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Rosslyn Noonan
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Dear Rosslyn Noonan

NZAC reply to (preliminary) recommendations of the Review of Family Court reforms in 2014

The New Zealand Association of Counsellors (NZAC) welcomes the Panel's "case for change" and recommendations to strengthen family justice services. We particularly support the concept of "joined up" services for the Family Court. We consider that services need to be joined up not only operationally, but through a shared foundation of understanding, at every level of service, of the harmful impact of parental conflict on children. And that it is critical to establish a service-wide common premise that seeks to reduce parental conflict and adversarial legal processes.

Lawyers need to support the reduction of conflict, encourage conciliatory approaches and lead the way of a culture change by challenging attitudes that promote the view of being entitled to a 'day in court' which is imbedded in society's psyche.

NZAC appreciates the opportunity to contribute further to this review and recommendations to strengthen Family court services. We want to signal our interest to continue this dialogue beyond the review panel's mandate and into the implementation phase. We would welcome the opportunity to be part of any consultations (beyond the review) on issues to do with the development and implementation of counselling services for parties with a dispute in the Family Court.

Focus on Children

We support your suggestion of a trial programme to assess child-inclusive models.

Te Ao Maori in the Family Court

We support your ideas on the opportunities to provide Family Court services that are responsive to Maori whanau and tamariki. Any meaningful change will need to start at the heart of power sharing of authority and mana.

Warranting of Maori Land Court judges for Family Court proceedings is an interesting idea. We consider that family court services require a unique set of skills and understanding - including knowledge of the impact of parental conflict on children, knowledge of child development and domestic violence.

Q5: Yes

Q6: The Courts need to make it their business to know the hapu, iwi and Maori services in their rohe. Family Justice Service Coordinators need to be able to maintain relationships and strengthen these links.

Q7: Development and "training" in tikanga Māori in Family Courts should be provided by mana whenua across regions, and appointment of kaumatua across rohe. A national advisory 'unit' could help to establish relationships at a local level.

Quality Accessible Information

We completely support need for the Ministry of Justice to develop an "information strategy" to support a "joined up" service; as well as public awareness campaign.

Q 9: Information about Family Court services (and any public awareness campaign) should include:

- Information about the harmful effects on children of parental conflict. Just like the health warnings on a cigarette packet, or the 'road safety speed reduction' campaign, or 'don't shake the baby' campaign, this message needs to be central to all information. Further, we consider that it is imperative that there be a shared understanding of the impact of conflict on children amongst all the services/providers (in-court and out of court).
- General information about key changes to Family Court services
- A list of services available: FDR, what it is and contact details; Counselling, what it is and how to access it; Family Justice Service Coordinator, their role, when to contact them; FLAS and how to access it, etc.

Counselling and Therapeutic Intervention

We support the idea of the three types of counselling as well as counselling for children.

We consider it likely that available counselling in a joined-up service would require a 'structure' (or joined-up network) of counsellors that is different from the way counselling was provided prior to 2014 (individual counsellors were contracted to the Family Court).

Counselling could be available through a 'supplier' system, similar to the model for provision of FDR. This would avoid the need for Ministry to contract with individual counsellors.

A supplier could also be responsible for accrediting counsellors and developing standardised reporting.

Q10: Counselling should also be available for children where they are experiencing extreme psychological effects related to parental conflict.

Q11: Parenting through Separation/Family Dispute Resolution (FDR) suppliers, Family Justice

Service Coordinators and Judges should all be able to refer people to counselling.

Q12: Our members consider that confidentiality should not be waived for Court directed therapeutic intervention. There is already the provision (under the Privacy Act 1993 and NZAC Code of Ethics) to waive confidentiality where a counsellor considers there is a serious risk of harm to a client or others.

Reasonable reporting requirements may be relevant and useful to the Court. Currently (under s46G counselling) there is little information required by the Court other than attendance. Anecdotally, lawyers are seeking more detail from counsellors on progress and outcomes.

We think that further consideration is required in order to determine what information and what level of reporting would be relevant to the Court, the purpose of any reporting; and to explore the associated ethical issues. It is not necessary to waive confidentiality in order to report on issues and outcomes. Counsellors currently provide outcome reports in many other areas of counselling.

NZAC is interested to be part of the development of guidelines, reporting protocols, competency guidelines for counsellors, and assessment and evaluation of counselling.

Evaluation of the effectiveness of counselling services would be made simpler if standardised reporting were implemented.

Parenting Through Separation (PTS)

We agree with your proposal regarding PTS.

Q13: Agreed. Making PTS should not be compulsory for everyone who makes an application to the Court.

Q14: FDR Providers are in a good position to exempt parties from the expectation of attending FDR. They are already responsible for exempting parties from FDR on other grounds.

Family Dispute Resolution

Q 15: We agree with the idea of a rebuttable presumption.

Currently there seems to be a lack of consistency throughout the Courts on whether attendance at FDR is required. If there is to be a rebuttal presumption, a list of compelling reasons could be used by the Courts as a guide and to provide consistency throughout the Courts.

Q16: Yes. Joined–up services would be promoting conciliatory processes *because* of the focus on children and an obligation to minimise the impact of separation on children.

Currently (anecdotally) some lawyers are advising parties to attend FDR (because they have to), but also advising parties that they don't have to participate meaningfully, promoting FDR as a 'tick-the-box' exercise.

Q17: Family Justice Service Coordinators could make the immediate referrals directly to suppliers.

Legal Advice And Representation

Q18: We think parties should have legal advice at any stage. But lawyers should not be involved with FDR.

The adversarial system is in the public's psyche. But we believe that this system is harmful to children. And that there needs to be a concerted culture change within the family law profession that moves away from advocacy for an individual and toward promoting a conciliatory view, and encouraging clients to resolve grief and anger in order to be able to move forward and make decisions as a family.

Case Tracks

We have nothing to add to this section.

Without Notice Applications

Q20: Lawyers must be encouraging conciliatory services.

Q21: Yes. Many parties (particularly men) are unaware of Court processes. Some wait many many years before realising that they can apply to the Court to have an Order rescinded.

Triaging

Q22: The 'Face of the Family Court' should offer all families an inclusive solution-based place to assist families in conflict. The suggestion that there be multi access points into the system will make it easier for parties/families to get in the door of the Family Court. At the point of arrival, clients need accessible information as to how the process can assist and what the options look like.

Triage may in some cases 'be carried out several times as clients move through the processes of counselling, FDR and the Family Court itself.

It is assumed that triaging would also involve referring parties for counselling. Tools to assess which level of counselling is initially needed, level of risk to be managed, family violence history, can be developed to assist the triage process. (Processes have been developed and implemented in the Restorative Justice Family Violence sector to ensure more accurate assessment procedures for Family Violence facilitators)

Complex Cases

Q24: Yes, if there is a question of risk to a child.

Cultural Information in Court

Q26: In some smaller centres there may be an issue of trust within a particular cultural group preventing a party of a particular (ethnicity) from feeling confident about the quality of information and more particularly, confidentiality.

Family Justice Service Coordinator

Q28: The role of the Family Justice Service Coordinator is essential as a hub of facilitating/promoting "joined-up" services.

Senior Family Court Registrar

We have nothing to add to this section.

Lawyer For Child

Q32: Absolutely yes.

Q33: Join up all services by requiring training in child development and the impact of conflict on children at all stages of development; be able to relate with children.

Q34: No. In some cases a "child development expert might be more appropriate as an advocate for children. Why does the child advocate need to be a lawyer?

Psychological Reports

We have nothing to add to the section.

Costs

Q39: Yes

Q40: FDR should definitely be fully funded for both parties where one party is eligible for government funding.

Kind regards

Bev Weber
President NZAC