A good exemplar is the New Zealand Government SmartStart website (www.smartstart.services.govt.nz/) for expecting mothers.

Public awareness

170. There is an opportunity to take a more proactive approach to providing the public with information about the family justice service.
171. A proactive approach will help ensure that whānau are aware of the harm to children caused by parental conflict before they begin to contemplate separation. With prior exposure to information about the best interests of the child during separation and where to go for information and support, whānau will be more likely to access that support early. This knowledge may impact behaviour from the beginning of the separation process, resulting in less harm to children, more self-resolution and improved buy-in for and uptake of out of court services.
172. A proactive approach will help inform separating whānau who choose to work out their own arrangements without accessing the family justice service. It will encourage them to put their children's best interests first when agreeing on parenting arrangements and establishing shared parenting behaviours.

Self help

173. It's important that Te Korowai Ture ā-Whānau not only provides services directly to people but also supports those people who choose to help themselves. Existing resources can be built on to achieve this.
174. One of the Ministry of Justice resources available to support parents to make their own arrangements is a parenting plan workbook, which helps them write their arrangements into a plan. This is a helpful resource available in digital and hard copy. However, the workbook doesn't make the most of modern technology – even the PDF version of the resource is designed to be printed and written on by hand.
175. There's an increasing number of people who prefer to make use of technology and it would be much more useful for these people if they could access a tool to help them create a digital parenting plan.
176. It is important to support self-represented litigants through what can be a stressful and bewildering experience so that they can more confidently and effectively take part in the Family Court. Some overseas jurisdictions provide a workbook for self-represented litigants. If introduced here, this will have a positive impact on the efficiency of the court process, therefore saving court staff and judicial time.

2.2 Counselling

177. Needing to settle arrangements for the care of their children can be a particularly stressful time in people's lives, with different interests at stake and emotions running high. Regardless of whether a disagreement has arisen as a result of a separation or a change in the wider whānau dynamic, people can often experience feelings of anger, grief, resentment or sadness, which can make it difficult to reach agreement.
178. Helping people to understand and set aside those emotions represents a valuable opportunity to achieve early resolution in the interest of the children involved, but there hasn't been a service available to facilitate this since the removal of widely available relationship counselling in 2014.

What we learnt

179. Consultations, submissions and research have established that:

- before 2014, free access to relationship counselling was available through the Family Court to anybody who wanted to use it. This counselling often occurred early after separation when parties were struggling emotionally. It gave them a chance to consider reconciliation (where appropriate) or to discuss issues and help them work through emotions. It was accessed through the Court and could be sought when a couple was still together, in the process of separating or after they had separated
- the Government stopped funding this counselling in 2014, after the 2012 review of the Family Court determined that it:
 - was costly (approximately \$9.7 million was spent on counselling in 2010/11)
 - lacked a clear focus and purpose
 - was delivered with variable quality and success
 - was available to married, de facto and civil union couples but not parents who shared a child but may have never been in a relationship
 - sat with the Family Court, despite there being no requirement that couples should be facing some kind of “justice issue” (such as a disagreement about care of children or property dispute). In addition, the Court received very little information about progress made
- the introduction of FDR (discussed from paragraph 194 onwards) and strengthening of programmes such as PTS (discussed from paragraph 182 onwards) and Preparation for Mediation was intended to be a better solution. Unfortunately, this hasn't been the reality
- some parents and whānau didn't get the help and support they needed to work through the emotions that come with a separation or family upheaval. Sometimes this was because a without notice application had meant that PTS and FDR were completely bypassed. PTS and FDR providers reported that some parents were unable to engage effectively because of unresolved personal emotions
- both parents and professionals felt that these kinds of cases drag on and result in longer periods of instability for children, when some support from a counsellor early on could have seen a much quicker resolution.

Recommendation

26. **Amend** the Care of Children Act 2004 to make three hours of targeted, government-funded counselling available to a parent or caregiver at an early stage of a dispute about care of children to work through their personal emotions and focus on reaching agreement.

Case for change

180. The introduction of early counselling will be a valuable addition to a toolbox of interventions for whānau in dispute. It acknowledges that a “one-size” model doesn’t fit all. Having more options outside the Family Court may also see an increase in the number of whānau coming to arrangements without going to court.
181. The purpose of this counselling should be to allow parents and caregivers to work through emotions at an early stage. Key features should include:
- the ability to self-refer in order to access this counselling, with assessment for eligibility determined at the outset by an accredited counsellor contracted through the Ministry of Justice
 - the ability for people to be directed to a counsellor by any other service provider, such as PTS facilitators, lawyers, FDR practitioners or the Family Justice Coordinator
 - eligibility restricted to parents or caregivers with each person entitled to attend three sessions
 - what is discussed at counselling remains confidential.

2.3 Parenting Through Separation

182. Parenting Through Separation (PTS) is an information programme for separated parents that has been provided free of charge by the Ministry of Justice since 2006. PTS was initially offered as a voluntary programme and had a lower than expected uptake.
183. The 2014 reforms sought to encourage child-focussed, out of court family dispute resolution. PTS was widely regarded as an effective way to encourage parents to focus on the needs of their children, so to increase uptake, PTS was made a requirement (with some exceptions) before a party could apply to the Family Court.
184. This increased the number of people attending PTS, but the increase in without notice applications as a result of the reforms has also meant a significant number of people have been exempt from attending PTS.

What we learnt

185. Consultations, submissions and research have established that:
- most people spoke positively about the programme
 - people thought it provided good information about family justice processes and encouraged them to focus on the impact of conflict on their children
 - The Children’s Issues Centre’s Parenting Arrangements After Separation Study⁴⁷ found that 84% of family justice professionals rated PTS as “helpful” or “very helpful”, and 89% indicated that they would recommend PTS to parents/caregivers
 - some parents have difficulty accessing PTS due to the availability and location of courses or English language, literacy, disability and learning ability requirements
 - PTS is not culturally responsive, particularly for Māori, Pacific peoples and recent migrants
 - PTS focuses on a nuclear family structure, which excludes some people.

⁴⁷ Parenting Arrangements After Separation Study: Evaluating the 2014 New Zealand Family Law Reforms. Children’s Issues Centre, University of Otago. See: www.passnz.co.nz/

Recommendations

27. **Amend** the Care of Children Act 2004 to:
 - a. allow a party to apply to the Family Court for a parenting/guardianship order without requiring prior attendance at PTS
 - b. allow the Family Court to direct a party to PTS if it has not been completed, unless there is a good reason not to.
28. **Direct** the Ministry of Justice to develop a centralised online PTS booking system (as part of the FDR portal referred to in recommendation 32).
29. **Direct** the Ministry of Justice to develop an online version of PTS.
30. **Direct** the Ministry of Justice to:
 - a. strengthen the contractual requirements (and provide appropriate support, including funding) for PTS providers to offer a range of facilitators from different cultures
 - b. reconsider its procurement process and encourage kaupapa Māori and other cultural organisations to contract to deliver PTS.
31. **Direct** the Ministry of Justice to evaluate PTS every three years.

Case for change

Encouraging uptake

186. We recognise that PTS is an effective programme that helps many parents understand how to minimise the impact of separation on their children and to make decisions that are in their children's best interests. We believe that people should be encouraged to take part in PTS and should be able to do so at the time that is most appropriate for them.
187. Currently, PTS is mandatory in name only. Only the applicant is required to attend PTS before filing an application. The research and submissions highlighted the difficulty in accessing PTS beyond urban centres:

“The quality of the service varies across the country. Some parents struggle with the time commitment of the programme or lack of available programmes when they need to attend.” PTS provider

“I found it difficult coping with the length of the PTS sessions due to my brain injury, concentration and fatigue.” Parent

“Participation by either or both partners is random – some parents participated, while others seemed to ignore it – which raised the question of how compulsory attendance at PTS is?” UMR⁴⁸

48 UMR (2019) A qualitative study on behalf of the independent panel examining the 2014 family justice system reforms. April at 8.

188. Given that, in the foreseeable future, PTS will not be provided on a basis that makes it universally accessible and relevant to everyone, it's inappropriate to make it mandatory.
189. While we consider people should not be required to take part in PTS before they are able to file an application with the Court, we do consider that a judge should be able to refer parties to PTS unless there is a good reason not to. This expectation will help encourage people to take part in PTS before applying to court.
190. It's essential that PTS is highly marketed as part of the information strategy and public campaign (see recommendation 25). Parents and whānau should be reminded of the value of PTS and encouraged to attend (where this is deemed appropriate) by all family justice service professionals, and particularly the new Family Justice Coordinator role, discussed in section 3.1 of this report.
191. It should be as easy as possible for people to take part in PTS, as this will make it more likely that people will attend. For this reason, we think there should be a version of PTS that can be completed online using up-to-date technology and educational methods. The online PTS should:
- include engaging, interactive content to suit a range of learning styles
 - include activities to encourage self-reflection throughout the course
 - feature modules for a variety of different situations, such as other cultures and people other than parents
 - be accessible to those with disabilities and low literacy levels
 - be available in other common languages, including te reo Māori
 - have a new name that reflects the diverse range of whānau the online programme will cater to.
192. It should be possible to book a place on any PTS course online, allowing visibility of dates and locations across providers. The booking system should include options for people to select any special needs, such as translators or disability assistance, and any preferences, such as a course run by a Māori facilitator. The booking system should be part of the FDR portal referred to in recommendation 36.

Ongoing evaluation

193. To avoid the need for another major system-wide review in the future, Te Korowai Ture ā-Whānau, including PTS, should be self-reflective and adaptable so that it can evolve to meet the needs of the people it serves. For PTS, we believe this can best be achieved by regular evaluation and implementation of any recommendations. The evaluation should look at programme content, attendance, accessibility and relevance.

2.4 Family Dispute Resolution

194. The 2014 reforms set up Family Dispute Resolution (FDR). It was designed to help separating parents or other whānau to reach agreement about the care of their children or mokopuna. It was meant to be quicker, cheaper and less stressful than going to court.
195. It is currently mandatory for people to attend FDR before being able to make an application to the Family Court. There are some exceptions, including where there is family violence or where a without notice application is made.
196. FDR is partially-funded by the government. It is free for people who meet the eligibility criteria. Those who are not eligible for funding must pay their share of \$897. For example, if there are two parties to a dispute, they are required to each pay \$448.50.
197. For those parties who use FDR, the outcomes are generally very good. Research suggests that FDR can be a quick, affordable and effective process. Since 2014, resolution rates have been consistently high. On average, around 84% of completed mediations since 2014 have resolved some or all issues.
198. However, few people have opted for FDR, and exemptions are high. In 2017/18, only 1,842 mediations were completed compared with 8,481 cases being resolved through the Court.⁴⁹ A Ministry of Justice evaluation found that 25% of mediations that resolved some or all issues still resulted in court applications.⁵⁰

What we learnt

199. Consultations, submissions and research have established that:
- significant issues have prevented FDR from working as it was supposed to
 - 40% of people refused to engage with the FDR supplier because they simply did not want to do FDR⁵¹
 - 23% of people did not respond to the supplier, even after multiple attempts via phone, email and letter⁵²
 - 14% cited the cost for non-participation⁵³
 - FDR can be difficult to access as there is no single entry point that parties can be directed to by court staff, lawyers or other family justice professionals
 - the costs can be a financial strain for those required to pay for FDR and can cause resentment, particularly where one party is funded and the other is not
 - assessing funding eligibility, managing payments and chasing up FDR fees contributes to delays and places a significant administrative and financial burden on FDR suppliers and providers

49 Ministry of Justice data 'National summary - 12 monthly volumes and average ages of 12 monthly disposals', as at 30 June 2018.

50 Ministry of Justice Family Justice Reforms: An Initial Cohort Analysis (Ministry of Justice, Wellington, April 2018).

51 Ministry of Justice, Family Justice: An Administrative Review of Family Justice System Reforms, 2017, accessed at <https://www.justice.govt.nz/assets/Documents/Publications/Family-Justice-Administrative-review-2017-FINAL.pdf>.

52 Ibid.

53 Ibid.

- there has been a lack of support from family justice professionals, such as judges and lawyers, for a number of reasons, including concerns about the referral process and child participation
- Court directions to FDR are rarely made. Only 157 directions to FDR were made in 2017/18, and the practice is inconsistent across different courts
- FDR is not sufficiently responsive to cultural diversity and does not sufficiently accommodate people with disabilities
- FDR was not promoted as expected. Many parents and whānau are unaware of FDR, do not understand what FDR is or how it could benefit them and their children
- child participation practices vary across FDR suppliers.

200. These factors have contributed to the low uptake of FDR. They are likely to have a greater impact on people from culturally and linguistically diverse backgrounds, people with poor literacy or people with a disability.



Recommendations

32. **Amend** the Care of Children Act 2004 to:
 - a. allow a party to apply to the Family Court for a parenting or guardianship order without requiring prior attendance at FDR
 - b. require a party to provide evidence about genuine attempts made to reach agreement before filing an application
 - c. require the Family Court to direct a party to FDR if it has not been attempted already, unless there is good reason not to (rebuttable presumption)
 - d. allow the Family Court to refer to FDR on more than one occasion if appropriate
 - e. provide a process for the Court to direct a party to FDR, set a timeframe and receive a report on the outcome
 - f. allow for a lawyer for child to attend court-directed FDR.
33. **Fully fund** FDR for all participants to encourage increased use.
34. **Amend** FDR regulations to provide for a wider range of dispute resolution models.
35. **Direct** the Ministry of Justice, in partnership with iwi, hapū and Māori organisations, to undertake work to ensure FDR kaupapa Māori services are delivered for, by and to Māori.
36. **Direct** the Ministry of Justice, in partnership with Approved Dispute Resolution Organisations (ADROs), suppliers and providers, to:
 - a. assume responsibility for a comprehensive information strategy and public awareness campaign to promote and support FDR
 - b. improve access to FDR through stronger connections and collaborations between FDR suppliers and the Family Court via the Family Justice Coordinator
 - c. work to improve pathways into FDR training for practitioners from culturally and linguistically diverse backgrounds
 - d. establish an online portal to enable easy, streamlined access to FDR.
37. **Direct** the Ministry of Justice to undertake an initial review of FDR after two years, and then evaluate every three years thereafter.

Case for change

Encouraging participation in FDR

201. We support FDR. Parents and whānau should be encouraged to reach agreement, and FDR has a central role in that process. The final report from UMR54 observed that:

“One Pasifika participant noted in retrospect that mediation would have worked better for them as it was less harsh than the in court experience and would have provided an opportunity for the wider family to participate and talk things through with an experienced independent mediator.”

202. FDR should be available at the most appropriate time for parents and whānau. Parents and whānau should try FDR at an early opportunity if appropriate (e.g., before considering making an application to court) but should also know that it is available to them after an application has been filed as is already the case.

203. Given the low participation and high exemption rates, FDR is, in effect, mandatory in name only. Alternative settings, specifically FDR being free and parents and whānau being able to access FDR at different times (rather than requiring it to be completed before filing an application in court), are likely to increase FDR participation. Some international research supports the mandatory nature of FDR. It’s important however to consider New Zealand research, which though limited, supports a New Zealand response to a New Zealand issue.

204. We propose that section 46F of the Care of Children Act 2004 be strengthened to provide that parties to parenting or guardianship proceedings who have not attended FDR are directed to attend FDR unless there are good reasons not to. Our expectation is that by making FDR the default direction for most cases, parties will be more likely to attempt FDR before making an application knowing that the Court is likely to make a direction to FDR anyway.

205. The requirement for parties to provide evidence of genuine attempts to reach agreement before filing an application will highlight the significance of attempting to resolve matters before applying to the Family Court.

206. The changes recommended are intended to encourage judges, lawyers and Family Justice Coordinators to refer appropriate cases to FDR. The creation of an online portal will streamline entry into FDR, and a process for settings timeframes and reporting back to the Court will encourage greater confidence in FDR.

54 UMR A qualitative study on behalf of the Independent Panel examining the 2014 family justice system reforms (April 2019) at 45.

Flexible and culturally appropriate dispute resolution

207. The law does not stipulate a set form for FDR. However, the FDR regulations require ADROs to have “a proven track record in assessing people’s competence in mediation”.⁵⁵ FDR providers are also assessed on their mediation experience and ability to facilitate mediation processes and help participants participate in mediation effectively. The focus on mediation competencies for FDR providers means that FDR has become synonymous with mediation.
208. The focus on mediation is inconsistent with the original policy intent that FDR be a flexible concept, drawing on a range of disciplines and dispute resolution models to help whānau reach agreement. Anecdotally, it is understood that many FDR providers adopt a flexible approach to meet the needs of the children and whānau they are assisting and draw on a range of disciplines, including counselling, social work, legal practices and restorative practices. Amending the FDR regulations to recognise a range of dispute resolution models may support the development of more multidisciplinary and culturally appropriate FDR models.
209. Māori parents and whānau should be able to access kaupapa Māori services that are delivered for, by and to Māori and based on a Māori world view. Ministry of Justice procurement and recruitment practices should be identifying and supporting kaupapa Māori services.

Public awareness and promotion of FDR

210. Parents and whānau should be aware of the expectation to try FDR, preferably before filing a court application. The Ministry of Justice has a key role in ensuring this happens. The Ministry has a responsibility to raise the public awareness of FDR through an effective and ongoing marketing campaign. The Family Justice Coordinator will have a pivotal role in liaising with FDR suppliers and community organisations.
211. Community organisations and service providers need to be aware of FDR and have a simple referral process available to them. Lawyers have an essential role in promoting FDR to their clients.

Children’s participation in FDR

212. The judiciary, lawyers and some FDR providers expressed concern about how children participate in FDR. We recommend a stocktake of child participation practices with a view to developing best practice models (see recommendation 4).
213. In the interim, if lawyer for child has been appointed and the Court directs FDR, the lawyer for child’s attendance at FDR should be considered on a case by case basis.

⁵⁵ Family Dispute Resolution Regulations 2013, r 7.

2.5 Access to early legal advice

214. Although the 2014 reforms did not technically prevent people from seeking legal advice and support in the early stages of an issue about their children, the rules for accessing funded legal advice and support changed.
215. The 2014 reforms introduced a Family Legal Advice Service (FLAS), under which lawyers who are registered FLAS-providers advise eligible people at set early stages of disputes. FLAS is funded through grants rather than loans, and eligibility is based purely on income, not income plus assets. Theoretically, this should have expanded access to basic legal advice to a greater proportion of parents and whānau.
216. FLAS was not set up to cover lawyer-led negotiations or the filing of court documents.
217. People who do not qualify for FLAS may seek legal advice from a lawyer through a private arrangement.

What we learnt

218. Consultations, submissions and research have established that:
- there are practical benefits in parents and whānau having a professional advisor in their corner to provide reality checks when contemplating action, yet it appears fewer people are accessing early legal advice
 - the rollout of FLAS was poorly advertised. Most parents and whānau had never heard of it
 - in some areas, there is a lack of FLAS providers
 - parents and whānau who accessed FLAS found it very beneficial (though some don't recall the name of the service they accessed)
 - lawyers find the initial advice section of FLAS (FLAS1) straightforward to provide, and parents and whānau feel this service is beneficial
 - the second part of the FLAS service (FLAS2), which is meant to support clients to make their own applications to the Family Court, is poorly understood by many
 - some lawyers find FLAS2 funding is inadequate, and the preliminary results from the Children's Issues Centre's Parenting Arrangements After Separation Study⁵⁶ found that most lawyers felt that the time allocated was far too brief
 - parent and whānau expectations call for greater involvement than lawyers can provide under FLAS
 - parents and whānau find it confusing that a lawyer providing advice under FLAS is not able to be named on court documents and does not negotiate on their behalf or represent them in court
 - the FLAS model does not create an ongoing client-lawyer relationship. Where further legal help is needed, a new client-lawyer relationship must be entered into. Recounting events to multiple lawyers can be stressful for parents and whānau

⁵⁶ Parenting Arrangements After Separation Study: Evaluating the 2014 New Zealand Family Law Reforms Children's Issues Centre, University of Otago. See: www.passnz.co.nz/

- many parents and whānau cannot meet lawyers' costs without great difficulty, yet they are above the FLAS eligibility threshold
 - disparities are particularly unfair where one party has access to legal advice and support, but another does not
 - in reality, parents and whānau with extensive needs cannot be properly supported within the constraints of FLAS funding. People with disabilities, non-English speakers and those facing very complex issues miss out on access to justice as a result
 - ideal attributes of lawyers in encouraging early agreement include temperament and training that prioritises ways of minimising conflict affecting children. But many parents and whānau, and some professionals, were concerned that some lawyers lack adequate skills and training and encourage adversarial behaviour.
219. UMR found that “most parents could not contemplate navigating the family justice system without the support of a lawyer. Lawyers are knowledgeable professionals who help to reduce parents’ fear and stress and allow them to focus on their own and their families’ emotional wellbeing”.⁵⁷

Recommendations

38. **Direct** the Ministry of Justice to:
- a. Repurpose the Family Legal Advice Service (FLAS) to transform the current two-stage process into a single grant of up to six hours to cover pre-proceedings legal assistance, up to and including FDR
 - b. Engage with the Legal Services Commissioner to ensure that an ongoing lawyer/client relationship can exist for those people who are eligible for both FLAS and legal aid
 - c. Recognise all family legal aid lawyers as approved FLAS providers.
39. **Amend** the Care of Children Act 2004 to introduce an obligation on lawyers to facilitate the just resolution of disputes according to the law, as quickly, inexpensively and efficiently as possible, and with the least acrimony in order to minimise harm to children and whānau.

“Most parents could not contemplate navigating the family justice system without the support of a lawyer.”

⁵⁷ UMR A qualitative study on behalf of the Independent Panel examining the 2014 Family Justice System Reforms (April 2019) at 10.

Case for change

220. New Zealand has obligations to provide access to justice. Particular care is needed to ensure people with low incomes have equal access and are not discriminated against. There is concern about barriers to access for justice for women, particularly Māori, immigrant, ethnic minority and rural women. Disabled people must also be adequately supported.
221. Because of the barriers to transferring FLAS into a legal aid grant, the only option is to repurpose FLAS from two two-hour grants into a single grant of six hours.
222. Repurposing FLAS will:
- Reduce the confusion that surrounds access to early legal advice and support
 - allow for the easier formation of ongoing client-lawyer relationships and greater continuity of legal support for parents and whānau.
223. Keeping the same conditions around the grant as apply to the current FLAS (i.e., non-repayable and based on income and dependants only) ensures that parents and whānau retain those advantages. In contrast, reverting to the legal funding arrangements that existed before the 2014 reforms would remove access to early legal advice and support or create additional debt for some parents and whānau.
224. More funded legal support in early stages will:
- provide parents and whānau with tools to better check proposals and arrive at realistic, robust and sustainable parenting agreements
 - reduce the likelihood of parties feeling bullied into an agreement
 - increase confidence in the FDR process among the legal profession and judges.
225. Introducing a positive obligation on lawyers to facilitate the just resolution of disputes will address concerns that lawyers are not sufficiently focused on minimising harm to children and whānau. This includes promoting early and lasting conciliation through attending a suitable programme, e.g., PTS and FDR, unless inappropriate; and making clients aware of options for counselling.
226. The introduction of this obligation should be supported by training to build relationships between lawyers and other professionals.

2.6 Recognising community engagement

227. Community agencies provide extensive support to children, young people, parents and whānau during family breakdown and at other times of crisis. They are often the first place people go for advice and assistance.
228. Before 2014, the Family Court Coordinator in many registries built relationships with community groups and organisations, drew on their expertise and referred people to such groups or organisations when appropriate. The community groups/organisations were recognised as important contributors to the wider family justice service.
229. Operational decisions rather than the 2014 reforms eroded the connection between community groups and the Family Court.

What we learnt

230. Community agencies, such as social service providers, iwi organisations, Community Law Centres, the Citizens Advice Bureau, men's, women's and children's groups, counsellors and others are providing outstanding support in their local communities in a diverse range of areas including:
- therapeutic services
 - specialised family violence services
 - advice and advocacy
 - legal services
 - counselling.
231. Consultations, submissions and research have established that:
- family dynamics and situations are more complex than they used to be, and there are often a range of services that whānau need
 - the Family Court has lost valuable knowledge about the whānau they work with
 - community groups are well placed to help people early and keep them out of more formal processes such as court
 - it's difficult for community organisations to access relevant information about family justice services
 - there is regional variation in the quantity and quality of services provided
 - how well community groups work together depends on local relationships, which are often stronger in smaller areas
 - community organisations aren't well resourced. For example, the 2014 reforms greatly increased the workload of some community-led parts of the service, such as Community Law Centres and the Citizens Advice Bureau. This increase was not recognised as a responsibility of family justice services. It was not accompanied by commensurate resourcing, putting those organisations under significant pressure
 - there is a need for more "joined up" service provision

- many whānau who engage with family justice services are also trying to manage other challenges in their lives, including poverty, health or disability issues, mental health issues, financial stress and the general upheaval that accompanies family separation. In this broader context, it can be difficult for some parents or guardians to navigate family justice services effectively and advocate for their or their children's needs
- some submitters suggested that a “navigator” model would help parents and whānau to access the services they need and stay engaged with those services.

Recommendation

40. **Direct** the Ministry of Justice to:
- develop relationships between community organisations and the Family Court to encourage a more integrated approach to service delivery in local communities
 - work with Whānau Ora and community organisations to develop a navigator model for whānau who engage with Te Korowai Ture ā-Whānau.

Case for change

232. Te Korowai Ture ā-Whānau must be accessible, cohesive and responsive to the diverse needs of the communities it serves and be easy to navigate.
233. The new Family Justice Coordinator (discussed from paragraph 244 onwards) will support community organisations to ensure people get access to the right services at the right time. The coordinator's role should include engaging with local community organisations to help build links within communities. This will assist in achieving a more integrated approach, which will be of most benefit to whānau.
234. In Te Korowai Ture ā-Whānau, a navigator could assist children, co-parents and whānau to identify and realise their shared aspirations, even after separation, through better access to existing family justice services. A navigator could also play an after-care role by supporting whānau to implement parenting arrangements or court orders.
235. Navigator models do not fundamentally change service delivery. Instead, they create a new interface for families that helps them access the right services at the right time.⁵⁸
236. Children and whānau engaged with Te Korowai Ture ā-Whānau could benefit from a navigator service that builds on the existing Whānau Ora model. A review of Whānau Ora was completed in 2019.⁵⁹ The review confirmed that the Whānau Ora approach works and that sustainable change can be achieved by building resilience and capability within whānau to be self-managing and create their own solutions. The review also concluded that Whānau Ora is an example of a whānau-centred approach to improve outcomes for whānau, that this type of approach should be applied more widely across government, and that there should be greater investment from government and increased collaboration across agencies to expand its implementation.

58 Anne Molineux and Adithi Pandit. “Article 4: Building New Zealand's social capital: A family-by-family approach.” (2018). www2.deloitte.com/content/dam/Deloitte/nz/Documents/public-sector/Deloitte-NZ-SotS-2018-Article-4.pdf

59 Whānau Ora Review Panel Whānau Ora Review: Tipu Matoro ki te Ao. Final report to the Minister for Whānau Ora. (2018) www.tpk.govt.nz/docs/tpk-wo-review-2019.pdf

Part Three:

Strengthening the Family Court

237. The terms of reference asked us to consider the effectiveness of Family Court processes, the increase in without notice applications and the need to ensure timely resolution of cases. They also asked us to review the role of professionals.

238. The Family Court is generally the final resort for those who cannot reach agreement in any other way, but on occasion, can also be an authoritative early guide to resolving their issues.

239. The mana and effective functioning of the Family Court with its constitutional independence is essential to the protective character of Te Korowai Ture ā-Whānau.

The 2014 reforms

240. Changes in 2014 to processes and procedures in the Family Court were intended, amongst other things, to streamline proceedings, reduce delays and progress cases to timely resolution. These included:

- removing lawyers from the early stages of a court case (except where cases are urgent)
- mandating lawyer for child represents both a child's welfare and their best interests and views
- changing the way that children's safety was assessed - one hearing was required rather than two
- changing the criteria for appointing lawyer for child
- changing court processes, including introducing "case tracks" and different types of conferences (meetings) to progress court cases
- tightening the criteria for written psychological reports, including the requirement that they be "essential" and not unduly delay proceedings
- introducing a standard brief (a checklist) for those reports
- introducing "cost contribution orders".

241. Other factors, specifically the increasing complexity and diversity within New Zealand whānau, the pervasiveness of family violence, justice sector-wide systemic issues and Ministry of Justice operational management decisions all contribute to the issues facing the Family Court today. These factors and the changes relating to assessing the safety of the child are dealt with in other sections of this report.

Key findings and conclusions

242. We learnt that:

- the Family Court has the most complex mandates, especially in relation to care of children, where the decisions deal not only with the past and the present but also with the future
- a number of submitters were concerned about the way they experienced their treatment in the Family Court, and such concerns have led to the development of community groups who publicly question the soundness of the court's decisions
- delays are a significant factor in undermining confidence in the Court and can contribute to deepening parents' and whānau conflict
- there is little data to show whether the 2014 changes as a whole, or any individual changes, have led to a reduction in applications to the Court or speedier resolution of those applications.
- the data is clear however about the massive increase in without notice applications since 2014 – from 30% to 70% of all applications
- Family Courts are not meeting their statutorily prescribed timeframes
- the administrative workload of judges impacts significantly on the availability of judicial sitting time
- there has been an increase in self-represented litigants, requiring increased court time
- there is little useful information to help self-represented litigants understand and navigate the process, and what there is can be hard to find and varies from region to region
- some of the 2014 changes appear to have made little if any difference, for example the case tracks and conferences
- there has been an increase in the number of appointments of lawyer for child⁶⁰
- other issues such as the decrease in the availability of specialist psychological report writers are not directly attributable to the 2014 changes but are contributing to delays.

243. This part assesses the 2014 reforms and other factors that have impacted on the functioning of the Family Court. It covers court registry staffing, judicial resourcing, access to legal representation, lawyer for child and psychologists. It addresses court-directed counselling, complex cases, case tracks and conferences, without notice applications, and cost contributions.

60 2015/16, 7,165 appointments; 2017/18, 7,663 appointments

3.1 Family Justice Coordinator and early triaging

244. The role of the Family Court Counselling Coordinator (FCCC) was established when the Family Court was established in 1981. The original role involved triaging applications, so that they were dealt with in the most appropriate way as soon as possible. The FCCC could refer applications that required urgent attention to a judge. Coordinators also developed and maintained links to community services and ensured that the Family Court and these other services were closely connected.

245. The FCCC role has since been renamed the Family Court Coordinator (FCC). The 2014 reforms did not make any changes to the role of the FCC. However, operational changes dating from 2012 significantly impacted on the effectiveness of the role.

What we learnt

246. Consultations, submissions and research have established that:

- the role has gradually diminished over time, and it is now a much more administrative role
- many submitters saw this as “dumbing down” what had been considered a key role
- the FCC’s role of triaging applications has been lost
- there is now no single person in the Family Court to go to for information, advice and connection to services
- there is now a significant disconnect between the Family Court and community services.

Recommendation

41. **Amend** the Family Court Act 1980 to establish the role of a Family Justice Coordinator (with appropriate administrative support) whose key functions will include:
 - providing information and guidance on process, next steps and options, including by electronic means, for example, webchat
 - encouraging people to use, and connecting them to, services such as counselling, PTS, FDR and other community services
 - triaging all on notice applications to the Family Court
 - establishing and maintaining links with the family justice community.

Case for change

247. One of the aims of Te Korowai Ture ā-Whānau is to encourage and support people to agree on decisions about the care of their children at the earliest time and in the least adversarial way. People will be able to access services through many different points – there will be no “wrong door”.

248. Triaging is required to ensure that people get access to the right services at the right time. The Family Justice Coordinator (FJC) will:



provide information and guidance on next steps and options for people wanting to decide arrangements or resolve disputes about care arrangements for children (in person or to ensure accessibility through electronic mediums such as webchat)



encourage people to use, and connect them to, services such as counselling, parenting programmes or FDR or to Community Law Centres or other community organisations that offer services relevant to the person’s needs



triage all on notice applications to the Family Court and make sure that applications requiring urgent judicial attention are referred to a judge for directions; and strongly encourage other parties to attend counselling, parenting programmes or FDR



be the “glue” that holds Te Korowai Ture ā-Whānau together. The FJC will have a crucial role in establishing and maintaining links across their region between providers of counselling, parenting education programmes, FDR, other community organisations such as community law centres and the Family Court.

249. There has been widespread support for the establishment of this position. Currently there are a number of Family Court Coordinators with the experience and skills to fulfil the role. It will be important to recognise and make available specialist professional development for those appointed.

250. Initially the FJC will work in care of children matters, but in time the role could be extended to include other children’s matters, such as care and protection and family violence since disputes about children often involve one or both other elements. It is not proposed that the FJC replace the FCC. The FCC will continue to have responsibility for all other Family Court application types and will support the FJC.

3.2 Senior Family Court Registrar

251. In 2008 the Family Court Act was amended to enable the establishment of the position of Senior Family Court Registrars (SFCRs). The provisions were repealed (without coming into force) by the 2014 reforms.
252. The new position was intended to reduce the amount of time judges spent on administrative matters to increase judge sitting time. Now repealed section 7B of the Family Court Act specified that SFCRs would be able to exercise the powers of a registrar and any additional powers set out in regulations.

What we learnt

253. Consultations, submissions and research have established that:
- delays in Family Court processes are causing harm to whānau especially children
 - the amount of routine administrative (“box work”) undertaken by judges is causing significant delays and reducing the amount of time available for hearing cases
 - whilst the Rules enable registrars to make a number of directions and orders, these powers are underutilised
254. There was significant support for the position of SFCR to be established, especially from the New Zealand Law Society and the Family Court judges.

Recommendation

42. **Amend** the Family Court Act 1980 to establish the position of the Senior Family Court Registrar and the areas of responsibility for that role.
43. **Direct** the Ministry of Justice to ensure that a clear plan and appropriate training is put in place for training to enable registrars to exercise the full extent of their powers.

Case for change

255. Any delay during court processes is harmful to children and whānau. Limited judicial resources contribute to delays. Reducing judges' administrative workload will free them up and allow more time for core judicial work.
256. We propose the position of SFCR be reinstated in the Family Court Act 1980. The role of the SFCR (as previously envisaged) would include:
- interlocutory applications
 - pre-hearing conferences
 - uncontested applications
 - applications for leave
 - matters that are consented to by all parties
 - confirmation of orders made overseas
 - the enforcement of orders and directions.
257. The delegation of powers to SFCRs is not a complete delegation, and they will only be able to use their powers when directed by the Court. The proposed powers are also not a major change, as the Family Court Rules already enable registrars to perform many of the functions currently undertaken by judges. The proposed powers will be clearly defined, and a judge would continue to have oversight.
258. The SFCR would exercise these powers across all legislation falling within the Family Court's jurisdiction, and they would not be limited to proceedings under the Care of Children Act 2004. The nature and extent of the powers would be set out in regulation in consultation with the Principal Family Court Judge and the New Zealand Law Society.
259. SFCRs should either be senior registry staff or someone with legal training. Currently there are a number of registrars with the skills and experience to carry out this role. Additional training and the introduction of qualifications for the position will promote the judiciary's confidence in the new role.
260. This role could be regionally based. SFCRs could operate electronically or travel to other registries as demand necessitates.
261. Registrars in the Family Court already have a considerable range of powers in the Family Court Rules 2002 that they can exercise. However, many of those powers are not being exercised to their full extent. This appears to be a result of a lack of confidence on the part of some judges in the training and experience of registrars to undertake some aspects of their role and a lack of confidence by some registrars in their ability to exercise the full range of their powers.
262. There needs to be a clear plan and appropriate training in place for registrars to ensure that they can exercise all existing powers and discretions.

3.3 Judicial resourcing

What we learnt

263. The 2014 changes did not make specific changes to overall judicial resourcing as this is the responsibility of the Chief District Court Judge.
264. Consultations, submissions and research have established that:
- lawyers and other professionals are concerned about delays across the Family Court due to an insufficient number of judges
 - parents and whānau are concerned about how long their cases were taking to be finalised
 - family Court judges do not reflect the communities they serve
 - the rise in without notice applications, from 30% to 70%, requires a significant increase in judicial e-Duty time (currently 60 days per month)
 - too much of a judge's time is spent on administrative work.

Recommendations

44. **Direct** the Ministry of Justice, in conjunction with the Principal Family Court Judge, to take immediate steps to identify and transfer appropriate areas of existing judicial responsibility to existing court registrars in order to increase judicial hearing time.
45. **Invite** the Chief District Court Judge to:
- a. consider an immediate increase in the number of Family Court judges available in order to reduce delays
 - b. advocate for greater cultural diversity among judicial appointments.

Case for change

265. The introduction of a SFCR should reduce much of the current administrative work of judges, freeing them up to focus on hearing cases.
266. In the immediate future, even with a reduced administrative workload, more Family Court judges are needed to assist in clearing the current backlog.
267. A Family Court that better reflects New Zealand's population can deal more effectively with the diversity of children and whānau who come before it.

3.4 Legal representation in court

268. Section 7A of the Care of Children Act 2004, which was introduced as part of the 2014 reforms, prevents lawyers from acting for parents and whānau in the early stages of on notice applications.
269. Removing legal representation from the early stages of Family Court proceedings was intended to encourage parents and whānau to interact in a less adversarial manner and take responsibility for resolving their own issues about the care of children without unduly relying on lawyers.
270. At the time of the 2014 reforms, there was also a review of legal aid. Changes made to family legal aid aimed to strike a balance between the financial viability of the legal aid scheme and access to the Family Court.

What we learnt

271. Consultations, submissions and research have established that:
- section 7A of the Care of Children Act 2004 reduced access to justice by removing legal representation and entitlement to legal aid, particularly impacting low income parents and whānau
 - in all other areas of family law, including relationship property, there is no similar restriction
 - there is concern about increasing disparity between parties, when one party is able to pay for a lawyer but the other is not. Women have, on average, less income and wealth than men, and this inequality increases after separation
 - requiring self-representation places an unreasonable burden on parents and whānau, who are anxious about representing themselves in an unfamiliar environment about such an important matter as their children's welfare
 - self-represented litigants often require extensive support from court staff and judges, leading to inefficiencies and delays
 - research has found that people wanting access to a lawyer is one of the three key drivers behind the increase in without notice applications⁶¹
 - some parents preferred to represent themselves
 - some savings to the legal aid budget have occurred.

Recommendations

46. **Amend** the Care of Children Act 2004 by repealing section 7A, to allow people to have legal representation at all stages of proceedings.
47. **Amend** the Legal Services Act 2011 by repealing section 7(3A) and providing for legal aid for Care of Children Act 2004 applications.

61 Nan Wehipeihana, Kellie Spee and Shaun Akroyd Without Notice Applications in the Family Court: A research report prepared for the Ministry of Justice (Research Evaluation Consultancy Limited July 2017) at 10.

Case for change

272. Restoring a right to legal representation in all Care of Children Act proceedings is necessary for access to justice. It will, however, be ineffective if people are unable to afford lawyers. Restoring the eligibility for legal aid in all Care of Children Act proceedings will go some way to address this.
273. Current legal aid eligibility thresholds are low. They exclude some beneficiaries, as well as many low-income workers. Repayment settings and interest rates create stressful debt for some whānau at a time when financial resources are already stretched.
274. The level of allowable equity in the family home should be reviewed given the rise in housing costs. The current level may disadvantage beneficiary and low-income homeowners as all but \$80,000 of their equity is recoverable on sale of the house to repay legal aid debt.
275. At the time of writing, the results of the Government's review of legal aid have not been released. Legal aid thresholds for care of children proceedings should be raised to allow more parents and whānau access to legal representation.
276. Some people prefer to represent themselves for a variety of reasons. Recommendation 25 of this report relates to developing an effective workbook to assist self-represented litigants.



3.5 Lawyer for child

277. The role of a lawyer appointed to represent a child or young person is to, among other things:⁶²
- act for that child in the proceedings in a way that promotes the child’s welfare and best interests
 - ensure that any views expressed by the child to their lawyer about matters affecting them and relevant to the proceedings are communicated to the Court
 - assist the parties to reach agreement where doing so is in the best interest of the child
 - provide advice to the child at an appropriate level about their rights to appeal court decisions and the merits of pursuing an appeal.
278. The 2014 reforms changed the appointment threshold for a lawyer for child from “appointment unless it would serve no useful purpose” to “appointment only where there are concerns for the child’s safety or wellbeing and the Court considers appointment necessary”. This change aimed to target appointment of lawyer for child to appropriate cases.
279. The other key change in 2014 was to the definition of the role to make it clear that the lawyer for child can present the child’s views and promote their welfare and best interests at the same time. Before that, if the child’s views and best interests were at odds, the Court would sometimes appoint two lawyers to advocate separately for the different aspects.

What we learnt

280. Consultations, submissions and research have established that:
- some people reported being satisfied with the role of lawyer for child and their ability to represent the child’s views, welfare and best interests⁶³
 - children’s voices are not sufficiently heard or advocated for
 - children were not being kept informed of progress in court proceedings about them
 - children and their parents and whānau often do not understand the role of lawyer for child or do not have that role explained to them
 - lawyers don’t have the appropriate knowledge and skills to advocate for children
 - the statutory criteria for appointing a lawyer for child do not require consideration of the lawyer’s personality, cultural background, training, qualifications or experience. Note that recommendation 16 of this report relates to enabling better representation of disabled children
 - lawyers for child have inconsistent practices
 - some consider that the role should be replaced with child development experts, or lawyer for child should work with child development experts
 - reviews of lawyer for child lists are ad hoc or do not occur every three years as required
 - people have difficulty finding a local lawyer for child in some areas
 - remuneration rates haven’t increased since 1996.

62 Section 9B Family Court Act 1980.

63 UMR A qualitative study on behalf of the independent panel examining the 2014 family justice system reforms (April 2019) at 10.

Recommendations

48. **Amend** the Family Court Act 1980 to:
 - a. incorporate as appointment criteria for lawyer for child, the criteria in section 159 of the Oranga Tamariki Act 1989
 - b. place a duty on lawyer for child to explain proceedings to their clients as set out in section 10(2) of the Oranga Tamariki Act 1989.
49. **Invite** the New Zealand Law Society to strengthen the professional development and supervision requirements for lawyer for child.
50. **Invite** the Principal Family Court Judge to amend the Family Law Practice Note – Lawyer for the Child: Selection, Appointment and Other Matters to:
 - a. strengthen the criteria for approval of lawyer for child
 - b. require that any lawyer for child appointment panel include:
 - i. a child development expert, and
 - ii. a kaumātua, kuia or another respected community representative from within the area, appointed by the local Administrative Family Court Judge following consultation with the Chair of the Chief District Court Judge’s Kaupapa Māori Advisory Group
 - c. require that, where possible, Māori children are represented by a Māori lawyer for child
 - d. make the Family Justice Coordinator responsible for reviewing the lawyer for child lists, including requiring the local branch of the New Zealand Law Society to advertise the reviews.
51. **Direct** the Ministry of Justice to review remuneration rates for lawyer for child.

Case for change

281. We consider the 2014 changes to lawyer for child are working well and do not require amendment. The appointment threshold achieves an appropriate balance between upholding children’s rights to participate in decisions concerning them while ensuring resources are targeted to cases where those resources are needed. The clarification of the dual role suitably limits the exposure of children to court-appointed professionals.
282. There is, however, a need for changes to some settings and practices that shape the lawyer for child role.

Appointing the right lawyer

283. It is vital that the right lawyer for child is appointed. An understanding of a child's culture, religion, family context and wider community enables more effective representation.
284. Section 159 of the Oranga Tamariki Act 1989 contains specific appointment criteria for counsel for child. These criteria are: personality, cultural background, training and experience. The same criteria should apply to appointments of lawyer for child under the Care of Children Act 2004.
285. There should be a rigorous selection process to be approved as a lawyer for child. The selection process should test the applicant's knowledge of how children develop and communicate and their experience in working with children from diverse cultural and social backgrounds. This requires the selection of panel members who are capable of testing that knowledge and skills.
286. The Family Justice Coordinator should be responsible for the review of lawyer for child lists to ensure it is completed in a timely manner.

Keeping children informed

287. Currently, the *Lawyer for Child Best Practice Guidelines*⁶⁴ do not place an explicit duty on a lawyer for child to explain proceedings to their clients. Section 10(2) of the Oranga Tamariki Act 1989 places a duty on lawyer for child to "explain ... in a manner and in language that can be understood by that person, the nature of the proceedings ... and satisfy themselves that the person ... understands the proceedings". That requirement should apply in the Care of Children Act 2004.

Professional development

288. Those working in family justice services have repeatedly told us that family and whānau dynamics are becoming much more complex, particularly with an increase in the prevalence of mental health issues, substance dependence and family violence. The professional development requirements for lawyer for child should be strengthened. The New Zealand Law Society, Ministry of Justice and Family Court bench should collaborate to strengthen the professional development and supervision requirements.

Remuneration

289. Remuneration levels for lawyer for child are not fixed in regulations. They are agreed between the Ministry of Justice and the New Zealand Law Society. They have not been reviewed since 1996. In real terms, there has been a 50% reduction in the relative value of lawyer for child remuneration since then. This is a likely factor in the reduction in the pool of lawyer for child.

64 New Zealand Law Society (Family Law Section) *Lawyer for the Child Best Practice Guidelines* (2018) www.lawsociety.org.nz/___data/assets/pdf_file/0005/123764/FINAL-FLS-lawyer-for-child-best-practice-guidelines-23.2.18.pdf.

Māori lawyer for child appointed for tamariki Māori

290. The Family Court Practice Note: Lawyer for the Child: Selection, Appointment and Other Matters⁶⁵ requires the Court to consider appointing a lawyer whose skills match the case requirements. This includes consideration of the child's culture and ethnicity. In the case *Cavanagh v Cavanagh*⁶⁶, Justice Hinton supported Māori lawyers being appointed for Māori children. We agree, because Māori whānau are likely to engage more effectively with a lawyer who they can identify with partly because Māori lawyers have a better understanding of whānau, hapū and iwi. They will also likely share commonalities with the child and whānau, including respect for the importance of whakapapa, te reo Māori, tikanga Māori and a Māori world view.
291. The aim of having Māori lawyer for child appointed for Māori children should be a shared goal for the New Zealand Law Society, Te Hunga Rōia Māori o Aotearoa (the Māori Law Society), the Ministry of Justice and the Family Court.

3.6 Psychological report writers

292. Since 1981, the Court has been able to order a report from a psychologist to help inform the judge's decision.
293. For many years, the pool of psychological report writers available to the Court has been small and decreasing. The 2014 reforms aimed to limit the number of psychological reports requested because of concerns about the reports being obtained when they might be helpful rather than when they are needed to decide a case. In response to this concern, the threshold for obtaining a report was raised from "necessary" to "essential", and, among other factors, a report could only be ordered if it would not result in undue delay.
294. Other changes made to section 133 of the Care of Children Act 2004 include:
- introducing a national standard brief for the report
 - clarifying when a report writer may be asked to obtain children's views
 - enabling a report writer to see children with a parent outside the terms of an order
 - allowing a second opinion (or critique report) to be obtained in "exceptional circumstances".
295. Elements of the judicial practice note were also incorporated into the Care of Children Act 2004. This allowed a judge to order the release of a report writer's materials to another psychologist if the Court was satisfied that the material was necessary to help a party prepare their cross-examination.
296. In response to the concerns of some professionals, further changes to section 133 were included in the Courts Matters Act that came into effect in November 2018. The changes in the Act provide that:
- a report of a court-appointed report writer may be disclosed to a party's psychologist to assist the preparation of cross-examination by the party
 - the Court may only permit disclosure of the report writer's notes and other materials to a party's psychologist for the purpose of assisting cross-examination by the party if there are "exceptional circumstances"

⁶⁵ 2015. See: www.justice.govt.nz/assets/Documents/Publications/fc-lawyer-for-the-child-selection.pdf

⁶⁶ *Cavanagh v Cavanagh* [2017] NZHC 1546 at [108]

- the notes and materials to be released by the Court must comprise information solely about the party who is seeking their release
- the Court may impose any terms and conditions on the release of the notes and materials as it sees fit.

297. During the Bill's second reading in Parliament, the Minister of Justice Hon Andrew Little and the Associate Minister for Justice, Hon Aupito William Sio agreed that, due to the conflicting views of key stakeholders, the issue of the release of notes and materials would be better dealt with by us to ensure appropriate consultations.

What we learnt

298. Some parents and whānau, including children and young people, reported positive experiences with psychologists. However, a number of concerns were also expressed, including a lack of objectivity, competence in assessing risk, limited observation time and the cost of reports.

299. Other issues raised included:

- a serious shortage of report writers
- delays in appointing a report writer and in receiving a report
- difficulties with recruiting and retaining suitably qualified and experienced psychologists
- effects of multiple complaints procedures
- lack of a professional pathway into Family Court work
- confusion about the definition of second opinion reports and whether they are the same or different from critique reports
- release of report writer's notes to another psychologist for cross-examination.

Recommendations

52. **Direct** the Ministry of Justice to work with the judiciary, the New Zealand Psychological Society and the New Zealand College of Clinical Psychologists to improve recruitment and retention of specialist report writers, including from diverse backgrounds. This should include an agreed approach to job shadowing by less experienced psychologists.
53. **Amend** section 133 of the Care of Children Act 2004 to consolidate the terms "critique report" and "second opinion" into the single term – "critique report".
54. In relation to psychological report writers' notes being released for cross-examination:
 - a. **invite** the Principal Family Court Judge to review the judicial practice note, in consultation with psychological report writers and the New Zealand Law Society, to include standard conditions for releasing notes and materials to a psychologist assisting with preparation for cross-examination
 - b. **direct** the Ministry of Justice to remunerate report writers for their time where redaction of notes is required.

Case for change

Shortage of psychological report writers

300. New Zealand is experiencing a shortage of psychologists. Clinical psychologists are on Immigration New Zealand's Long Term Skill Shortage List.
301. The recruitment and retention of psychological report writers should be addressed urgently. Difficulties in obtaining psychological reports contribute to delays in the Court. Achieving an increase in the workforce will require a concerted effort from psychologist professional bodies, in liaison with universities and the Ministry of Justice. This should include an agreed approach to job shadowing by less experienced psychologists, which has occurred on an ad hoc basis in the past.

Release of a report writer's notes and materials for cross-examination

302. The release of a report writer's notes and materials to a psychologist assisting with preparation for cross-examination is a contentious issue, and there are differing points of view. While it's important that evidence before the Court is able to be thoroughly tested, careful safeguards are needed to mitigate the risk of harm to parties or children from the release of a report writer's notes and materials.
303. The current legislation aims to strike the appropriate balance, but there is opportunity for it to be further clarified in the judicial practice note by including standard conditions for the release of notes and materials to a psychologist.

3.7 Court-directed counselling

Section 46G counselling

304. Section 46G of the Care of Children Act 2004 provides that a judge can direct parties to attend counselling if that judge believes it will be the best way to help with the parties' relationship or in complying with court orders.
305. While the 2014 reforms didn't make specific changes to section 46G counselling, wider changes, such as the removal of relationship counselling (discussed at paragraph 179) has meant the Court's ability to direct counselling is limited to a single referral on only the two grounds specified.

What we learnt

306. Consultations, submissions and research have established that:
- The Court can only direct one referral to section 46G counselling
 - This direction is often delayed so the Court doesn't exhaust its one opportunity prematurely, but this can mean counselling doesn't happen early enough to be helpful
 - There is no upper limit on session allocation
 - Session allocation varies between judges and registries – anywhere from a few to over 25 hours

- There is no process for the Court to be informed of progress made at counselling, even where counselling is completed before the judge makes a final order
- Section 46G does not allow the Court to direct counselling for children or provide for their participation alongside their parents, even where this may be beneficial for a child.

Recommendations

55. **Amend** section 46G of the Care of Children Act 2004 to:
 - a. allow judges to make up to two directions for counselling
 - b. allow children to attend counselling with one or both parents/parties
 - c. require the Family Court, when directing section 46G counselling, to clarify purpose and stipulate a report back from the counsellor to inform the Court of progress.
56. **Promulgate** regulations to set an upper limit of 10 sessions for section 46G counselling.

Case for change

307. There may be some cases where multiple referrals are appropriate, for instance, once early in proceedings to focus on communication, and again towards the end to encourage compliance with the final order.
308. Providing for two referrals will give the Court more flexibility to help parents and whānau cooperate in making decisions about their children. It also means that parties have a better chance of receiving the support they need at the right time.
309. There is a regulation-making power in the Care of Children Act 2004 to set the maximum number of section 46G counselling sessions that can take place in each case, but regulations have not been made. Currently, the maximum number of sessions available to parties is decided by the judge on a case-by-case basis.
310. An upper limit on session allocation should be set in regulations. This should ensure regional consistency and efficient use of court resources.
311. To provide accountability in court-directed counselling, counsellors should be required to report back to the Court on progress made, the level of engagement and whether further counselling is recommended.
312. Some counsellors and psychologists thought therapy in a family setting (involving children) was often even more valuable than couples' therapy.
313. Section 46G should be broadened to enable children to attend counselling sessions alongside one or both parents or parties where the counsellor deems this appropriate. This change increases the flexibility of section 46G counselling to provide family counselling with the holistic support needed to reduce the likelihood of a return to court.

Counselling for children

What we learnt

314. Consultations, submissions and research have established that:
- The impact that parental separation has on children is well documented, particularly in the early stages when children are dealing with initial feelings about the separation and adjusting to their changed circumstances
 - Some children will not comply with court orders about their care arrangements, disagreeing with the Court's assessment of what is in their best interests
 - Some parents felt the behaviour of the other parent was a factor in the children's unwillingness to comply with a court order
 - Counselling for children has never been provided through the Family Court, although it was recommended by the New Zealand Law Commission in 2003
 - A majority of submitters, particularly those working with children and young people, supported counselling being provided for free, to help children work through the wider emotional effects and overcome trauma or exposure to conflict and ease the transition into a new family dynamic.

Recommendations

57. **Direct** the Ministry of Justice to undertake further work as a matter of urgency, in consultation with the Family Court, counsellors, relevant professional bodies, child development experts, social services and children/young people to determine:
- best practice guidelines for when children should be eligible for funded counselling in their own right
 - key settings around parent and child consent
 - scope and purpose
 - required amendments to the Care of Children Act 2004.

Case for change

315. Children can feel angry, guilty, sad, worried or torn after a family breakdown. These emotions often persist for many years and impact on their wellbeing.
316. To enable their effective participation in decisions that affect them, children should have the opportunity to speak to someone about the effect of the family breakdown on them and the impact of the decisions being made in court proceedings. Being able to direct a child to counselling provides the Court with a positive alternative to more serious intervention.
317. Further work will have to be done to determine the right models and settings for eligibility, consent, purpose and duration of counselling. This work must be done in consultation with the Court, counsellors, relevant professional bodies, child development experts and social services and, importantly, children and young people. As soon as the key settings are determined, there should be an amendment to the Care of Children Act 2004 to enable implementation.

3.8 Identifying and responding to complex cases

318. The 2014 reforms changed the Family Court Rules, introducing rule 416UA to enable individual Care of Children Act cases to be categorised as complex at any stage in the proceedings.
319. A judge may classify a case as complex and individually case manage it if they consider it requires more judicial oversight. The features that identify a case as complex are:
- allegations of serious abuse or violence
 - the personalities or behaviour of any of the parties indicating that there may be a serious risk to the physical or psychological safety or wellbeing of any child involved in the case
 - novel or difficult legal, technical or evidential issues.
320. There is no guidance or process for judges to follow other than the ability to call case management conferences at any time.

What we learnt

321. Consultations, submissions and research have established that:
- many people spoke of the increased complexity of the cases coming before the Court, making it difficult for them to progress through the current services
 - the number of these cases is increasing, but few cases are designated as complex
 - the effect on children and young people is particularly damaging
 - these cases are difficult and costly for both parties and the Court
 - they take up a disproportionate amount of the Court's time even though the number of them is comparatively small
 - current rules are insufficient to classify and deal with these cases adequately
 - there are limited therapeutic interventions available to the Court and the nature of what these should involve is highly contested
 - there is limited understanding of the nature and extent of these cases, and this may be limiting the Court's response to them
 - a few submitters considered that a party or parties in a high conflict case should be psychologically assessed if necessary or privilege waived in any therapeutic intervention
 - in many instances, there are multiple applications to the Court, often on a without notice basis and over a long period of time. These applications are considered by many different judges, frequently without access to the full history of the case
 - having one judge case manage a file ensures consistency and familiarity, and is likely to promote better judicial decision making
 - similarly, it was suggested that having one judge manage all Family Court and, where relevant, criminal matters regarding a family, is likely to promote better outcomes for the children.

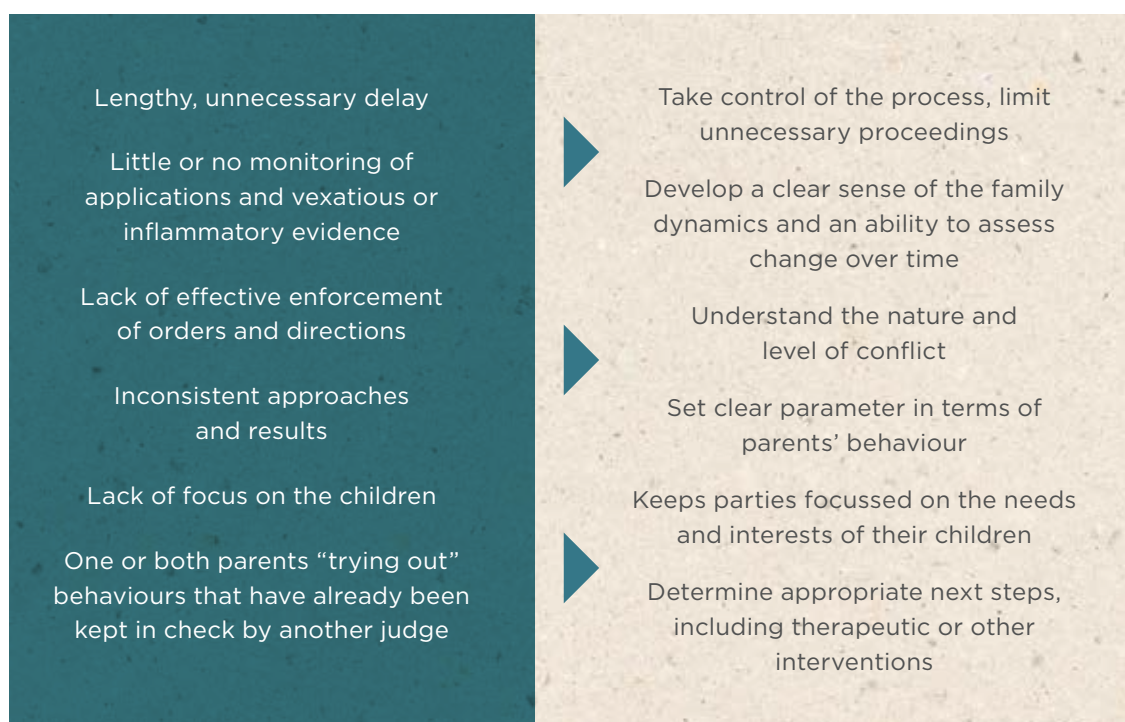
Recommendations

58. **Amend** the Family Court Rules 2002 so:
- a second judge is identified as a back-up judge for complex cases so that momentum is not lost if the designated judge is ill or on leave
 - all applications, in particular, without notice applications or applications for a warrant to uplift are dealt with by the designated judge(s) and not on e-Duty
 - administration/oversight of a complex case file is the responsibility of the Senior Family Court Registrar, to ensure that all judicial directions are complied with
 - a case may be classified as complex if:
 - there are serious allegations of violence and abuse or serious risk of violence or abuse
 - it has novel or difficult legal, cultural, technical or evidential issues.
59. **Direct** the Ministry of Justice to:
- collect and analyse relevant data concerning complex cases to improve practice and procedure in these cases
 - after two years, undertake an analysis of the extent and effectiveness of referrals to section 46G counselling in complex cases and recommend any immediate changes required
 - undertake research to identify the nature and extent of complex cases in the Family Court, appropriate responses to those cases and specialist professional development required for lawyers, judges and other professionals involved in these cases.
60. **Invite** the Chief District Court Judge, Principal Family Court Judge and Ministry of Justice to explore the development of an integrated approach to management of rostering and scheduling, with the goal of having one judge manage all Family Court and, where relevant, criminal matters regarding a family.

Case for change

322. Complex cases may include:
- family violence
 - high conflict between the parties
 - an inability to focus on the children's interests
 - deeply rooted negative behaviours and beliefs
 - degrees of mistrust, anger, or poor or abusive communication
 - personality disorders/cognitive distortions
 - one parent using the court process to either harass their former partner or attempt to engage them in an ongoing relationship
 - a child rejecting/resisting contact with a parent or caregiver.

323. There is little information about complex cases in the Family Court. Very few cases are currently categorised as complex. For example, in 2016/17, out of a total of 8,676 resolved Care of Children Act cases, 147 were categorised as complex and took on average 606 days to be resolved. In 2017/18, of 8,481 cases that were resolved, 92 were categorised as complex, taking on average 554 days to resolve.
324. An overseas study has estimated that 10% of cases can be categorised as high conflict and these cases take up 90% of the Court's time.⁶⁷ People we spoke to during our consultation thought that this was probably the same in New Zealand.
325. A specialised approach to dealing with complex cases is required.
326. The following diagram describes the current challenges of the system and the effect of recommendations in this report.⁶⁸



327. Failure to deal effectively with these cases risks repeated engagement with the Court and continuing exposure of children to instability, conflict and lasting damage.
328. Steps can be taken almost immediately to deal more effectively with complex cases. The Family Court Rules currently provide for complex cases to be managed by a primary judge. A second judge should be allocated as backup to these cases to avoid loss of momentum in the absence of the primary judge.
329. All applications, including any subsequent without notice applications, should be dealt with by the primary judge or, if they are unavailable, by the backup judge.

⁶⁷ Neff and Cooper above n 4, at 99.

⁶⁸ Nicholas Bala, Rachel Birnbaum and Justice Donna Martinson, One Judge for One Family: Differentiated Case Management for Families in Continuing Conflict 26 Canadian Journal of Family Law 395 at 410 - 412.

330. Effective administrative oversight is also required. The Senior Family Court Registrar should have responsibility, working closely with the primary judge.
331. To better identify complex cases, classification should be widened to include not only serious allegations of violence and abuse, but serious risk of violence or abuse. In addition, cultural issues should be added as a novel or difficult factor for classification.
332. It is vital to collect information about complex cases and to review the Court's responses, including the use and effectiveness of section 46G counselling, in order to identify any improvements.
333. The complexity of these cases requires a multi-disciplinary approach. The Ministry of Justice should initiate a research project to better understand the nature and extent of these cases, identify best practices to assist resolution and strengthen appropriate professional development.

3.9 Case tracks and conferences

334. The 2014 reforms introduced three tracks and five types of conferences. The three tracks were simple, standard and without notice tracks. The five types of conferences were issues, directions, settlement, pre-hearing and case management conferences. These changes were made through amendments to the Family Court Rules.
335. The reasons given for the changes were insufficient judicial and registry powers to actively direct and manage the conduct of proceedings, resulting in delays and additional expense for parties. People coming to court did not know how long their case would take and what to expect at each stage of the process.

What we learnt

336. Consultations, submissions and research have established that:
- there has been some support for these changes
 - others consider there are too many case tracks and conference types
 - there is little adherence by judges and lawyers to the procedure, with multiple conferences persisting
 - parents and whānau, in particular those who are self-represented, do not know about or understand the different types of conferences and tracks and find them difficult to navigate
 - parents and whānau felt conferences were unhelpful or of no benefit
 - the significant increase in without notice applications has increased the delays for those cases on the simple and standard tracks
 - people coming to court still don't know how long their case will take and what to expect at each stage of the process.

Recommendation

61. **Amend** the Family Court Rules 2002 to:
 - a. provide for two case tracks (standard and without notice) and three types of conference (judicial, settlement and pre-hearing)
 - b. where appropriate and practicable, encourage and prioritise video and telephone conferences over requiring parties and lawyers to attend court.

Case for change

337. Despite there being three tracks, very few cases are allocated to the simple track and there are significant delays across all tracks.
338. For example, in the 2017/18 year, of the 8,481 Care of Children Act cases that were resolved, 245 were on the simple track, taking on average 235 days (around eight months) to resolve. In the same year, 3,132 cases on the standard track were resolved, taking on average 341 days. The number of cases resolved on the without notice track for the same period was 5,007, taking on average 285 days to resolve. The remaining 92 cases were categorised as complex, and took on average 554 days to resolve.
339. There should be two case tracks (standard and without notice) and three conference types: judicial, settlement and pre-hearing.⁶⁹ Simply reducing the number of tracks and conferences will not in itself reduce the number of conferences held in any particular case. That requires a commitment from both judges and lawyers to manage cases effectively without unnecessary adjournments. This will require a change in judicial and lawyer behaviour.
340. Given our recommendations about FDR, we anticipate a potential reduction in the number of settlement conferences. However, some cases benefit from a judge presiding over a settlement conference. For some cultures, the authority and the prestige of a judge can assist in early resolution, avoiding the need for a defended hearing.
341. In all cases, unless impractical or disadvantageous to the parties, the use of video and telephone technology for judicial and pre-hearing conferences should be encouraged to reduce delays and costs.

⁶⁹ Diagrams illustrating the two case tracks can be found in Appendix Five. These diagrams appeared in the New Zealand Law Society's submission to our first round of consultation.

3.10 Without notice applications

342. Without notice applications are a fundamental process in the Family Court because they give immediate relief in urgent cases, where even 24 hours' notice would be harmful. People have been able to file proceedings in the Family Court on a without notice basis since the establishment of the Family Court in 1981. There was no change to the without notice threshold in 2014.
343. Without notice applications require a careful balance between one party's right to immediate relief against the other party's right to natural justice.
344. The Family Court Rules establish the threshold that must be met before an order can be made on a without notice basis. That threshold is "the delay that would be caused by making the application on notice would or might entail ... serious injury or undue hardship, or risk to the personal safety of the applicant or any child of the applicant's family, or both".⁷⁰

What we learnt

345. Consultations, submissions and research have established that:
- without notice application numbers increased dramatically following the 2014 reforms. They've gone from being the exception (30% of all applications pre-2014) to being the norm in 2019 (70% of all applications), despite there being no change to the threshold
 - this has increased delays in the Family Court
 - without notice application numbers are attributed to three main factors:
 - applicants want to secure legal representation they are otherwise not entitled to as a result of the 2014⁷¹ changes
 - there is a perceived risk of family violence or harm
 - delays and the perceived lack of an alternative option to progress quickly through the Family Court.⁷²
 - family violence is a significant factor in without notice applications
 - in some instances, parties, particularly self-litigants, fail to disclose all essential information
 - the process incentivises a negative and adversarial approach

"Participants thought that the without notice track put the parent who did not initiate proceedings at a disadvantage, in that the applicant secured an initial 'win' in the form of an interim order. This set a negative tone for the process from that time forward."⁷³

- the large increase in the amount of time devoted to the e-Duty platform dealing with these applications is placing pressure on the registry and judges
- parties are not using out of court services, such as PTS and FDR.

⁷⁰ Applications can also be filed without notice if the application affects the applicant only or is in respect of a routine matter or every person in respect of whom the order is sought has either died or cannot be found.

⁷¹ Nan Wehipeihana, Kellie Spee and Shaun Akroyd, *Without Notice Applications in the Family Court: A research report prepared for the Ministry of Justice*, (Research Evaluation Consultancy Limited, July 2017) at 14.

⁷² *Ibid.*

⁷³ UMR A qualitative study on behalf of the Independent Panel examining the 2014 family justice system reforms (April 2019) at 52.

Recommendations

62. **Amend** the Family Court Rules 2002 to:
- a. clarify that Rule 34 applies to proceedings under the Care of Children Act 2004 to allow an application to be made to rescind a without notice order
 - b. specify a timeframe within which the Family Court must allocate a hearing/conference where an order to abridge time has been made and service has occurred
 - c. require represented parties and self-represented litigants to answer the following specific questions when applying without notice to the Family Court:
 - Why would an on-notice application with an application to reduce time not be more appropriate (bearing in mind a reduction of time can shorten the period for response to 24 hours or less, at the judge's discretion)
 - Why should an order be made without notice to the other party
 - Does the respondent or their lawyer know of the intention to file
 - Is there likely to be any hardship, danger or prejudice to the respondent/a child/a third party if the order were made
 - What kind of damage or harm may result if the order were not made
 - Why must the order be made urgently.

Case for change

346. The without notice threshold itself is sound.
347. Clarifying that orders made on a without notice basis can be rescinded gives the Court an important tool to address disadvantage to one party where orders may have been made quickly on the basis of incomplete or misleading information. This amendment to the Family Court Rules would helpfully reflect and codify the existing precedent established in the case *Stanford v Smalls* [2016] NZFC 3993.
348. The use of on notice applications with applications for reduction of time for time-sensitive but non-urgent issues should be encouraged. This should be achieved through a rule change so an application for a reduction of time relates to both the timeframe for response and stipulates a timeframe within which the first court event must take place.
349. Currently very little information is available to applicants to understand the without notice threshold, what it is intended for, the consequences of filing without notice and other alternatives an applicant might consider. Including more targeted questions in application forms will go some way to ensuring applicants have fully considered the specific implications of a decision to file without notice. Judges will then have more information to consider the application. The recommended questions are based on those in Rule 5.12 of the Australian Family Law Rules 2004.

3.11 Cost contribution orders

350. Before the 2014 reforms, the fees and expenses of lawyer for child, lawyer to assist and specialist report writers were government-funded. In certain circumstances, the Court could order a party or parties to contribute, but this rarely occurred.
351. Cost Contribution Orders (CCOs) were introduced in the 2014 reforms under section 135A of the Care of Children Act 2004. The intentions of CCOs were to help with the government's funding constraints in the family justice sector, act as a deterrent to prolonged litigation and act as an incentive to resolving disputes out of court. The aim was to incentivise whānau to address their problems without recourse to the Court.
352. Section 135A of the Care of Children Act 2004 requires people to pay part of the cost of any lawyer for child, lawyer to assist the Court and specialist report writers appointed in relation to their case. Each party is required to pay an equal one-third share of those costs, and the government pays the remainder. The Court may, however, decline to make an order if it is satisfied that imposing the order would cause serious hardship to the party or to a child of the party.
353. Cost contributions were estimated to cost parties approximately \$1,100 each. It was estimated that \$15.17 million (not including written off debt) would be recovered over four years (2012/13 to 2014/15) in relation to the costs of lawyer for child alone.

What we learnt

354. Consultations, submissions and research have established that:
- CCOs have not met their intended objectives
 - judges have not made CCOs in approximately 85% of cases where they were entitled to
 - for the last three financial years, approximately \$1.3 million was recovered in total
 - in some cases, CCOs have created financial hardship for parents and whānau
 - CCOs create an additional administrative workload in an already busy court registry
 - CCOs are made after a court case has ended, and often after further processing delays. They take some parents and whānau by surprise, undermining their usefulness as a lever to incentivise earlier behaviour change. Inconsistencies in how CCOs are made between courts around the country erode trust in the Family Court
 - the CCO paperwork is sent directly to the parents or whānau, often considerably after the client-lawyer relationship has ended. Recipients do not always understand how to complete applications for exemptions, meaning some parties pay CCOs for which they could have been exempted.

Recommendation

63. **Amend** section 135A of the Care of Children Act 2004, replacing it with a provision giving judges the discretion to order a party to pay up to a set amount of the costs of lawyer for the child, lawyer to assist the Court and specialist report writers appointed only in those cases where a party has behaved in a way that intentionally prolongs proceedings, or is vexatious or frivolous.

Case for change

355. CCOs have not met the objective of incentivising non-court dispute resolution. The extra workload they incur to the Family Court and the stress placed upon whānau justifies the removal of mandatory CCOs.
356. There is an argument, however, for retaining Family Court judges' ability to issue CCOs in cases where one or both parties are held to be vexatious or frivolous or their behaviour causes undue delays.
357. It will be necessary for judges to be able to distinguish between people who were culpably vexatious from those whose experience of family violence trauma, mental health issues or other vulnerabilities influences them to behave in ways that appeared irrational or obstructive.
358. The maximum proportion could be set in the range of 25%–50% of costs. The provision should make it clear that where the behaviour is the result of matters beyond the party's control, such as trauma, mental illness or cognitive impairment, a cost contribution order should not be made.



Part Four:

Monitoring and development

Introduction

359. The terms of reference asked us to examine the 2014 family justice reforms and in doing so to consider, amongst other things, whether the family justice system is:

- “accessible with consideration of barriers to access, including financial, disability, cultural, linguistic, geographical and institutional ...
- cost effective, with reference to financial sustainability to the Crown, given the various drivers of cost, capability and resources.”

360. A number of critical barriers to accessibility have their origins in administrative and management decisions and practices.

361. There has been no comprehensive monitoring of the impact of the 2014 reforms, and available data does not provide a sufficiently sound basis on which to rigorously compare and evaluate developments.

362. This section identifies areas where change is essential for Te Korowai Ture ā-Whānau to provide truly accessible justice for children, parents and whānau. It covers technology in the Family Court, the Family Court Rules, and Care of Children Act forms. It concludes with a section on monitoring and development.

Key findings and conclusions

363. We learnt that:

- management and administrative decisions have impacted almost as significantly as the 2014 law reforms
- under-investment for over a decade or more has contributed to endemic delays in current family justice services
- financial pressures have led to decisions that prioritise the interests of the service rather than being responsive to the needs of children, young people, parents and whānau
- the Care of Children Act forms have been widely criticised
- ensuring Te Korowai Ture ā-Whānau is fit for purpose, responsive to te ao Māori and embraces New Zealand's diversity requires a fresh approach to open and transparent accountability.

4.1 Technology in the Family Court

364. The Family Court currently operates a paper-based file management system alongside an outdated IT system. This is inefficient and a source of delays and issues such as loss of files.

What we learnt

365. Consultations, submissions and research have established that:

- there has been significant under-investment the Family Court infrastructure for more than 10 years
- the current IT system represents a real risk to continuity of business because of increasing unreliability
- the current IT system undermines efficiency, for example, it does not allow a judge on circuit in some areas to edit court documents without returning to the main court
- investment in an up-to-date IT system is critical to the effective functioning of the Te Korowai Ture ā-Whānau and the implementation of other changes recommended in this report.

Recommendation

64. **Allocate** sufficient new funding to enable the Ministry of Justice to strengthen the technology platform that supports case management in the Family Court, to facilitate robust data collection for monitoring and development.

Case for change

366. The old and creaky technology currently in use is a major barrier to reducing delays, improving efficiency and ensuring accuracy at all points of Family Court processes.

367. The Ministry of Justice has been investigating how to strengthen the technology supporting case management in court, including enabling people to make applications and track progress of their case online. This is a key requirement as the current paper-based system is inadequate.

368. The importance of investment in modern case-management tools strongly aligns with what we have heard from a range of people over our first and second rounds of consultation. Its importance cannot be underestimated.

369. While the initial investment is substantial, these tools are critical if the Court is to take a proactive role in managing family cases and reducing the risk that judges' decisions are made without the complete information and that actions around their decisions are not unnecessarily delayed or inadequately communicated.

4.2 Family Court Rules 2002

370. The Family Court was established as a division of the District Court in 1981, with specialist judges and support services, including counsellors. In 1981, the Family Court had jurisdiction under eight acts, which dealt with such matters as marriage, separation and divorce.
371. Until 2002, the practices and procedures in the Family Court were prescribed in rules and regulations made under the Adoption Act 1955, the Guardianship Act 1968, the Property (Relationships) Act 1976, the Family Proceedings Act 1980, the Protection of Personal and Property Rights Act 1988, the Children, Young Persons and Their Families Act 1989, the Child Support Act 1991 and the Domestic Violence Act 1995.
372. Having the practices and procedures for the Family Court spread throughout these rules and regulations made understanding the law difficult. This led to a stand-alone set of rules for the Family Court – the Family Court Rules 2002, which consolidated all the existing rules applicable to Family Court proceedings.
373. The 2014 reforms introduced a new part – 5A – into the Family Court Rules 2002. This part provided 37 new rules for certain proceedings under the Care of Children Act 2004. Some recommendations for changes to these rules are dealt with in section 3.9 about case tracks and conferences.

What we learnt

374. Consultations, submissions and research have established that:
- judges, lawyers and registry staff find the Rules overly complex and difficult to navigate
 - a comprehensive review of the Family Court Rules is required.

Recommendation

65. **Direct** the Ministry of Justice to initiate and coordinate a review and rewrite of the Family Courts Rules 2002 in consultation with the Principal Family Court Judge and the New Zealand Law Society.

Case for change

375. In 2002, the focus was on consolidation. Since then they have been amended on numerous occasions and have become more complex.
376. A comprehensive review provides an opportunity to make changes. A consistent, principled approach will ensure that the Rules reflect modern court practices, acknowledging the specialist nature of the Family Court.

4.3 Care of Children Act forms

377. The 2014 reforms introduced new court forms for Care of Children Act applications. These forms aimed to improve the relevance to the dispute of information filed and reduce the inflammatory nature of affidavits.

What we learnt

378. Consultations, submissions and research have established that:

- Many people were critical of the forms during consultation
- Lawyers told us that the forms do not allow them to provide the relevant information in a succinct format
- self-represented litigants find the forms confusing and difficult to complete
- judges and court staff find that the forms present information in an unhelpful manner
- the Ministry of Justice is in the final stages of creating new Care of Children Act forms. There will be two sets of new forms; a less prescriptive set for lawyers and a clearer, simpler set for self-represented litigants.

Recommendation

66. **Direct** the Ministry of Justice introduce the new Care of Children Act forms as soon as possible and review them after 12 months.

Case for change

379. We acknowledge the Ministry of Justice's work on the new forms and support these forms being introduced as soon as possible. It is important that the forms and accompanying guide are easy for those completing them to understand; accessible to those with low literacy, disabilities and cultural and linguistic differences; and provided in a range of formats – both electronic and paper.

380. A review of the forms should take place in 12 months to ensure they are fit for purpose.

4.4 Monitoring

381. The 2014 reforms introduced a significant change to the way in which family justice services were delivered, with an emphasis on in court and out of court processes.
382. PTS was reviewed and improved and FDR and FLAS were established. Despite these services being funded by the Ministry of Justice (with some elements of user pays for FDR), there is little, if any, coordination between them by the Ministry of Justice.
383. Since 2014, there has been no formal recognition of the contribution that community-based services make to family justice services.
384. Although considerable data is collected by the Ministry of Justice, and to a lesser extent by others within family justice services, it is mainly for operational purposes and has limited analytical use.

What we learnt

385. Consultations, submissions and research have established that:
- professionals working in family justice services often feel siloed and detached from one another
 - there is little opportunity to work collaboratively to build trust in each other and there are few incentives to work innovatively across services
 - until recently, there was no promotion of a joined-up service, sector-wide planning, collaborative practices or system-wide capacity and capability building
 - the absence of planning means that there is limited ability to address gaps and areas for development that are observed
 - in 2018, the Ministry of Justice began establishing Local Family Justice Sector Networks (LFJSN). These networks exist in 18 locations across the country. They aim to provide structured engagement to identify, address and solve issues that affect operational service delivery in local Family Court registries
 - the long-standing calls to change the monocultural nature of family justice services have not been accompanied by any constructive response, system-wide planning or resourcing for kaupapa Māori or other culturally appropriate service development
 - there has been some ad hoc but no systematic monitoring and evaluation of the impact of the 2014 reforms or of any other aspect of family justice services
 - much of the data required to answer questions raised in the terms of reference was not available. It was difficult to compare datasets, and it was not always possible to draw robust conclusions

- there is a lack of capacity across family justice services to deal with a range of issues, exacerbated by the shortage of professionals. Building capacity is important in the following areas:
 - responding to cases involving family violence (see section 1.5 of this report)
 - offering services in accordance with te ao Māori or incorporating tikanga in family justice processes (see section 1.2 of this report)
 - appropriately serving culturally diverse whānau (see section 1.3 of this report)
 - accommodating the needs of parents/caregivers and children with disabilities of all types (see section 1.4 of this report)
 - working with children in a way that consistently reflects best practice (see section 1.1 of this report)
- there is no mechanism to seek feedback from children and young people at any level of family justice services.

Recommendations

67. **Direct** the Ministry of Justice to develop a monitoring and development strategy for Te Korowai Ture ā-Whānau. The strategy should involve a comprehensive data collection plan, with particular focus on improving the data collection on gender, ethnicity, language and culture and the prevalence and management of complex cases. The strategy should also contain an evaluation plan to ensure, among other things, that:
 - a. PTS is evaluated every three years
 - b. FDR is initially reviewed after two years, and then evaluated every three years thereafter
 - c. changes made to section 46G counselling are reviewed after two years
 - d. the new Care of Children Act forms are reviewed 12 months after their introduction.
68. **Establish** a children’s advisory group to provide advice and insight into children’s experiences of care of children matters in Te Korowai Ture ā-Whānau to inform policy and practice.
69. **Establish** a ministerial advisory group to advise on, and make recommendations about, implementation of changes arising from this report, and any other matters specified by the Minister of Justice.

Case for change

386. There is a clear need for a systematic approach to ensuring Te Korowai Ture ā-Whānau learns and evolves as a cohesive, collaborative whole. The first step is to develop a monitoring and development plan to build understanding, respect and trust across the service. This will support the shared vision expressed by Te Korowai Ture ā-Whānau.
387. LFJSN meetings would benefit from widening the membership to include FDR and PTS providers, community agencies such as the Community Law Centre and Citizen's Advice Bureau and tangata whenua representatives.
388. Children's participation is central at a systems level, as well as in individual cases, hence the recommendation to establish a children's advisory group. The voices of children who have lived experience of Family Court matters can provide the Minister of Justice with insights and advice from their own perspectives and, ideally, those of their peers. Such a group must include tamariki Māori, children from other ethnic backgrounds, children with disabilities, and children from diverse geographic and socio-economic backgrounds.
389. We recognise the importance of establishing this advisory group, noting that Oranga Tamariki is already beginning to engage children and young people in policy development, for example it recently used a child-centred design process to develop the key values of Oranga Tamariki.
390. We recommend the establishment of a ministerial advisory group to provide oversight of Te Korowai Ture ā-Whānau. The group must reflect the diversity of Te Korowai Ture ā-Whānau and its users. Members should be appointed in their own right rather than as representatives of their institutions or organisations.
391. The ministerial advisory group should contribute to the monitoring and development plan; the early identification of issues, and a coordinated capacity building programme for Te Korowai Ture ā-Whānau.

Final thoughts

392. The development of Te Korowai Ture ā-Whānau will:
- improve the well-being of children and young people
 - enhance access to justice for children, parents and whānau
 - strengthen respect for and fulfilment of human rights for all who engage with the family justice services.
393. Te Korowai Ture ā-Whānau should be a model for the justice sector as a whole, in being child centred, in how te ao Māori is recognised, in its responsiveness to diversity, accommodation of disability and the handling of family violence.
394. If taken and implemented as a whole, the recommendations in this report will reduce the damaging delays endemic throughout the present services, enable the Family Court to meet its statutory deadlines and most significantly ensure decisions are made in a timeframe that reflects a child's development.
395. Monitoring and development are crucial to the effective functioning of Te Korowai Ture ā-Whānau. They are essential to building a collaborative, evolving family justice service; and to avoid a situation where unintended consequences and perverse outcomes emerge.
396. Relatively modest increases in funding are required to implement the recommendations in this report. The one exception is the cost of the technology renewal.
397. Transition from a siloed family justice system to Te Korowai Ture ā-Whānau will require sustained leadership at the political level, within the judiciary, the legal profession, from all other family justice services and from the Ministry of Justice.
398. We recognise there is a significant degree of consensus about the recommendations in this report. That consensus provides a sound basis from which to make the changes that are so urgently required to restore pride and confidence in the family justice services, services where children and their whānau are treated with dignity and respect, listened to and supported to make the best decisions for them.

**Unuhia te rito o te harakeke
Kei hea te kōmako e kō
Whakatairangitia
Rere ki uta, rere ki tai
Ui mai ki ahau
He aha te mea nui o te Ao
Māku e kī atu,
He tangata, he tangata, he tangata.**

If you remove the central shoot of the flax bush,
Where will the bellbird find rest?
If you were to ask me, what is the most important thing in the world?
I would reply,
It is people, it is people, it is people.

Appendix One: Terms of reference

The following terms of reference were announced by the Minister of Justice in August 2018.

- A. The panel is to consider the 2014 family justice reforms as they relate to assisting parents/guardians to decide or resolve disputes about parenting arrangements or guardianship matters, in the following areas:
 - a. the effectiveness of out of court processes, in particular, Family Dispute Resolution
 - b. the effectiveness of court processes, in particular, the increase in without notice applications and the need to ensure the timely resolution of cases
 - c. the appropriate role and use of professionals, for example, family dispute resolution mediators, lawyers for parties (including legal aid lawyers), lawyers for children, and psychologists (court appointed report writers)
 - d. the extent to which out of court and in court processes, including for determining final parenting orders, enable decisions that are consistent with the welfare and best interests of the child, with a particular focus on any differential impacts on Māori children.
- B. In examining the points above and in reaching its conclusions and recommendations, the panel should consider, in particular, the extent to which the family justice system:
 - a. is child-centred and provides the services necessary to ensure the child's welfare and best interests are paramount
 - b. is accessible, with consideration of barriers to access including financial, disability, cultural, linguistic, geographic, and institutional (such as the lack of information about how the system works and its purpose)
 - c. is coherent, with clear purposes, roles and functions (including the role of professionals) for different parts of the system
 - d. has processes flexible enough to be appropriate for the issues being addressed (including where there are multiple issues or concurrent proceedings) and which are responsive to the changing needs of the community
 - e. is evidence based and reflects research about what works best for children, including, for example, within the context of family violence and how this affects parenting and children; children with disabilities and/or disabled parents
 - f. is cost-effective, with reference to financial sustainability for the Crown given the various drivers of cost, capability and resources.

- C. The panel will consult with children and young people (including Māori children and young people), Māori, Pacific peoples, academics, the Judiciary, the legal profession, disabled people, relevant professional groups, community organisations, interest groups, court users and the public over 2018.
- D. In making its recommendations, the panel shall have regard to international, and domestic research (including kaupapa Māori research) and best practice and the Ministry's evaluations of the 2014 family justice system reforms;
- E. The panel may, in their final report, recommend further work be undertaken on specific issues which the panel considers it has not been able to explore sufficiently, or that were outside the terms of reference but which could benefit from being considered in the context of its recommendations.
- F. The panel will report to the Minister of Justice with its recommendations no later than May 2019.

Appendix Two: Acknowledgements

We would like to extend our thanks to the following members of the Expert Reference Group appointed to support our work:

- Professor Bill Atkin, Faculty of Law, Victoria University of Wellington
- Associate Professor Ruth Busch (retired), family violence expert
- Catherine Cooper, General Manager of Resolution Institute (NZ)
- Jill Goldson, Director of the Family Matters Centre
- Deborah Hart, Executive Director of the Arbitrators' and Mediators' Institution of New Zealand
- Simon Jefferson QC, family lawyer
- Dr Jan Pryor, psychologist and academic specialising in outcomes for children after parental separation
- Professor Jacinta Ruru, Co-Director of Nga Pae o Te Maramatanga, New Zealand's Māori Centre of Research Excellence
- Kirsty Swadling, family lawyer and Chair of the New Zealand Law Society's Family Law Section
- Associate Professor Nicola Taylor, Alexander McMillan Leading Thinker Chair in Childhood Studies and Director of the Children's Issues Centre at the University of Otago
- Renuka Wali, psychologist and specialist court report writer.

Their generous commitment of both their time and expertise is deeply appreciated.

We would also like to express our gratitude to Hemi and Paula Pirihi who were seconded from the Human Rights Commission to provide kaiwhakarite (cultural advisor) support throughout our consultations. The wisdom, warmth and compassion they brought to the role was invaluable.

Our thanks also to the secretariat team operating out of the Ministry of Justice for their support along the journey.

Appendix Three: Prioritisation of recommendations

The report begins with a principal recommendation, the development of Te Korowai Ture ā-Whānau. Subsequent recommendations are grouped under four headings:

- system-wide issues
- encouraging early agreement
- strengthening the Family Court
- and monitoring and development.

This appendix proposes a sequence for their implementation and within that some prioritisation.

Recommendations for changes to primary legislation should be prioritised in one Bill with subsequent regulatory change, including a re-write of the Family Court Rules 2002. Changes to primary legislation and the revised Family Courts Rules should be brought into force at the same time.

The recommendations form a package of inter-related and inter-dependent elements. If we were to prioritise them, our priorities in no particular order are:

- children's participation and safety
- recognition of te ao Māori
- establishment of the role of the Family Justice Coordinator
- fully funding and diversifying Family Dispute Resolution
- introducing targeted counselling and extending counselling available to the Court
- allowing legal representation in Care of Children Act cases
- responding better to diversity
- accommodating disability, and the
- introduction of a technology platform to support case management and evaluative data collection.

Principal recommendation

Direct the Ministry of Justice to develop a joined-up family justice service, Te Korowai Ture ā-Whānau, bringing together the siloed and fragmented elements of the current in and out of court family justice services. The Korowai should provide a variety of ways for people to access the right family justice service at the right time for them. (Rec 1)

Legislative changes

Children's participation

Amend the Care of Children Act 2004 and the Family Dispute Resolution Act 2013 to include children's participation as a guiding principle, modelled on the new section 5(1)(a) of the Oranga Tamariki Act 1989. The provisions should make express reference to the United Nations' Convention on the Rights of the Child. (Rec 2)

Amend the Care of Children Act 2004 to require parents and guardians to consult children on important matters that affect those children, taking account of the children's age and maturity. (Rec 3)

Te ao Māori

Amend the Care of Children Act 2004 to include a commitment to te Tiriti o Waitangi (the Treaty of Waitangi). (Rec 5)

Cultural diversity

Amend the Care of Children Act 2004 to:

- a. lower the threshold for obtaining a cultural report
 - b. allow a lawyer for child to request the court hear from a person called under section 136, and
 - c. allow a judge, of his or her own motion, to call a person under section 136 (Rec 8)
-

Family violence and children's safety

Amend the Care of Children Act 2004 to include a checklist of factors the Family Court may take into consideration relevant to a child's safety, including:

- the nature, seriousness and frequency of the violence used
- whether there is a historic pattern of violence or threats of violence, for example, coercive and controlling behaviour or behaviour that causes or may cause the child or their carer cumulative harm
- the likelihood of further violence occurring
- the physical or emotional harm caused to the child by the violence
- whether the child will be safe in the care of, or having contact with, the violent person
- any views the child expresses on the matter
- any steps taken by the violent party to prevent further violence occurring
- any involvement or oversight by a community or other organisation relating to a child's welfare
- any serious mental health condition that impacts on a party's ability to ensure a child's safety, and the steps taken to address this condition
- any drug or alcohol issues that might impact on a party's ability to ensure a child's safety, and the steps taken to address these issues
- any other matters the Court considers relevant. (Rec 18)

Amend the Care of Children Act 2004 and relevant Rules to enable the Family Court to request relevant information about family harm or family violence incidents from Police and supervised contact providers. (Rec 20)

Amend the Care of Children Act 2004 so that judges may:

- a. make findings of fact in a timely way, where there is a disputed allegation of violence or abuse
- b. undertake ongoing risk assessment, recognising that risk is dynamic and can be unpredictable. (Rec 17)

Amend the Family Violence Act 2018 (as it will be called from 1 July 2019) so that children who are the subject of Care of Children Act proceedings are able to access safety programmes available under that Act. (Rec 23)

Counselling

Amend the Care of Children Act 2004 to make three hours of targeted, government-funded counselling available to a parent or caregiver at an early stage of a dispute about care of children to work through their personal emotions and focus on reaching agreement. (Rec 26)

Amend section 46G of the Care of Children Act 2004 to:

- a. allow judges to make up to two directions for counselling
- b. allow children to attend counselling with one or both parents/parties
- c. require the Court, when directing section 46G counselling, to clarify purpose and stipulate a report back from the counsellor to inform the Court of progress. (Rec 55)

Parenting Through Separation and Family Dispute Resolution

Amend the Care of Children Act 2004 to:

- a. Allow a party to apply to the Family Court for a parenting or guardianship order without requiring prior attendance at PTS or FDR

In respect of PTS only:

- b. Allow the Family Court to direct a party to PTS if it has not been completed unless there is a good reason not to

In respect of FDR only:

- c. Require a party to provide evidence about genuine attempts made to reach agreement before filing an application
- d. require the Family Court to direct a party to FDR if it has not been attempted already, unless there is good reason not to (rebuttable presumption)
- e. allow the Family Court to refer to FDR on more than one occasion if appropriate
- f. provide a process for the Court to direct a party to FDR, set a timeframe and receive a report on the outcome
- g. allow for a lawyer for child to attend court-directed FDR (Rec 27 and 32).

Legal representation

Amend the Care of Children Act 2004 by repealing section 7A, to allow people to have legal representation at all stages of proceedings. (Rec 46)

Obligation on lawyers

Amend the Care of Children Act 2004 to introduce an obligation on lawyers to facilitate the just resolution of disputes according to the law, as quickly, inexpensively, and efficiently as possible, and with the least acrimony in order to minimise harm to children and whānau. (Rec 39)

Family Legal Advice Service

Amend the Legal Services Act 2011 to:

- a. Repeal section 7(3A)
- b. Repurpose the Family Legal Advice Service (FLAS) to transform the current two-stage process into a single grant of up to six hours to cover pre-proceedings legal assistance, up to and including FDR.

Direct the Ministry of Justice to

- a. engage with the Legal Services Commissioner to ensure that an ongoing lawyer/client relationship can exist for those people who are eligible for both FLAS and legal aid
 - b. recognise all family legal aid lawyers as approved FLAS providers (Rec 38, 47).
-

Family Justice Co-ordinator

Amend the Family Court Act 1980 to establish the role of the Family Justice Coordinator (with appropriate administrative support) whose key functions will include:

- providing information and guidance on process, next steps and options, including by electronic means, for example, webchat
 - encouraging people to use, and connecting them to, services such as counselling, PTS, FDR and other community services
 - triaging all on notice applications to the Family Court
 - establishing and maintaining links with the family justice community (Rec 41).
-

Senior Family Court Registrar

Amend the Family Court Act 1980 to establish the position of the Senior Family Court Registrar and the areas of responsibility for that role. (Rec 42)

Lawyer for Child

Amend the Family Court Act 1980 to:

- a. incorporate as appointment criteria for lawyer for child, the criteria in section 159 of the Oranga Tamariki Act 1989
- b. place a duty on lawyer for child to explain proceedings to their clients as set out in section 10(2) of the Oranga Tamariki Act 1989. (Rec 48)

Psychological reports

Amend section 133 of the Care of Children Act 2004 to consolidate the terms 'critique report' and 'second opinion' into one term - 'critique report'. (Rec 53)

Cost contribution orders

Amend section 135A of the Care of Children Act 2004, replacing it with a provision giving judges the discretion to order a party to pay up to a set amount of the costs of lawyer for the child, lawyer to assist the Court and specialist report writers appointed only in those cases where a party has behaved in a way that intentionally prolongs proceedings, is vexatious or frivolous. (Rec 63)

Regulatory changes

Family Dispute Resolution

Fully fund FDR for all participants to encourage increased use. (Rec 33)

Amend FDR regulations to provide for a wider range of dispute resolution models. (Rec 34)

Grandparents and other whānau

Request that Oranga Tamariki align the level of legal funding available to grandparents and whānau under the Care of Children Act 2004 with the support available under the Oranga Tamariki Act 1989, where Oranga Tamariki support the children being placed in the care of those grandparents and whānau. (Rec 11)

Counselling

Promulgate regulations to set an upper limit of 10 sessions for section 46G counselling. (Rec 56)

Changes to the Family Court Rules

Rewrite the Family Court Rules

Direct the Ministry of Justice to initiate and coordinate a review and rewrite of the Family Courts Rules 2002 in consultation with the Principal Family Court Judge and the New Zealand Law Society. (Rec 65)

As part of this, the following changes should be made:

Complex cases

Amend the Family Court Rules 2002 so:

- a. a second judge is identified as a back-up judge for complex cases so that momentum is not lost if the designated judge is ill or on leave
- b. all applications, in particular, without notice applications or applications for a warrant to uplift are dealt with by the designated judge(s) and not on e-Duty
- c. administration/oversight of a complex case file is the responsibility of the Senior Family Court Registrar, to ensure that all judicial directions are complied with
- d. A case may be classified as a complex case if:
 - there are serious allegations of violence and abuse or *serious risk of violence or abuse*
 - it has novel or difficult legal, *cultural*, technical, or evidential issues. (Rec 58)

Family violence

Amend the Family Court Rules 2002 to specify Care of Children Act 2004 documents to include information about the safety needs of victim-survivors when attending court. (Rec 19)

Court processes

Amend the Family Court Rules 2002 to:

- a. provide for two case tracks (standard and without notice) and three types of conferences (judicial, settlement and pre-hearing)
- b. where appropriate and practicable, encourage and prioritise video and telephone conferences over requiring parties and lawyers to attend court (Rec 61)
- c. clarify that Rule 34 applies to proceedings under the Care of Children Act 2004 to allow an application to be made to rescind a without notice order
- d. specify a timeframe within which the Family Court must allocate a hearing/conference where an order to abridge time has been made and service has occurred. (Rec 62)

Without notice applications

Amend the Family Court Rules 2002 to require represented parties and self-represented litigants to answer the following specific questions when applying without notice to the Family Court:

- a. Why would an on-notice application with an application to reduce time not be more appropriate (bearing in mind a reduction of time can shorten the period for response to 24 hours or less, at the judge's discretion)
- b. Why should an order be made without notice to the other party
- c. Does the respondent or their lawyer know of the intention to file
- d. Is there likely to be any hardship, danger or prejudice to the respondent/a child/a third party if the order were made
- e. What kind of damage or harm may result if the order were not made
- f. Why must the order be made urgently. (Rec 62)

Operational changes

Technology upgrade

Allocate sufficient new funding to enable the Ministry of Justice to strengthen the technology platform that supports case management in the Family Court, to facilitate robust data collection for monitoring and development. (Rec 64)

Court registrars

Direct the Ministry of Justice, in conjunction with the Principal Family Court Judge, to take immediate steps to identify and transfer appropriate areas of existing judicial responsibility to existing court registrars to increase judicial hearing time. (Rec 44)

Direct the Ministry of Justice to ensure that a clear plan and appropriate training is put in place for training to enable registrars to exercise the full extent of their powers. (Rec 43)

Children's participation

Direct the Ministry of Justice, in conjunction with relevant experts and key stakeholders, to undertake a stocktake of appropriate models of child participation, including at FDR as a priority. The stocktake should also include:

- a. consideration of key principles for children's participation, including requiring professionals to promote children's participation
- b. consideration of how children's views should be taken into account in cases where there is family violence
- c. development of a best practice toolkit co-designed with children and young people. (Rec 4)

Direct the Ministry of Justice to undertake further work as a matter of urgency, in consultation with the Family Court, counsellors, relevant professional bodies, child development experts, social services and children/young people to determine:

- a. best practice guidelines for when children should be eligible for funded counselling in their own right
 - b. key settings around parent and child consent
 - c. scope and purpose
 - d. required amendments to the Care of Children Act 2004. (Rec 57)
-

Te ao Māori

Direct the Ministry of Justice, in partnership with iwi and other Māori, the Court and relevant professionals, to develop, resource and implement a strategic framework to improve family justice services for Māori. The strategic framework and subsequent action plan should include:

- a. appointing of specialist advisors to assist the Family Court on tikanga Māori
- b. supporting kaupapa Māori services and whānau centred approaches
- c. providing a Mana voice to ensure the Family Court has access to mana whenua and wider Māori community knowledge

- d. developing a tikanga-based pilot for the Family Court
- e. phasing in the presumption that Māori lawyer for child are appointed for tamariki Māori
- f. considering how the Family Court registries can better identify and support mana whenua relationships with the Court
- g. providing adequate funding for culturally appropriate FDR processes. (Rec 7)

Until sufficient Māori judges are appointed to the Family Court, invite the Chief District Court Judge to:

- a. appoint some Māori Land Court judges to sit in the Family Court
- b. require all new Family Court judges to spend one week observing Māori Land Court proceedings
- c. require all Family Court judges to attend the tikanga Māori programme delivered by the Institute of Judicial Studies. (Rec 6)

Direct the Ministry of Justice, in partnership with iwi, hapū and Māori organisations, to undertake work to ensure FDR kaupapa Māori services are delivered for, by and to Māori. (Rec 35)

Diversity

Direct the Ministry of Justice to develop:

- a. in consultation with Ministry for Pacific Peoples, Office of Ethnic Communities and other relevant community organisations and professionals, a diversity strategy for Te Korowai Ture ā-Whānau with the objective of improving the responsiveness of family justice services to the diverse needs of children and whānau
- b. information and guidance about section 136 of the Care of Children Act 2004 for parties, lawyers and the community
- c. an improved operational framework to properly resource cultural reports. (Rec 9)

Direct the Ministry of Justice to:

- a. strengthen the contractual requirements (and provide appropriate support, including funding) for PTS providers to offer a range of facilitators from different cultures
- b. reconsider its procurement process and encourage kaupapa Māori and other cultural organisations to contract to deliver PTS. (Rec 30)

Direct the Ministry of Justice to undertake further work on how to facilitate the participation and recognition of grandparents and other wider whānau in Care of Children Act proceedings. (Rec 10)

Accommodating Disability

Direct the Ministry of Justice, in partnership with the disability sector, the judiciary and other key stakeholders, to develop a disability strategy to improve access to justice for disabled people using Te Korowai Ture ā-Whānau. (Rec 12)

Direct the Ministry of Justice to:

- a. ensure all information resources are accessible to disabled people
- b. include questions relating to disability and required disability supports on the Care of Children Act forms to identify accommodation and support needs for disabled people

- c. fund disability awareness training for all client-facing court staff (an invitation to attend this or similar training should be extended to the Family Court Judges)
- d. undertake further work to address the systemic barriers to affordable and specialised legal advice for disabled people. (Rec 13)

Family violence

Direct the Ministry of Justice to:

- a. undertake a stocktake of all Family Courts and make improvements (where possible and practicable) to court areas to improve the safety of victim-survivors
- b. work with key stakeholders to develop best practice standards for FDR suppliers and providers where family violence is identified
- c. work with key stakeholders to identify community organisations, including iwi, to increase the pool of supervised contact providers. (Rec 24)

Direct the Ministry of Justice, in consultation with key stakeholders, to develop a risk assessment tool for use with children, victim-survivors and perpetrators of violence. (Rec 21)

Community engagement

Direct the Ministry of Justice to:

- a. develop relationships between community organisations and the Family Court to encourage a more integrated approach to service delivery in local communities.
- b. work with Whānau Ora and community organisations to develop a navigator model for whānau who engage with Te Korowai Ture ā-Whānau. (Rec 40)

Information

Direct the Ministry of Justice to:

- a. develop an information strategy to establish a cohesive and consistent set of resources in a range of formats including:
 - a stand-alone website specifically for separation and care of children disputes
 - a children's section of the website containing a range of interactive, engaging information resources for different age groups, co-designed by children
 - information explaining the role of various family justice service professionals
 - information for grandparents and whānau seeking care or guardianship
 - information on care of children matters for victims of family violence
 - a review of the 0800 2 AGREE helpline
 - information in languages other than English, including te reo Māori, and resources relevant to all cultures in New Zealand
 - information that is accessible for people with disabilities and low literacy
 - information on help or support outside of the Government-funded system
 - information about the role of different professionals within Te Korowai Ture ā-Whānau

- b. develop an ongoing public awareness campaign to encourage parents to resolve issues as early as possible and provide information on the range of family justice services available and how to access them
 - c. reformat the existing parenting plan workbook to enable it to be used digitally
 - d. work with the judiciary, the New Zealand Law Society and representatives of self-litigants, develop a workbook (in digital and hard copy) to help self-represented litigants navigate Te Korowai Ture ā-Whānau. (Rec 25)
-

Family Dispute Resolution and Parenting Through Separation

Direct the Ministry of Justice, in partnership with Approved Dispute Resolution Organisations, suppliers and providers, to:

- a. Assume responsibility for a comprehensive information strategy and public awareness campaign to promote and support FDR
 - b. Improve access to FDR through stronger connections and collaborations between FDR suppliers and the Family Court via the Family Justice Coordinator
 - c. work to improve pathways into FDR training for practitioners from culturally and linguistically diverse backgrounds
 - d. establish an online portal to enable easy, streamlined access to FDR and PTS. (Rec 28 and 36)
-

Psychologists

Direct the Ministry of Justice to work with the judiciary, the New Zealand Psychological Society and the New Zealand College of Clinical Psychologists to improve recruitment and retention of specialist report writers, including from diverse backgrounds. This should include an agreed approach to job shadowing by less experienced psychologists. (Rec 53)

In relation to psychological report writers' notes being released for cross examination:

- a. **Invite** the Principal Family Court Judge to review the judicial practice note, in consultation with psychological report writers and the New Zealand Law Society, to include standard conditions for the releasing notes and materials to a psychologist assisting with preparation for cross-examination
 - b. **Direct** the Ministry of Justice to remunerate report writers for their time where redaction of notes is required. (Rec 54)
-

Judicial resourcing

Invite the Chief District Court Judge to:

- a. consider an immediate increase in the number of Family Court judges available in order to reduce delays
- b. advocate for greater cultural diversity among judicial appointments. (Rec 45)

Invite the Chief District Court Judge, Principal Family Court Judge and Ministry of Justice to explore the development of an integrated approach to management of rostering and scheduling, with the goal of having one judge manage all Family Court and, where relevant, criminal matters regarding a family. (Rec 60)

Lawyer for Child

Invite the Principal Family Court Judge to amend the 'Family Law Practice Note – Lawyer for the Child: Selection, Appointment and Other Matters' to:

- a. strengthen the criteria for approval of lawyer for child
- b. require that any lawyer for child appointment panel include:
 - i. a child development expert, and
 - ii. a kaumātua, kuia or another respected community representative from within the area, appointed by the local Administrative Family Court Judge following consultation with the Chair of the Chief District Court Judge's Kaupapa Māori Advisory Group
- c. require that, where possible, Māori children be represented by a Māori lawyer for child
- d. make the Family Justice Coordinator responsible for reviewing the lawyer for child lists, including requiring the local branch of the New Zealand Law Society to advertise the reviews. (Rec 50)

Direct the Ministry of Justice to review remuneration rates for lawyer for child. (Rec 51)

Parenting Through Separation

Direct the Ministry of Justice to develop an online version of PTS. (Rec 29)

Monitoring and development

Developing competencies

DISABILITY

Direct the Ministry of Justice to collaborate with the New Zealand Law Society and the disability sector to develop best practice guidance for lawyers working with disabled clients and for lawyers for children representing disabled children. The best practice guidance should be based on research and evidence about what works for disabled clients. (Rec 14)

Invite the New Zealand Law Society to include disability awareness in the training programme and ongoing professional development requirements for lawyers for children. (Rec 15)

Direct the Ministry of Justice to work with the Family Court and the New Zealand Law Society to develop a system of specialist endorsement for lawyers for children who are trained to work with children with disabilities to support better matching of disabled children to a lawyer with suitable experience and skills. (Rec 16)

FAMILY VIOLENCE

Direct the Ministry of Justice to work with judges and relevant professional bodies to ensure family justice professionals to receive consistent, ongoing training about family violence. (Rec 22)

Professional development

Invite the New Zealand Law Society to strengthen the professional development and supervision requirements for lawyers for children. (Rec 49)

Monitoring and Development Strategy

Direct the Ministry of Justice to develop a monitoring and development strategy for Te Korowai Ture ā-Whānau. The strategy should involve a comprehensive data collection plan, with particular focus on improving the data collection on gender, ethnicity, language and culture and the prevalence and management of complex cases. The strategy should also contain an evaluation plan to ensure, among other things, that:

- a. Parenting Through Separation is evaluated every three years (Rec 31)
 - b. FDR is initially reviewed after two years, and then evaluated every three years thereafter (Rec 37)
 - c. changes made to section 46G counselling are reviewed after two years (Rec 67)
 - d. the new Care of Children Act forms are reviewed 12 months after their introduction. (Rec 66)
-

Complex cases

Direct the Ministry of Justice to:

- a. collect and analyse relevant data concerning complex cases to improve practice and procedure in these cases
 - b. after two years, undertake an analysis of the extent and effectiveness of referrals to section 46G counselling in complex cases and recommend any immediate changes required
 - c. undertake research to identify the nature and extent of complex cases in the Family Court, appropriate responses to those cases and specialist professional development required for lawyers, judges and other professionals involved in these cases. (Rec 59)
-

Advisory groups

Establish a children's advisory group to provide advice and insight into children's experiences of care of children matters in Te Korowai Ture ā-Whānau to inform policy and practice. (Rec 68)

Establish a ministerial advisory group to advise on, and make recommendations about, implementation of changes arising from this report, and any other matters specified by the Minister of Justice. (Rec 69)

Appendix Four: Estimating additional costs of recommendations

Every option has implications for who pays how much, and for what within the family justice system. Given that the primary intended beneficiaries of the system are children, the costs must be met by someone other than the primary beneficiaries. Parents and whānau, and the state are obvious candidates to meet such costs.

All operate under resource constraints. In determining how to apportion costs, the best interests of children must be a primary consideration. Other considerations include, incentivising desired behaviours from all involved in the system, avoiding perverse outcomes, ensuring safety of parties, and ensuring wider access to justice.

This Appendix provides rough high-level costings estimates for some of our recommendations. Given the variables involved, they are necessarily tentative. We have not provided estimates of costings for some areas. For example, we do not separately cost some recommendations which we suspect (depending on the Minister's priorities for the Justice sector as a whole) may be fundable from baselines; which intermesh with proposals, reviews or decisions beyond the Family Justice Service; or for which we have insufficient information.

Significantly, no attempt has been made to quantify any savings that may occur elsewhere in the family justice system as a result of any recommendation. It is possible that such savings could be significant. For example, it has been argued by some submitters that increasing the availability of legal advice early in the process may reduce the number of cases that proceed to court. In addition to the benefits that this would offer children and their parents/caregivers, such a result could potentially save significant amounts in court and wider social costs. Similarly, increasing the accessibility of FDR is likely to result in more agreements being reached at an earlier stage, which would (in general) benefit children and their parents/caregivers, and also lead to significant savings in court and legal costs.

External costs and benefits have not been accounted for. We know that resolving issues in the most expeditious manner, and minimising conflict between parents, while also ensuring the safety of all involved, results in more positive outcomes for children. This, in turn, has been shown to have significant positive impacts on many dimensions of a child's development, as measured by health, social, educational and criminological indices. Nevertheless, the range of variables is too great to make any meaningful estimates of the likely, or hoped for, impacts of adopting any of the proposals under consideration.

We urge the Minister to ask that the Ministry, in undertaking further work on costing our entire package of recommendations, pay particular attention to the social and timeliness benefits of effective action, and the opportunity costs of not doing anything.

Initial costing of proposals per annum (additional to current costs to the state)⁷⁴

	Current expenditure	Low (\$ million)	Medium (\$ million)	High (\$ million)
Recommendation 7 -Development & resourcing of kaupapa Maori strategic framework and action plan	-	0.20	0.40	1.00
Recommendation 8 - Cultural reports	-	0.75 ⁷⁵	3.02 ⁷⁶	4.54 ⁷⁷
Recommendations 13(a), 25, 28, 29, 36(a) & (d) etc - Information, awareness, and online materials and bookings	-	0.75	1.20	2.00
Recommendation 26 - Counselling to deal with emotions impeding resolution ⁷⁸	-	2.00 ⁷⁹	2.73 ⁸⁰	3.99 ⁸¹
Recommendation 33 - Funded FDR	1.44	1.70 ⁸²	4.85 ⁸³	8.00 ⁸⁴
Recommendation 38 - Repurposed FLAS for up to 6 hours legal assistance	1.16	0.58 ⁸⁵	2.03 ⁸⁶	3.48 ⁸⁷

74 Estimating likely costs of recommendations for rewriting the Care of Children aspects of the Family Justice Service necessarily involves making assumptions about an array of matters which are not subject to accurate prediction. Many involve estimating how behaviour will change, others involve attempting to predict how two or more aspects of the reforms may work together. For the areas in which we are recommending the Ministry undertake further work, we cannot pre-empt the outcomes of such work, nevertheless it would be remiss not to make some mention of the possible budget needed for implementation to be successful. No reliance should be placed on these estimates, beyond being our best indication of what we can anticipate as the implications of our proposals.

75 Assumes that the number of Māori and ethnic minority children dealt with by the court remains relatively constant, and that report writers spend on average 16 hours per report

76 Assumes reports for approx. 10% of cases involving Māori and ethnic minority children

77 Assumes reports for approx. 40% of cases involving Māori and ethnic minority children

78 Assumes 3 hours per person based on wage-inflation adjustment of 2012 RIS figure

79 Assumes 5000 people take up

80 Assumes 7000 people take up

81 Assumes 10,000 people take up

82 Assumes current attendance rates

83 Assumes numbers attending double

84 Assumes numbers attending triple

85 Assumes no change in uptake

86 Mid-point between high and low assumptions

87 Assumes uptake doubles

	Current expenditure	Low (\$ million)	Medium (\$ million)	High (\$ million)
Recommendation 41 – Family Justice Coordinator ⁸⁸	-	2.20 ⁸⁹	3.85 ⁹⁰	5.17 ⁹¹
Recommendation 42 – Senior Family Court Registrar ⁹²	-	0.84 ⁹³	1.35 ⁹⁴	2.03 ⁹⁵
Recommendation 46 & 47 – Legal Aid for care of children proceedings in the Family Court	23.93	5.17 ⁹⁶	5.74 ⁹⁷	6.31 ⁹⁸
Recommendation 63 – Removal of mandatory consideration of cost contribution orders ⁹⁹	-0.51	-0.26 ¹⁰⁰	-0.13 ¹⁰¹	0 ¹⁰²
Recommendation 51 – Lawyer for Child rate increase ¹⁰³	21.94 ¹⁰⁴	2.23 ¹⁰⁵	5.58 ¹⁰⁶	11.16 ¹⁰⁷
Recommendation 32(f) – Lawyer for child to attend Judge-ordered mediation	-	0.69 ¹⁰⁸	1.83 ¹⁰⁹	4.14 ¹¹⁰

88 Assumes that all existing roles remain, and that these positions are additional.

89 Assumes 20 additional FTEs based on salary and overheads

90 Assumes 35 additional FTEs based on salary and overheads

91 Assumes 47 additional FTEs based on salary and overheads

92 Assumes that all existing roles remain, and that these positions are additional

93 Assumes 5 additional FTEs based on salary and overheads

94 Assumes 8 additional FTEs based on salary and overheads

95 Assumes 12 additional FTEs based on salary and overheads

96 Assumes uptake of 90% of the proportion of the current parties to on notice proceedings estimated to meet Legal Aid eligibility thresholds

97 Assumes uptake of 100% of the proportion of the current parties to on notice proceedings estimated to meet Legal Aid eligibility thresholds

98 Assumes uptake of 110% of the proportion of the current parties to on notice proceedings estimated to meet Legal Aid eligibility thresholds

99 This row is expressed as a negative, as it deals with amounts returned to the state, to cover state-incurred costs (as distinct from new costs). Amounts do not don't take account of cost of collection.

100 Assumes ordered in 50% of current cases, and collected at current rate

101 Assumes ordered in 25% of current cases and collected at current rate

102 Assumes ordered in nil (or close to nil) cases

103 Based on Reserve Bank Inflation Calculator, wages category 1996 Q–2019 Q1 calculation. <https://rbnz.govt.nz/monetary-policy/inflation-calculator>. Increasing the Lawyer for Child rate to 100% of its 1996 value would require \$22.32m in additional government funds.

104 Based on 2015/16 costs

105 Assumes adjustment to account for 10% of rate erosion since last increase

106 Assumes adjustment to account for 25% of rate erosion since last increase

107 Assumes adjustment to account for 50% of rate erosion since last increase

108 Assumes 10% of Lawyer for Child appointments to go to mediation, and take on average 6 hours

109 Assumes 20% of Lawyer for Child appointments to go to mediation, and take on average 8 hours

110 Assumes 30% of Lawyer for Child appointments to go to mediation, and take on average 12 hours

	Current expenditure	Low (\$ million)	Medium (\$ million)	High (\$ million)
Recommendation 52 – Improve recruitment and retention of specialist psychological report writers, including from diverse backgrounds	-	0.05	0.25	0.50
Recommendation 54 – Remunerate psychologists for preparing notes for cross examination	-	0.10 ¹¹¹	0.29 ¹¹²	0.72 ¹¹³
Recommendations 55 & 56 – Additional s46G counselling	0.86	0.09 ¹¹⁴	0.43 ¹¹⁵	0.65 ¹¹⁶
Recommendation 57 – Child counselling	-	1.20 ¹¹⁷	2.40 ¹¹⁸	4.80 ¹¹⁹
Aspects of Recommendations 31, 37, 59, 66, 67, 68 and 69 – Monitoring and Development, including Advisory Groups	-	0.15	0.38	1.10
<p>Indicative totals if whole package recommended</p> <p>This row is purely to give a sense of the possible ballpark of cost implications of recommendations taken together. It assumes the whole package is implemented at the same level (low, medium or high).</p>	-	18.44	36.20	59.59

111 Assumes 5% of reports are redacted and each takes on average 1 hour

112 Assumes 10% of reports are redacted and each takes on average 3 hours

113 Assumes 15% of reports are redacted and each takes on average 5 hours

114 Assumes 20% increase in counselling uptake

115 Assumes 50% increase in counselling uptake

116 Assumes 150% increase in counselling uptake

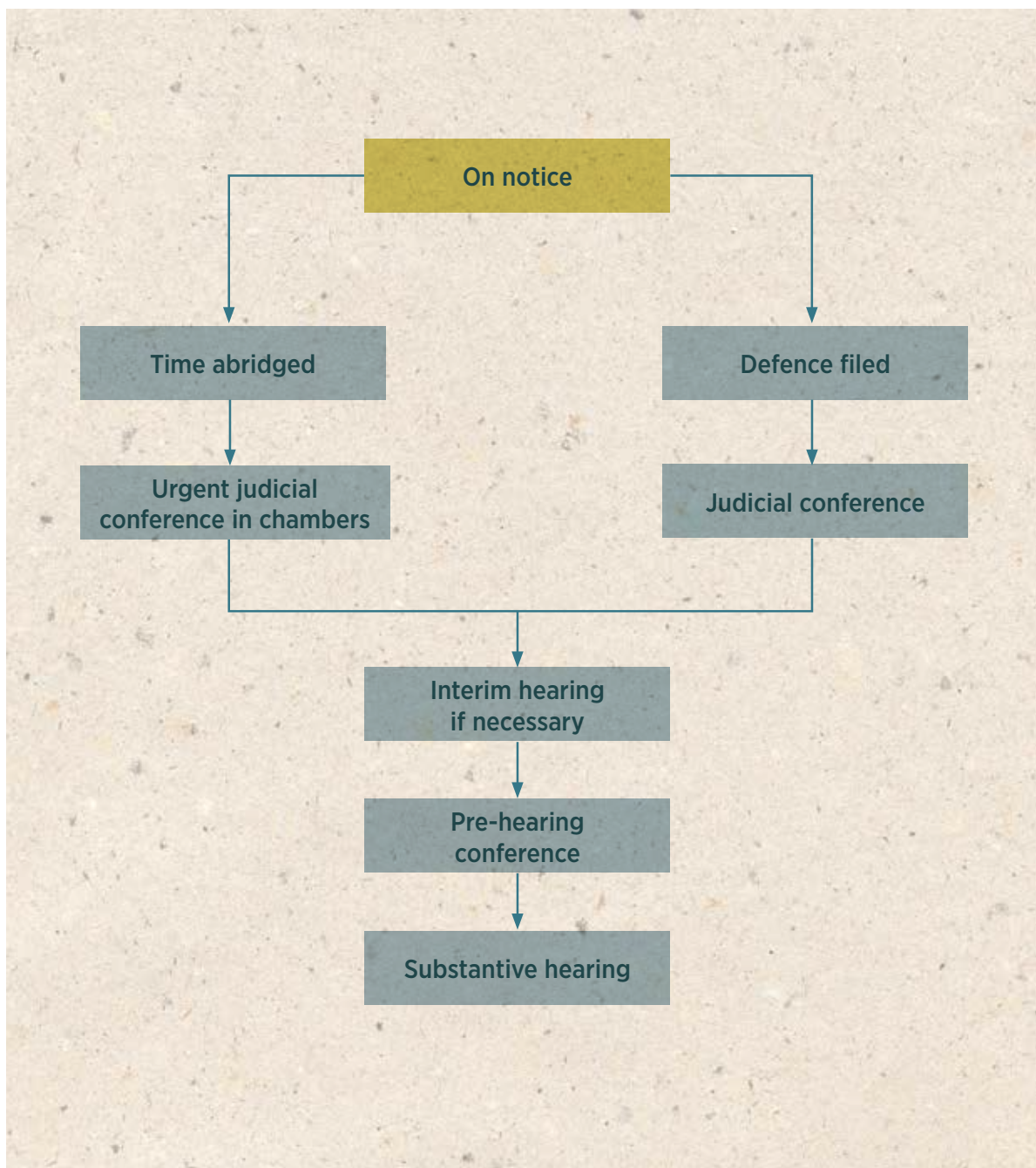
117 Assumes uptake of 1000 (5% of cases)

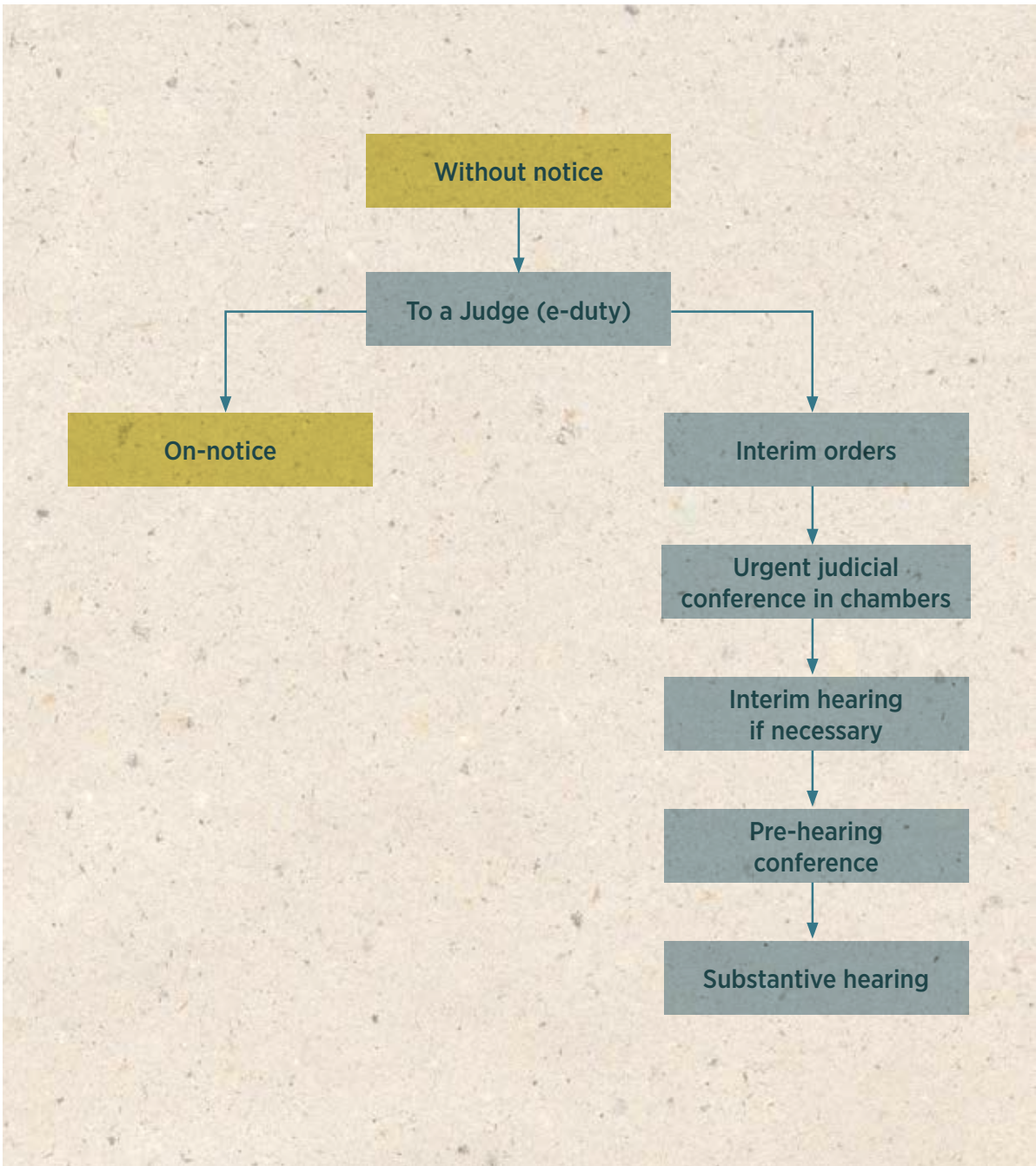
118 Assumes uptake of 2000 (10% of cases)

119 Assumes uptake of 4,000 (20% of cases)

Appendix Five: Diagrams of proposed case tracks

The following diagrams, included in the New Zealand Law Society's submission, outline our proposed case track structure.





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Glossary

0800 2 AGREE	A family justice helpline established by the Ministry of Justice to provide information about care of children proceedings
affidavit	A sworn or affirmed statement used for evidence in court
allegation	A claim that someone has done or failed to do something that has yet to be proved
application	The act of making a request to the court. Also, the name of the document that contains the request
Approved Dispute Resolution Organisation (ADRO)	A dispute resolution organisation that has been approved by the Secretary of Justice and is responsible for the appointment and approval of FDR providers
Care of Children Act 2004	The main law relating to the guardianship and care of children. It came into force on 1 July 2005 and replaced the Guardianship Act 1968
case tracks	Pathways that determine what processes or steps the case will follow. The 2014 reforms introduced three case tracks; simple, standard and without notice
child-inclusive mediation	A method of child participation where a professional meets with the child or children directly to gather their views and share these views with the parents on the child's behalf during mediation
CRC	The United Nation's Convention on the Rights of the Child sets out the rights of all children and the responsibilities of governments to ensure those rights. It was adopted by the United Nations in 1989 and ratified by New Zealand in 1993
conference	A meeting between parties, their lawyers and the judge to discuss aspects of the case. There are different types of conferences, including settlement conferences, issues conferences and pre-hearing conferences
consent order	An agreement entered into willingly by parties that has then been made into an order by the Family Court
contact arrangements	Arrangements about how and when the parent or guardian who doesn't have day-to-day care of a child spends time with the child
Cost Contribution Order (CCO)	A Family Court judge can order an applicant or respondent in Family Court proceedings to contribute to the cost of providing lawyer for child, lawyer to assist and specialist reports
court order	A formal decree from the court requiring a person to do or not do certain things
direction	An instruction made by a judge about the conduct of a proceeding

e-Duty	An online portal allowing judges to immediately review and make decisions on urgent applications
eligible	Allowed
Family Court	A division of the District Court that was established under the Family Court Act 1980
Family Dispute Resolution (FDR)	An out of court service provided by a Family Dispute Resolution provider to help parties to a family dispute resolve the dispute without having to pursue court proceedings
family justice service	A joined-up network consisting of the Ministry of Justice, the Family Court, PTS and FDR providers, lawyers, counsellors, specialist report writers, iwi and kaupapa Māori organisations, social services and community agencies that comes together on a regular basis to share knowledge, experience and professional development and interact with each other to better serve children, parents and whānau
Family Legal Advice Service (FLAS)	A service offering initial advice and information for parties in dispute over arrangements involving care of their children. The service is only available for people who meet the income eligibility test
guardian (of a child)	A person with all the duties, powers, rights and responsibilities that a parent has in bringing up a child
hearing	The part of a legal proceeding where the parties give evidence and submissions to the court and the judge may make a decision
interlocutory	Matters that are dealt with after an application is made but before a hearing
jurisdiction	The authority to make legal decisions and judgments. Also refers to a system of law courts
korowai	Cloak
Korowai Ture-ā Whānau	The name of the family justice service
lawyer for child	A lawyer appointed by the court to represent a child involved in, or affected by, proceedings in the Family Court
legal aid	Government funding to pay for a lawyer for people who cannot afford one
make an application	Ask the court to make a decision
Mana voice	An authoritative person with knowledge of tikanga Māori and the local community, including those involved in a case before the Court
mana whenua	Māori who have historic and territorial rights over the land
mediation	A process where the parties, with external help, create an environment where they can address their issues and come up with agreements

mediator	A dispute resolution practitioner who helps the parties reach agreement but does not decide the outcome
mokopuna	Grandchild, grandchildren
on notice application	An application that is served on the other person, who is given the chance to respond to the application before the court makes a decision
parenting order	An order made by the Family Court that says who is responsible for day-to-day care of a child, and when and how someone else important in the child's life can have contact with them. Parenting orders can be enforced just like any other order of the Court
Parenting Through Separation (PTS)	A free information programme that helps separating parents understand the effect of separation on their children
party (or parties)	People involved in a court case, such as the applicants, appellants or respondents
proceeding	A case being considered by a court
rebuttable presumption	A presumption made by the court that something is true unless evidence is provided that shows that it is not
rescind	Cancel
roundtable meeting	A meeting between parties in Family Court proceedings, often conducted by the lawyer for child, with the aim of reaching an agreement about the matters in dispute
settlement conference	A privileged meeting between parties and the judge who will try to help the parties reach agreement. At a settlement conference, a judge can only make orders with the agreement of the parties
silo	A system or process that operates in isolation from others
specialist report (section 133 report)	A report requested by a judge to obtain more information about the child. These reports are written by specialists and can be cultural, psychological, medical or psychiatric
supervised contact centres	Centres run by approved organisations to allow for contact with a child to be overseen and take place in a safe, controlled situation when this has been ordered by the court
tamariki	Children
terms of reference	Instructions given to someone when they're asked to consider or investigate a particular subject, telling them what they must cover and what they can ignore
whakapapa	Genealogy, lineage or descent
whānau	Extended family or family group
whānaungatanga	Relationship, kinship, a sense of family connection

Whānau Ora

An approach to health and wellbeing that is driven by Māori cultural values and puts whānau at the centre of decision making about their future

**without notice
application**

An application that is not served on the person to be affected by it (the respondent) and therefore does not give that person the opportunity to have a say before a judge makes an interim (temporary) order



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