NZCCP Comments on The Family Court Review paper:

The New Zealand College of Clinical Psychologists (NZCCP) welcomes the circulation of the Ministry of Justice paper *"Reviewing the Family Court: A public consultation paper (20 September 2011)"*. The College is particularly pleased to see that this document confirms the Government/ Ministry's commitment to the Family Court being a major provider of justice to children and families in New Zealand. There is recognition that this area is fraught with many competing demands and participation from a number of agencies and Ministries not the least being Ministry of Social Development.

Who we are

The NZCCP represents 569 clinical psychologists and 177 postgraduate students enrolled in New Zealand clinical psychology programs.

All members of NZCCP have done research at the masters or doctoral level. Clinical psychologists are registered under the clinical psychology scope defined by the New Zealand Psychologists Board; the Health Practitioners Competence Assurance (HPCA) Act 2003 requires clearly specified competences are met and maintained by all registered clinical psychologists; the title "Clinical Psychologist" is protected by this law. We are bound by a comprehensive code of ethics.

Within this larger group there is a significant number who are registered as Specialist Report Writers[1] or Counsellors for the Family Court. Clinical psychologists have two specialist roles within the Family Court:

a) Providing families, Judges and Counsel an assessment and formulation of dysfunctional family dynamics and ways that resolution in the interests of the children could occur. A sound psychological formulation can assists parties and their Counsel to understand why they have needed intervention from the Court and hence to set the basis of good decisions for the future.
b) Providing counselling to parents who may have serious mental health or personality disorders so that damage to the children is minimised. Judicious use of specialists at this level may prevent the need for more advanced Court interventions.

We note that there is no research on the efficacy of these services and we would recommend that this occurs.

This submission is prepared by representatives of this group with the wider group being fully informed and involved.

[1] Preparing reports under s133 of the Care of Children Act 2004 (CoCA); or s 178 of the Children Young Persons and their Families Act 1989 (CYPFA).

The Review Document:

The Review document is set out in nine chapters with questions within each chapter. We have collated the questions and will reply to some of these where appropriate. However before beginning this process we would like to make the following broad submissions:

- The emphasis of the Family Court must remain on the wellbeing of the children within their families. As Clinical Psychologists we have been trained to interview children, however many judges and lawyers for the child are not, and we firmly believe that the involvement of the children in proceedings needs to be carefully considered developmentally and psychologically to ensure there is no potential for further abuse.
- The Review is occurring in the absence of evidence based data about many of the functions of the Family Court. For example the report notes that counselling expenditure has increased by approximately 86% between 2006/ 07 and 2009/10 financial years. However there is no data with respect to the efficacy of counselling; methods that work or do not work; and even to the extent of whether counselling meets the goals for Counselling as set out in the Family Proceedings Act 1980, namely to promote reconciliation in the first instance, and if this is not possible, conciliation of the disputing parties with a focus on the children. In terms of Specialist Reports under s133 of the Care of Children Act or s178 of the Children Young Persons and their Families Act, no data as to the usefulness of these is available. We suggest that Family Court files could be accessed to gauge the numbers of dispute settlements (therefore with no need for hearings that result in consent memoranda) and that this would be a very useful and cost saving way measure the usefulness of reports.
- We are aware that there is little standardisation of processes and procedures (in spite of the Practice Notes etc) between Courts in different parts of the country. We recommend that there should be a direction from Chief Family Court Judge to standardize processes and procedures in all Family Courts.
- Some parents are litigious and while they have the right to continue Court proceedings, even following a Decision they return to Court to relitigate. We do not have clear data on who these "intransigent" parents are though psychologists do have a lot of evidence based data about the effects of continued conflict on the children. There needs to be a standardized system for flagging these cases, which generally well known to Family Court Coordinators. Judges may, after a hearing, make a stipulation in their judgment that there is to be no more litigation for five years.

- As is acknowledged in the Review, families are becoming more complex in structure and function (s 3.2, p 25). This complexity must be recognised in any future Ministry strategy.
- We applaud that there is discussion about how far the state should enter a family's private domain however if the state withdraws too far then more children will be at risk. We acknowledge that NZ has a horrifying level of child abuse statistics and that the state does need to be closely involved with families where there is violence, alcohol and drug abuse and to take steps to ensure innocent victims like young children are protected.
- In these times of financial restraint there can be attempts to shift non-core functions to other agencies. However it is important to look at the links rather than "throwing the baby out with the bathwater" as may happen if counselling were totally dispensed with. The Family Court provides a very good seamless service to its clients, including Counselling, Specialist Counselling, Specialist reports, mediation, Parenting Through Separation, Stopping Violence programmes and respondent's programmes, each of which provides a unique service to meet the needs of Family Court clients.
- Some financial solutions are suggested such as free services being available to the "poor" whereas others may have to contribute. Today we aware that the "middle classes" are struggling financially and if they are denied services for financial reasons, this may jeopardise the welfare of the children and families. The cost of lawyers needs to be reduced or perhaps subsidised for both low and middle income earners and persons on benefits.
- The Ministry's support for education programs such as Parenting Through Separation has also been an important development. We advocate that this is available on a regular basis nationwide and separating parents should attend this before approaching the Court for assistance in resolving their parenting issues. Such programs may influence parents' perceptions so that they learn that children have rights and parents have responsibilities. Often these are considered by parents as being the other way around.
- One of the issues that we continue to address with the Court is that of parties' contact details. We live in a mobile society. However there is a measurable cost for people who do not attend appointments or comply because their last address is outdated, sometimes by years. Better liaison between the Court and parties would assist in this process.
- Lastly and most importantly we wish to highlight the specialist training clinical psychologists have in diagnosis and the potential for psychologists to assess the adults involved with the Family Court, as well as the children, and so relieve the need for and cost of psychiatric reports. Furthermore we would emphasise the specialist role of clinical psychologists in assessing and intervening in dysfunctional family dynamics and the potential for psychologists to be used more rather than less in providing assistance to families in distress - hopefully averting the need for some Family Court

proceedings. In addition where there have been Family Court proceedings and when there has been a S133 report providing independent advice to families about the report clinical psychologists can help them better understand where the psychologist is coming from and guide them toward a helpful response. Finally clinical psychologists through a sound psychological formulation can help the judge, the parties' lawyers and the parties themselves to make sense of why they have found themselves in need of intervention from the Court and that we can be instrumental in helping them to find a way forward. Clinical Psychology training is unique and entirely geared to dealing with the classic Family Court s133 and s178 reports

RESPONSE TO ISSUES:

CHAPTER 2: A COURT UNDER PRESSURE

1. **Are the issues outlined in Chapter 2 the main issues facing the Family Court?**

The issues outlined are:

a) Financial sustainability – decreasing the costs

b) Financial – who should pay?

c) Delay in processes

d) The number of processes and the different routes that cases may take.

e) The role of the State in the lives of families

f) Rights or responsibilities – parents' rights overwhelm children's responsibilities.

g) Therapy vs Judgment – adversary vs inquiry: ***The court needs to make judgments and in best interests of children we recommend an inquisitorial rather than an adversarial approach.***

h) Cultural responsivity: ***An inquisitorial approach would also work better for ethnic minorities, Maori and Pacific peoples.***

i) The roles of professionals – training and experience

If not, what other issues should we look at? Do you have any evidence that supports your view?

a) The efficacy of the current system – baseline data for outcomes from the different strands is required before any changes are effected. This is needed to allow comparison when changes are put into place. Research on the effectiveness of the counselling process in reducing conflict is needed to ensure that any subsequent changes are based in solid research evidence.

b) Stakeholders' (especially users) perceptions of the Court and the current system are likely to be mixed depending on who has won or lost.

Should the law continue to focus on reconciliation or should the duty on lawyers, counsellors, and the Court be on conciliation only?

There must be room to focus on reconciliation, however there is no data that suggests how successful reconciliation therapy/ intervention is over say a 10 year period. Is the focus on reconciliation merely delaying the inevitable?

What is the evidence of the effectiveness of the current counselling model? Few cases before the Family Court are straightforward, as it is possible that such families are able to make decisions about their children without the need for much input from the Court. Many people referred for counselling have significant disorders (e.g. personality disorders) where 6 – 8 hours of counselling will not make any difference at all.

6 hours counselling is not really counselling in the true sense of effecting change in people. It is more a hybrid of counselling and mediation plus information provision. Those parents who are dealing with an unexpected or traumatic separation are at a great disadvantage in having to cope with their own emotional trauma and make good decisions for the children, compared with the party who has planned to leave over a period of time and is in a different place. Such individuals would benefit from more support than is possible - but is the Family Court the right agency to provide this?
Reconciliation/Conciliation/Mediation are all tasks of Family Court counselling. Personality issues are best handled by mental health services rather than the Family Court.

How can we better ensure that professionals working in the Family Court have adequate training? What changes are needed to the skills of people working in the Family Court?

First of all there is a risk that the Court does not recognise the different specialties and their different roles. The Court needs to have clear definitions of: Clinical Psychologist, Educational Psychologist, Social Worker, Counsellor, in a handbook in

order for Judges, Court Staff and Family Court Lawyers to have a clear understanding of the specialist professionals the court employs.

Psychologists: Registered Clinical Psychologists are expected to have a solid training in child and human development throughout the lifespan; in personality (both normal and disordered); and conflict resolution strategies. For those psychologists wanting to work in the Family Court, there needs to be further training which could possibly combine to some degree with specialist training for Counsel for Child. The Family Court also needs to support a peer system where the new psychologist can shadow the completion of a report with an experienced psychologist, and that their first couple of reports are closely supervised and monitored. A lack of training and support has seen many psychologists unwilling to work in the Family Court, with a resultant loss to the Court of skills. The Continuing Competency (CCP) system that all practicing psychologists have to adhere to on an annual basis should allow for adequate review, reflection and supervision.

Lawyers: It has been reported by members that law firms may employ young and inexperienced lawyers to take on work in the Family Court as the legal aid rates do not attract experienced senior lawyers from within such firms. These lawyers may be inadequately supervised, particularly in more complex cases. This can result in clients who have acquired unhelpful views of the situation and knowledge e.g. many clients appear to have a lack of understanding of Guardianship issues; parental responsibilities and children's rights; what shared parenting means; the advantages and disadvantages of equal (by time) shared care.

There is a need for the Ministry of Justice and the Psychology organisations to work together to provide specialist training that is appropriate for psychologists and to allow up-skilling for e.g. for lawyers and Judges as well. Special training days run by the Family Court for all Family Court professionals would provide ideal opportunity for all sharing of information between all involved and a way to update people regarding the work.

CHAPTER 3: THE CHANGING FAMILY COURT

2 What do you consider are the most important social, economic and environmental changes that may affect the Family Court over the next five to ten years?

a) Family structures will become more complex with more generations and changes in family structures. This will involve more applications for a share

of the child as the categories of potential applicants have been increased under the 2004 CoCA.

b) There are an increasing number of very young parents who have unstable relationships and little positive support. These situations often result in Care & Protection matters before the Family Court. Closer links between Education, Welfare & Community agencies to ensure all teen parents attend some form of intensive parenting support, e.g. the Schools for teen parents, could prevent these children from ending up in the welfare service or the Coroners Court.
c) Fathers are continuing to step up to parenting better, and many areas have father support networks which can be beneficial. However a number of fathers who have not parented in the past are also now demanding equal shared care without any knowledge of the consequences on the children. Compulsory attendance at Parenting Through Separation courses that are nationalised and standardised would have better outcomes than fathers attending a parenting course, the type and quality of which can vary hugely.
d) Increasing numbers of parents with "complex" presentations – personality disorders, substance abuse and a lack of their own attachment.
e) The recessionary times are not clearly over and middle income earners are struggling financially. There can be unfairness through the use of Legal Aid in perpetuating matters before the Court.
f) All Government services are retrenching which is creating a higher educated unemployed group who cannot find employment especially in the over 45 year olds. This will place pressure on their families and especially the children.
g) Greater numbers of cultural challenges as we have more cultures seeking assistance from the Court
h) Potential outfall from the Christchurch earthquakes – the stress on families; families who have needed to relocate but are less settled.

3. Should any changes be made to the Family Court's current jurisdiction? If yes, in what way?

Shifting jurisdiction only shifts the problem to another Court and we understand that there are delays in all Courts. The Family Court has the civil burden of proof as does the Civil District Court.

We make the following recommendations:

a) To decrease the number of adjournments because people are not ready and to ensure that a case set for Judicial Conference or Hearing is heard when scheduled would be a good start.
b) Call for the psychological report when there is Hearing time available, so as to avoid doing repeated updates. With appropriate negotiation many reports (unless very complex) could be prepared in eight weeks, providing the contact details for clients and information about the children (e.g. ages; schools etc) are available and sent with the request from the Court.
c) Assume that the case will not settle with the psychological report and if it does it is a bonus.

What would be the impact of changing the jurisdiction of the Court in the manner you suggest? What might its risks and benefits be?

4. Should the Family Court be an open court, what would be the risks and benefits of such a proposal?

Benefits: That Justice may be seen to be transparent. Some of those advocating for a fully open Family Court are basing this on their own experiences and their perceived sense of injustice or unfairness. The media can now attend and while it does not appear to be a priority for the media, the use of TV, Radio and newspapers could be a good way to promote Family Court matters.
Risks: The matters before the Family Court are complex and involve many people, not just the aggrieved party. The priority of our system is in the best interests of the child, and it is hard to see that an open Court will promote this for any child. The evidence given to the Court is often personal and private, and should never be allowed to be in the public arena. An open Court would mean the child's and their family's lives become the subjects of public knowledge and could create peer issues at school. We are aware of this happening already, thankfully usually to a minor extent.

That the Court process is slowed down as Judges try to meet more needs and influences – it may be less easy for a Judge to speak directly to the parents as needed.

How can we further promote the Family Court's transparency and accountability? What sort of information could the Family Court provide that would achieve these outcomes?

Using the media to run a campaign through say weekly columns of the key issues e.g. What is Guardianship; what happens to kids when parents separate etc.....

Perhaps decisions that focus on particular issues could be put into general language and there could be a report in the media about this as well.

There are regular parenting spots on the radio, television and paper media that are suitable for neutral and factual information on these matters to be promoted.

CHAPTER 4: FOCUSING ON CHILDREN

5. What measures do you think could be used to manage and reduce conflict between parents following separation? How might these be achieved?

Establishment of Parenting Through Separation courses throughout the country and court ordered compulsory attendance at these for all separated parents from their initial contact with the Family Court.

Early appointment of an independent advocate for the children, to encourage the parents to focus on the child's needs separate to the wishes of the parents, for example, the Parenting Co-ordinator model.

The Goals of Parenting Coordination are to:

1. Educate parents regarding the impact of their behaviours on their child(ren)'s development.
2. Reduce parental conflict through anger management, communication and conflict resolutions skills.
3. Decrease inappropriate parental behaviours to reduce stress for the child.
4. Work with parents in developing a detailed plan for issues such as discipline, decision-making, communication, etc.
5. Create a more relaxed home atmosphere allowing the child to adjust more effectively with the new family structure.
6. Collaborate with professionals involved with the family in order to offer coordinated service.
7. Monitor parental behaviours to ensure that parents are fulfilling their obligations to their child while complying with the recommendations of the Court.
8. A Parenting Co-ordinator could identify the issues for a particular family early on, and be mindful of further issues that can creep in due to delays, adjournments and parental reactions to not getting what they want.

Providing places where separating parents can quickly gain knowledge and information such as the counselling which could be relabelled to Counselling - Mediation service or similar.

Having Decisions deemed to be final with no right of relitigation without a full review by Judge / Registrar. There would be occasional situations when this may be necessary, such as non-compliance with Court Orders, however parents need to allow children to be stable. This is not removing the right to Appeal a decision.

6. How can we ensure children participate earlier in the decision making process? What would you recommend as the crucial safeguards to enable this to happen?

Given the developmental variation in children's capacity to make sense of the Court process and appreciate the 'big picture' of their family circumstances, it is always going to be very difficult to make hard and fast rules about children's participation in the decision making process.

It may be disadvantageous under the current system that the counselling process is completely confidential, because often the counsellor can identify early on that there is no chance of agreement, and whether the parents are able to be child focussed. This knowledge before the Court earlier could save a lot of time and stress, when it is clear that there will need to be a detailed Court Order for contact. This could be done by extending the Checklist report to include some information about possible forward process.

There are considerable risks to children's emotional and social development, in being placed in positions where they believe they are choosing between their parents. While their views need to be considered as part of the overall picture, involving young children in decision making about care/living arrangements is a highly complex and risky thing to attempt to do. Many children would benefit from professional support so that they can meaningfully take part in the process and to protect them from parental influence. As experts in child development, family systems and dysfunction, clinical psychologists are best placed to assist when such specialist assistance is required.

As above parents need knowledge of how to promote children's welfare following separation and they need to be empowered to use this knowledge to make good decisions.

Should participating in child-inclusive mediation be compulsory before an application is filed in the Court?

As noted above, it is this difficult to see how this would work under a compulsory model, given the complex nature of many families, and issues such as abuse and/or domestic violence.

It may be suitable for some families where abuse is not an issue, the children are older and can be empowered to have a view. However most children do not want to upset Mum or Dad where there has been a previously solid parenting relationship. This could be a situation where the Family Co-ordinator can assist the family and the Court about the suitability of including the child.

What about where family are seeking input?

Another suggestion could be a family FGC process before an Application to the Court – where the family meets to make decisions and to gain information about the effects on children. Again this would depend on the extended family being able to maintain a child-centred focus, and keeping the issues between the adults out of the decision.

To what extent should parents contribute to the costs of such a service?

Keeping in mind the fact that people who pay or contribute to a service may receive more benefit with the access and affordability, it might be that a minimal fee is charged for the first application but for subsequent applications there is an increase to the fee which the Registrar can waive if the case has merit. At the moment it seems likely that too many parents are relitigating and this is allowed almost ad infinitum.

7. Would an obligation in legislation for parents to consult with their children about care arrangements following parental separation be helpful? What might be the risks and benefits?

Again – it depends on the age of the children and the wellbeing of the parents – how can parents who have their own agendas provide a neutral consultation to the children? In the families that we see, there is a significant risk that the children will be challenged/ cajoled by both parents and even more destabilised. And again, there are considerable risks to children's emotional and social development, in being placed in positions where they believe they are choosing between their parents. While their views need to be considered as part of the overall picture, involving young children in decision making about care/living arrangements is a highly complex and risky thing to attempt to do.

All separating parents being required to attend Parenting Through Separation courses would assist to focus to be on the best interests of the child rather than parental wishes.

8. **Who should be responsible for obtaining a child's views on the Court's behalf? Should children be offered a choice about how their views are obtained?**

Clinical Psychologists could be requested to undertake a restricted brief focused on the assessments of the children's needs and views and present that as a brief report to the Court.

An alternative is that a neutral person akin to a Guardian ad liteum, who may come from legal or social services but must know about children and child development, could be introduced. Having said that this adds another layer to the bureaucracy and such discussions may need more than one meeting and may require some rapport building before faith can be given to the children's discussions.

It is common for children caught in conflict separations to agree with whatever each parent is wanting, in an effort to please the parents and avoid further argument. Then each parent continues to argue to the Court their version of events, each believing that the child is being honest with them.

What criteria could be used to decide whether and when to appoint lawyer for the child?

a) Abuse allegations or Court processes require children to be represented as they cannot self-represent.
b) When parents are trying to stop the other parent being involved in the children's life.
c) when there are care and protection issues,
d) high conflict cases,
e) where there is evidence of parental alienation and relocation issues

What are the main tasks that lawyers for children should undertake in proceedings?

a) To provide legal representation for children to the Court.

b) To provide a mid-service to attempt to help the parents reach agreement at the earliest time.

c) To be alert to welfare vs wishes/conflicts.

What are your views on the provision of in-house lawyers for children?

Maybe an option – however how will this work and will we lose the ability to appoint lawyers who have specific skills to represent particular children. It may seem that to provide in-house lawyers is cheaper but the experience, supervision and commitment may be diminished. There is also a cost associated which is often not calculated. What training would such lawyers have? What role would they have – is there enough separation from the Court i.e. is this independence or going to add to the friction?

What are your views on using other professionals to obtain the views of children?

This seems a good idea especially in complex cases where the children's views need to be carefully considered in the context of their experiences and family issues to better understand the complexities of the children's lives. The professional can be cross-examined and justify their position for the children so may address the wishes vs welfare issues.

However, in complex cases parents may seek other professionals to get their views about the children supported. They also want the professional to interview the child(ren) to establish the parent's view as being correct, and then to become involved as an advocate for the parent's role rather than maintaining a focus on the children and their welfare.

9. **What changes, if any, do you consider are necessary to clarify the welfare and best interests of the child principle in the Care of Children Act, for example, should principles such as the 'delay,' 'no order,' or 'finality,' principle be introduced?**

No order is an option where making an Order may actually have a detrimental effect on the child/ren.

How else might more certainty be achieved in law when making care arrangements for children? What might be the risks and benefits of any of the proposals or suggestions you have made?

Make the Orders final and do not allow relitigation.

However, Orders do need to allow for future changes as the children grow older and their needs change. Perhaps a Parenting Co-ordinator can check in with families after 6 months to see how things are working from the child's perspective.

Make the Orders at the time needed – i.e. time delays mean that parents become more set in their ways and more convinced that their way is the right way.

Improvements in legal aid funding so that key cases are funded and litigious people are not funded.

CHAPTER 5: SUPPORTING SELF-RESOLUTION

10. **How can we improve the provision and delivery of information to those who need it, especially children?**

Education programs including for other adults around children e.g. public health nurses, GP nurses.

Designing and running courses at organisations, such as Relationship Services, Barnardos for children, that are the equivalent to the parents' courses.

Barnardos, Church Social services, Relationship Services, Family Works, Supporting families in mental illness, Jigsaw, plus a number of Maori programme providers etc all run some educational courses and groups for children.

Family Court needs better information about who does what in order to make referrals.

11. **Should attendance at Parenting through Separation (PTS) be compulsory before making an application to the Court? What might be the risks and benefits of such an approach?**

Attendance should be compulsory, and the PTS courses needs to be run in a standard manner throughout the country, and to be more widely available in the community. Perhaps Barnardos etc can expand on the groups and provide for more complex cases - estranged parents, those with past substance problems.

Should parties be required to contribute to the cost of PTS?

The courses need to be accessible and too high a cost will prevent some from attending - a gold coin donation would be a start.

People benefit from what they pay for. A major benefit would be the child-focussed approach, to support parents to become aware of what is happening for the children

separately to the issues between the parents. Further benefits are that parents have the opportunity to learn about their responsibilities so they cannot use the defence that they did not know about guardianship responsibilities or the effects of conflict on children.

A potential risk in smaller areas may be access and availability of the courses, and both parents attending the same one - although this could also be beneficial in some cases.

12. To better balance lawyers' professional responsibilities with the needs and interest of children, should lawyers who specialise in family law?

- be accredited? Should accreditation be mandatory or voluntary?

Many lawyers have completed some level of Family Court specialist training, usually through NZLS workshops. Counsel for Child should have some form of standardised mandatory accreditation.

- be obliged to work collaboratively in the interests of children rather than their clients?

This can be a challenge to Lawyer for the Child, who needs to be able to see the wider picture rather than simply reflecting the views of the child, given that this can be influenced by a parent. A wider focus on the interests of children in general would be helpful.

- be encouraged to assist their clients to resolve their issues without using the court system?

There are a number of people determined to have their day in Court, but a solution reached by the parties is always going to be better than one imposed unless there are particular circumstances (e.g. Mental illness).

- be required to demonstrate that they tried to get the parties to reach an agreement as a pre-requisite to filing non-urgent applications in court?

Yes – that is how we see many Lawyers for Child work currently, and it well may take the focus to the children and away from the litigation.

What would be the impact of changing lawyers' professional responsibilities on the way lawyers practice, and on their clients?

CHAPTER 6: FOCUSING ON ALTERNATIVE DISPUTE RESOLUTION (ADR) SERVICES

13. If counselling is to remain, how could it be targeted, for example, to people with children and who cannot afford to pay for it?

One of the strengths of the NZ model is the free access to counselling through the Court. If it were to move to a user pays model, it would only benefit those with money. Those without means would be able to avoid attendance.

What role should counselling play in a broader ADR system ahead of Court?

These questions need some research data on the effectiveness of the current model.

Is it appropriate to access counselling via the Court?

It is the first step in resolving disputes and reaching agreements re reconciliation, conciliation or orders by consent. It is essential that counselling remain within the Court, because this gives it credibility for the parties. It does not belong in the Mental Health field, because the parties do not have a severe mental illness. Moving it to community agencies would run the risk of inconsistency, lack of accessibility, and cost, without the aura of the Court behind it.

Clinical psychologists with their rigorous training are in a unique position to provide specialist counselling counseling as many additional skills are required in those situations, e.g. Judge Directed referrals s19.

Should counselling focus more clearly on conciliation?

As discussed above, there are some disadvantages to the current structure where the counselling is totally confidential. As counselling is funded by the Court and with a purpose, whether that be reconciliation or decision making, the Court should have a right to be able to make use of the information obtained in the counselling sessions to progress the matters before the Court.

However to remove confidentiality in total from the counselling may have a risk that it opens up another area of litigation for such parents.

There may be a worthwhile project where counselling report forms are modified to a middle position, perhaps especially where the Court has ordered Counselling rather than s9 where the parents have sought such assistance for their relationship voluntarily.

14. Do you agree some form of ADR should be mandatory before an application can be filed in the Family Court, in certain circumstances? What are the benefits and risks in making these processes mandatory?

Attendance at PTS courses should be the first step, unless there are extreme circumstances such as domestic violence. From members' feedback it is too easy for false allegations to be made by angry parents, which require investigation and trauma for the children. Alternative dispute resolution is a logical next step after counseling. A mediation conference clearly should be held before any case proceeds to hearing. Often after receipt of a specialist report and the convening of a mediation conference, consent memorandum emerges and the case does not go to a hearing.

Contact arrangements that are delayed through the Court process can affect the relationship between child and parent, and in the case of younger children this can have long term effects. By the time the Court process has slowly made its way along, the child may well be anxious, distressed or refusing to see the parent, and if this is the goal of the parent they live with, the Court has inadvertently aided in the estrangement process.

Who would pay for the parties to attend ADR?

Given that many separated families are living on minimal income, including a large group who are on welfare benefits, it is unrealistic to set up a user pays model which will further disadvantage such families. If Counselling followed by ADR and specialist report avoids a hearing the money spent on hearings could be used to pay for ADR.

What is the best way to ensure both parties engage in ADR?

Separating families could chose between counselling via the Court of Court-nominated ADRs, but either way there needs to be some element of compulsion regarding attendance or neither model will work.

How could modes of ADR be developed that are responsive to the cultural needs of Māori, Pacific and ethnic communities?

ADR only works if the parties engage in it. Parties could ask and then when a referral is made, the parties contact the worker/ clinician rather than it being the other way around as it is now – no contact in 3 weeks – no ADR??? We spend a lot of time looking for clients who have changed addresses.

Involvement of wider whanau in a FGC type meeting would fit well with some cultures e.g. Maori, Pacific Island. However, there are large communities of cultures developing that are very different, and this would need to be further researched e.g. male-female roles, ownership of children, arranged marriages etc. The Australian Family Court has considerable experience dealing with communities such as Greek / Lebanese - perhaps some education about models they have found effective.

Maybe after ADR and before Court for some cases (not violence or abuse) a FGC type approach could be useful where wider family come in and professionals assist the family to work out care arrangements. Families then could know what the allegations are. This could polarise but may also lead to solutions between say grandparents or aunts and uncles to make the living situation for the children work. This may not be beneficial for cultures with different values around e.g. discipline of children.

15. Do you think a separate forum for resolving low level disputes would be useful? If yes, what types of matters should it deal with?

It may be possible for straightforward cases with low level disputes to utilise an alternative forum, although how this would work in practise could be a problem. When there is dispute between separating parents, the minor issues can become quite important and in fact low level disputes often morph into high level disputes. If counselling has not achieved an outcome then referral to a mediation conference or FGC type ADR would be appropriate. Parenting Coordinators could be engaged to assist here but care needs to be taken to preserve the coordination role and ideally they would also have some mediation training and skills to settle some disputes.

What are the risks and benefits associated with establishing a separate forum?

Providing the agreements become Orders this would be useful. We do not know the numbers but experience would suggest that maybe 33 – 50% of agreements reached at counselling are not agreed to at final sign up. It is suggested that following completion of counselling both parents sign the agreements where possible. This may occur at the last session and prior to the report being sent to the Court.

CHAPTER 7: ENTERING THE COURT

16. Do you have any views about limiting access to the Family Court? What might be the impacts associated with restricting access to the Court? What are the risks and benefits?

It is difficult to limit access as Courts should be available to all persons. However it may be that parents need to undertake some steps e.g. PTS and children e.g. the equivalent course prior to entry to the Court.

Once a decision has been reached perhaps there could be brakes applied to relitigation of this decision. Ongoing conflict has a detrimental effect on all aspects of a child's life, and often parents are so keen to win against the other parent that they forget the child's need for stability, and a decent settling in period if there are new Orders in place.

17. Should all Family Court applications be screened to determine their appropriate pathway?

This could be the role of the Counselling Co-ordinator. They are often very skilled at seeing where cases need to go and selecting the best match of counsellor or report writer e.g. one who has had experience in mental health etc.

What kind of skills and training should the person carrying out the screening have?

A Social Science background with mental health / forensic skills, or access to those, would provide the skills to read the situation quickly and advise what course of approach is required. Possibly some of the necessary information could be obtained if the form required more detail. However abuse and violence allegations require a different path to "standard" care and contact arrangements.

18. Do the criteria for urgent (without-notice) applications need to be made clearer? If yes, in what way?

Criteria need to be both clearer and more difficult. Members who deal with complex cases reported some frustration around the ease with which some ex parte orders were made, without the Court seeming to have taken into account the previous patterns of behaviour or the recommendations from psychological reports.

Should lawyers be required to certify that all urgent applications are appropriate in the circumstances? If not, why not?

Yes, unless there is documented evident of risk / violence.

Should there be penalties for making unmeritorious without notice applications? What might be the risks and benefits associated with imposing penalties?

There are already penalties available for non-compliance but they are not used and the whole process of outcomes for non-compliance with Court Orders needs

reviewing. Some cases seem to get away with a disregard of what has been determined to be in the best interests of the child.

19. Does the 'any evidence' rule in proceedings need to be clarified?

Should there be an obligation/time limit on the filing of direct evidence after hearsay evidence is used in support of an application?

Yes there should be clearly specified and known (in the legislation or practice notes) time limits adhered to for all steps of the process. Currently this is not the case and thus cases get delayed markedly by the failure of parties to file the appropriate documentation.

What are your views on a standard questionnaire form of affidavit, and what information do you think it should include?

Currently affidavits are often too lengthy, focussed on historical adult information and not helpful to the current issues or especially focussed on the children and their welfare. An advantage of a standard questionnaire may be to focus the parents on the children's needs. Lawyers should assist their clients to summarise issues clearly and succinctly.

20. Should applications be focused on the issues to be determined and the outcomes sought?

This would be a positive step and ensure the focus is on the children's welfare rather than tit for tat for parents. Lawyers for parties need to take a proactive step in reviewing and screening all affidavits to ensure they are child focused and highlight the major issues to be addressed.

Should filing joint memoranda be mandatory?

This could be a goal to aim for if it was focused on the issues for determination with respect to the children, and the parties' different outcomes sought. This may prevent issues growing as time proceeds.

Without a model that focuses on the child's best interests, high conflict parents will refuse to agree on anything just to spite the other parent.

21. In what further circumstances should the Family Court impose application, setting down and hearing fees? What would be the impact of these different fees, and what might be the risks and benefits?

Benefits of financial contribution may be deterrence against repetitious or frivolous applications.

However, Costs for some applicants may mean that they stay in abusive situations.

Possibly there could be research into a bond type payment that is refunded if the parties make and keep to an agreement for a set period of time, possibly after assessment by a Parenting Co-ordinator.

CHAPTER 8: PATHWAYS AND PROCESSES IN THE COURT

22. If the Court is only dealing with serious cases should counselling or mediation be part of court processes?

The Court does not only deal with serious cases.

Counselling and mediation (or even a combined Co-Med process) may resolve the less serious cases especially if some teeth can be given to the worker – e.g. signing the agreement reached which is then filed in the Court, follow up by a Family Co-ordinator.

Should lawyers appointed to assist the Court be used as mediators?

Yes – this seems to have been a good process but it could be extended to other professions e.g. clinical psychologists who have their base training and experience in areas such as conflict resolution. It is using people's specialist skills and may be better than the Judge's time being spent when there are long waiting lists.

23. How can we help people with complex social needs? Are proceedings in the Family Court the right response or should social agencies be involved?

Other social agencies often are involved but sometimes a forum is needed to get everyone collaborating. This would be especially beneficial for cases where there is mental illness in a parent, as it can be very difficult getting that information before the Court. Even if a Strengthening Families approach is used we are prevented from being a part of this because of confidentiality of Court processes and funding. A parenting coordinator could be an ideal person to liaise with other agencies and call an FGC type meeting under the Family Court Umbrella, particularly if CYFS are not involved.

24. Do you agree that a standard process for hearing Family Court proceedings should be introduced? Could all non urgent cases be dealt with in this way? Should the number of steps in any process be restricted? What would be the impact of this proposal, what might be the risks and benefits?

No one size fits all but a standard approach could be useful for providing certainty.

We recommend that use of a focused strengths based approach – what is going well is highlighted along with an issues and outcomes sought approach would be a good start.

25. Should the Court attempt to make predictive assessments of a family's circumstances or make decisions on the basis of the evidence before them?

In my view it is important for a predictive assessment to be made. Otherwise we are merely putting children in a situation that has not worked for them. Prediction is based on past behaviours so the two approaches sit in together.

How could orders be varied (because a family's circumstances have changed) without the need for a court hearing? What could a simpler process to vary parenting orders look like?

Client centred mediation or Counselling-Mediation that is able to produce an agreement, and subsequently future Orders. The strengths based approach as above may be a positive and useful way for such applications to be filed. It is important to have some future planning for the child's changing needs as they age, if applicable.

Should the number of interim orders made in any one case be restricted?

Yes: providing the child(ren)/ family are safe and the Order is not being abused i.e. the process is not stopping because of one party's repeated failures to comply with Court Orders.

Should interim orders automatically become final after a certain period of time?

Interim orders are important to get progress but should have an expiry date say 6 months and then become final. Too many are allowed to drift on and on and invite more litigation which could lead to a hearing. In some cases a further hearing reactivates all the previous problems, when the interim orders have in fact been working well enough for the child. This is particularly the case for those families determined to have their day in Court, believing that this will validate their view when it actually opens old wounds.

26. Is there any merit in introducing penalties to reflect a party's or lawyer's behaviour in proceedings? If so, what sanctions would be useful, and how can we ensure the sanctions are applied when appropriate?

Yes – not filing on time, not having correct contact details at the Court, failing to attend appointments. It is really important that timetables are adhered to in filing of reports affidavits etc. Down the line it means that unnecessary delays occur adding more stress to what is already a stressful situation for all parties, with decisions not being made in a timely manner and the case dragging on. Maybe sanctions for such behaviour can be added to the section of law about existing penalties for non compliance.

27. Do you consider that the process to be followed in situations where allegations of physical and sexual abuse have been made in Care of Children Act matters needs to be amended? If so, how? What would be the impact of your suggestion? What might the risks and benefits be?

It would be helpful for more complex cases to have a timeline in the front of the file, so that any further allegations can be seen in the perspective of the history of this case. A documented history of CYFS involvement should always accompany a referral. In that manner the report writer has a clear history to work from and an accompanying copy of DV incidents as these are common in child abuse cases. Further allegations re child abuse are often made once a case is underway, particularly if a mother fears a father may get contact with a child as an outcome.

These matters may need to bypass counselling and be on a specialist report process sooner so the allegations are considered and there is not time for further allegations to arise. The Affidavit could state that this is a true and correct record of all the allegations up until this time.

28. How might specialist information for the Court be more targeted, focused and timely? What criteria might be used to decide whether to request a specialist report?

The brief for the specialist report writer needs to focus on the real issues that are pertinent for each particular family, rather than many broad, general questions that overlap and are clearly not well thought out. It would be useful for Lawyers for Children and others who propose briefs to have some training in this area. In fact there is a need for explicit and mandatory training for report writers – not only in the methodology of report writing, but in the allied areas such as child and adolescent development, DV, mental health, abuse, and so on.

There is too little standardisation in the techniques used for this work, leading to unreliable (in the psychological sense, not the legal sense) evidence. There are some

specific models for psychological reports which may be worth considering, given the variations around different providers. This could fit with the Court's wish for shorter more concise reports and if conducted in an evidence-based way with an explicit methodology, the court can be reliably informed about the psychological issues facing a child and his or her family.

It would assist to ensure that all necessary information is made available to the report writer on appointment e.g. addresses and contact details; permission to view Evidential Tapes; CYFS notes; Police and DV records without the writer having to go through a long approach (takes 6 weeks – 2 months for EVIs – a new process has started whereby we apply; lawyers and clients have to see tapes and then submit to a Judge's list....) to gain such access. The most common delay is around contacting parties. Addresses and telephone numbers MUST be kept up to date by the Court. The process of allowing up to two months for a report is sensible. In a number of cases, particularly vexatious ones, good data can be obtained between initial interview and follow up interview which is very useful for predicting what is/is not possible. Children and adults may change in their views between initial and follow up assessment.

Criteria for specialist reports would include complex cases, repeat applications, allegations that need further assessment.

We cannot emphasise strongly enough that if psychologists reports were to be discontinued the Court would lose a totally independent Specialist Clinical view on the most complex of family court matters that no other Court contracted person can undertake. Children and adults would be disadvantaged at least and placed in dangerous situations at worst which could then lead to more abuse, violence and death for vulnerable children.

We also recommend that clinical psychologists' reports under s133 should be extended to allow a focus on the parents grandparents, other whanau and new partners who are involved with the children. One has to consider the whole family/whanau when making decisions in the best interests of children, and clinical psychologists have the unique skill set to diagnose and then comment on the effects on children if a parent has a psychological/ psychiatric condition.

Should a broader range of people, such as social service providers provide information to the Court?

As part of their normal practice, many report writers collect information from a broad range of people who have knowledge of the family and then summarise this

into the report. Social service agencies and teachers can have a conflict as they may have important information about children yet they have to continue a relationship with the family. One may find that social services agencies become more closed down etc. if expected to provide evidence directly to the Court. They don't want to give evidence that can be challenged or where they can be cross examined. We have found it vital to have clear confidentiality statements and it may be that these could be more generalised so all information to the Court has the same boundaries.

Should more use be made of cultural reports? What might be the risks or benefits of using more cultural reports?

When appropriate, cultural reports are a bonus and feedback from members was that these have always been useful and appropriately ordered.

Should a critique of a court-appointed psychologist's report be allowed or should parties be limited to cross-examination of the report writer?

The opportunity to access a critique of a report should be allowed to maintain the integrity of the system and advice being given to the Court.

There are guidelines for critiques and second opinions through the professional bodies – s 10 of the Specialist Report Writer's Practice Note.

29. How can we improve processes so that Hague cases are dealt with adequately and promptly and meet our obligations under the Convention?

A fast response is essential in such cases.

It may be useful for the Court to develop a national list of lawyers who have experience working in other countries who can be consulted about Hague cases, as this has been extremely helpful in particular cases reported by members.

30. Would there be any benefit to allowing some cases involving children in State or organisational care to be reviewed on the papers rather than by way of Court hearing?

It is important that the basic tenets of our legal system are maintained, and that there is the opportunity for families to argue against CYFS if they believe that they have been unfairly treated. It is important that there is transparency in decision making, while also essential that CYFS, or any agency, does not become a law unto itself. Currently CYFS can have difficulty getting information from for example health services but this is changing with the establishment of multi-agency & discipline

child protection groups that can work across services. Mandatory reporting would also assist the flow of information about children at risk.

For children who are not in State or organisational care, should reviews of cases only be at the direction of the Court rather than the norm?

If there was a Parenting Coordination system there would be the opportunity for general cases to be reviewed and any minor problems addressed in a timely manner and this may prevent more costly applications and hearings in the future.

31. Should permanent caregivers be given sole guardianship responsibility for some matters? What might be the implications of this approach?

Yes as consultation with parents can be an impossible task if there are personality or mental health issues. This could cover medical and education matters, with reports of outcomes being provided to parents especially if children are on minimal visiting (e.g. 2 – 6 visits per annum).

32. What is your view on removing the mandatory requirement for respondents to attend stopping violence programmes and focus the justice system on swift and effective enforcement of protection orders?

We would recommend that both mandatory Stopping Violence programmes and swift enforcement of protection orders continue alongside each other. This is providing mandatory education for perpetrators and consequences if they fail to adhere to Court Orders.

Should government investment be refocused on supporting families including providing protection order applicants and respondents with access to social services?

Access to social services often happens and should be a mandatory part of protection orders.

33. Do you believe the breaches of orders should be subject to greater sanctions or penalties? If yes, what types of sanctions and penalties would be appropriate?

It is our experience that currently available sanctions are not used enough and that rather than changing these there should be swift use of sanctions so that people understand that they have to take responsibility for their behaviour early on.