

Evaluation of the 2014 Family Law Reforms: Phase One

Report to the New Zealand Law Foundation

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Megan Gollop (Children's Issues Centre)

Associate Professor Nicola Taylor (Children's Issues Centre)

Professor Mark Henaghan (Faculty of Law)

UNIVERSITY OF OTAGO



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Introduction

The Family Law Reforms that took effect in New Zealand on 31 March 2014 (Family Dispute Resolution Act and Regulations 2013) “mark the most significant changes to New Zealand’s family justice system since the establishment of the Family Court” in 1981 (Collins, 2014, p. 1; see also Ministry of Justice, 2011). These reforms are based on the review of the Family Court undertaken by the Ministry of Justice from 2011-2014. They primarily relate to Care of Children Act 2004 matters, which account for about 40 per cent of applications to the Family Court, and aim to reduce the stress on families and children by avoiding, wherever possible, the delays, conflict and expense that court proceedings can entail. The Family Court’s response to domestic violence is also strengthened.

Background to the 2014 Reforms

The New Zealand Family Court was established as a division of the District Court on 1 October 1981 (Family Courts Act 1980). An initial review was undertaken by a committee appointed in December 1992 by the Principal Family Court Judge. The committee was tasked with revisiting “the philosophy upon which the Court was created, and by examining how the Court was presently functioning, to report on whether the balance seemed right” (Boshier, Beatson, Clark, Henshall, Priestley, & Seymour, 1993, p. 22). The review was completed in 1993 and made a number of recommendations for improvements to service delivery. Prominent among these was the call for the establishment of a separate Family Conciliation Service (recommendation 5.7.1) utilising mediation as the primary method of dispute resolution (recommendation 5.7.3). The role of the Family Court would become quite distinct from the role of the Family Conciliation Service (recommendation 6.5.1), with the former only to be used, and applications filed, when a decision on a family law issue was required (recommendation 6.5.4). Parents would be able to approach the Family Conciliation Service without the assistance of lawyers. Whilst the Report’s case management recommendations were acted upon to increase the efficiency of the Court, the Family Conciliation Service was not endorsed by the Government of the day.

A second review was later conducted by the New Zealand Law Commission, which received terms of reference from the Government in June 2001 to:

... undertake a review to consider what changes, if any, are necessary and desirable in the administration, management and procedure of the Family Court in order to facilitate the early resolution of disputes. (Law Commission, 2002, p. 1)

A Scoping Paper, published in July 2001, was followed by a Discussion Paper (Law Commission, 2002) which revealed that the present dispute resolution system was inadequate for responding to family transitions in the most timely, helpful and holistic manner possible. Following the receipt of 126 written submissions, the Law Commission's final report, *Dispute Resolution in the Family Court* (2003) was disseminated. This strongly recommended better resourcing of the present system to reduce the delays caused by insufficient court time, the shortage of psychologist report writers and lack of assistance from the Department of Child, Youth and Family Services. A new, expanded conciliation service was also proposed with mediators being contracted to offer mediation services to clients. The report promoted the participation of children in conciliation processes (particularly counselling and mediation) and the ascertaining and incorporation of their views in dispute resolution procedures. Upskilling court staff and contracted professionals, extending the role of the Family Court co-ordinator, enhancing information about the court within the community, and making court services more culturally responsive were also all recommended. The Law Commission made "no recommendations for major jurisdictional or operational change" (Ministry of Justice, 2003, p. 2), but rather focused upon ways of improving the conciliation processes and altering public perceptions of the Court.

The Government's response to the New Zealand Law Commission's report (Ministry of Justice, 2003) centred on three immediate initiatives:

- Extending a public information strategy for the Family Court to heighten awareness of the principles upon which decisions are made in cases so as to bring greater balance to the public perception of the Family Court;
- Developing a pilot of non-judge led mediation using qualified mediators to provide another opportunity for dispute resolution without judicial intervention; and
- Preparing an integrated training package for Family Court staff to enhance their skills, efficiency and client responsiveness.

In 2011 Cabinet agreed to a third Review of the Family Court, to be carried out by the Ministry of Justice. A consultation paper with options for reform was released for public comment in September 2011 and 209 submissions were received by the closing date of 29 February 2012. A sample of 173 Care of Children Act cases and 88 Property Relationship Act case files were also analysed, and an External Reference Group established to assist the Ministry of Justice with the review. The 2011 Review identified that:

- Current court processes were complex, uncertain, and too slow;
- There was a lack of focus on children and vulnerable people; and

- There was insufficient support for resolving parenting issues out-of-court.

There was also considerable concern about the cost to the taxpayer of running the Family Court. This had increased 70 per cent in the six years to 2012, from \$84 million to \$142 million per year, despite the overall number of applications to the court remaining relatively steady.

On 2 August 2012 the Minister of Justice, Hon. Judith Collins, announced a package of reforms to the Family Court to create a modern, accessible family justice system that is more focused on the needs of children and vulnerable people. The Family Court Proceedings Reform Bill was introduced to Parliament in 2012 and then considered by the Justice and Electoral Committee, which received 386 written submissions and heard 217 oral submissions. The Bill passed its Third Reading in Parliament on 19 September 2013, assent was given on 24 September 2013, and the changes took effect on 31 March 2014.

Purpose of the 2014 Reforms

The General Policy Statement included in the Family Court Proceedings Reform Bill stated the purpose of the reforms as follows:

To ensure a modern, accessible family justice system that is responsive to children and vulnerable people, and is efficient and effective. (p. 1)

While not stated explicitly, the objectives of the reforms can be extracted from this policy statement as:

1. To encourage faster and less adversarial resolution of family disputes;
2. To make the Family Court more efficient and effective;
3. To mitigate the adversarial nature of court proceedings;
4. To improve the Court's response to victims of domestic violence;
5. To better target resources in the family justice system in order to ensure the system remains sustainable in the future and to enable the court to support those children and vulnerable people who most need protection; and
6. For disputes requiring a judicial decision the process should be "understandable, simple, transparent, timely, and proportionate to the dispute" (p. 3).

The focus on supporting people to resolve their own disputes, mainly through out-of-court family dispute resolution, is based on the following assertions:

- Out-of-court dispute resolution provides "a distinct and effective opportunity" for faster and less acrimonious dispute resolution.

- “Effective pre-court processes can reduce the number of cases coming to the court by encouraging people to focus on the needs of their children and on taking ownership of the agreement. This can improve outcomes for children by reducing the likelihood of heightened conflict that often results from litigation. (p. 3)

Summary of the Changes

The 2014 reforms largely focus on **Care of Children Act 2004** matters, which include issues relating to children’s post-separation care arrangements such as day-to-day care and contact. They aim to make the Family Court more efficient and effective, to provide better information (including via a new website), and to introduce new Court forms, such as a standardised questionnaire affidavit to establish the facts of the case. The Court is now to be regarded as part of a wider family justice system that puts more emphasis on people sorting out disputes about caring for children through access to out-of-court dispute resolution services. Key features of the reforms include:

- Expanding **Parenting through Separation (PTS)** and making participation mandatory for many applicants before they proceed to the Family Court. PTS is a free information programme that teaches parents about the effects of separation on children, and parenting skills to reduce children’s stress during separation;
- Introducing a new **Family Dispute Resolution (FDR)** service for resolving parenting and guardianship matters out-of-court. An approved FDR provider (a mediator) assists parents and guardians to identify the matters in dispute, facilitates discussion, and helps them to reach agreements that focus on the needs of their children. FDR is mandatory for most parties prior to commencing Care of Children Act 2004 proceedings. However, in cases where it is inappropriate (such as urgent proceedings, where there are safety risks or a significant power imbalance exists, or where parties consent to orders), then the parties can go directly to court. It was estimated that FDR will help resolve about 1,200 cases that would otherwise go to court. Access to the Court is still available if FDR is unsuccessful. The cost of FDR is fully subsidised for the estimated 60 per cent of participants who meet an eligibility test for out-of-court support. For those not eligible, the cost of FDR is \$897.00, which is likely to be less expensive than retaining a lawyer and proceeding to a defended court hearing.
- Providing low-income parents eligible for out-of-court support with up to four hours of legal advice prior to FDR through the **Family Legal Advice Service (FLAS)**. They may also be provided with up to three hours of **Preparatory Counselling** to help them make the most of FDR.

- Introducing a simplified **three-track system** to support people to navigate parts of the Court independently. Applications to the Court are allocated to a 'track' depending on its complexity:
 - a) **"Without Notice" Track** - Urgent applications to the Court, for example, where violence is alleged, are automatically allocated to the Without Notice track. This ensures vulnerable people exposed to violence and children needing protection have immediate access to the Court.
 - b) **Simple Track** - Applications to the Court for single-issue matters. For example, contact arrangements for children. This track is designed so that the parties are able to represent themselves, without the need for a lawyer.
 - c) **Standard Track** - Applications to the Court for multiple or more serious issues, for example, an application for day-to-day care or permission to take children to live overseas, are allocated to the Standard track. This track is designed so parties are able to represent themselves, without the need for a lawyer, for most of the process. If matters are not resolved, the case moves on to a formal hearing where lawyers are present.

Domestic Violence Changes

The maximum penalty for breaching a protection order has been increased from two years to three years imprisonment. The definition of domestic violence has been broadened to include financial and economic abuse, such as denying or limiting access to financial resources. Non-violence programmes have been made safer and more effective and there are wider powers to direct people to attend an assessment as well as a non-violence programme. People under a protection order can request provision of a safety programme at any time. There is also an increased onus on providers to report on the outcomes of non-violence programmes and to identify any ongoing safety concerns about those who have attended programmes.

Project Description

Given the large fraction of the public purse that is expended in the social policy domains, quality evidence to support appropriate policy development and formal evaluation of desired impacts is critical. Evaluative science and intervention research is particularly important in the implementation of social policy because the reality is that the nature of human systems is such that it is not possible to predict with certainty the direct effect and spill-over consequences of any one intervention. (Gluckman, 2013, p. 13)

The public good is undoubtedly advanced by knowledge-informed policy formation, evaluation and implementation. The challenge is how to do better in two related domains: the generation and application of knowledge to inform policy making, and the use of scientific approaches to the monitoring and evaluation of policy initiatives. (Gluckman, 2011, p. 3)

As advocated above by the Prime Minister's Chief Science Advisor, it is vital to monitor and evaluate public policy developments and legislative change in order to assess the consequences. In Australia and the United Kingdom family justice law reform has been accompanied by an acknowledged need for, commitment to, and investment in, evaluating the reforms (see Australian Institute of Family Studies, 2007, 2009; Family Justice Review Panel, 2011). In their submission to the Family Court Proceedings Reform Bill, the Families Commission (2013) also asserted that, "If these proposals are implemented, it is imperative that the impact and outcomes for families and their children are evaluated. ... On-going evaluation is also important to monitor and assess whether the desired policy objectives are achieved and any unintended and unforeseen consequences are minimised" (p. 15).

This project is the first step in such an evaluation and involved the initial consultation and planning phase for a proposed research strategy to evaluate the 2014 New Zealand family law reforms. Specifically, this project consisted of the following components:

1. An annotated bibliography of domestic and international research literature pertaining to New Zealand family law research and family law evaluation research.
2. Ascertaining the existence of baseline data in New Zealand (collected prior to the March 2014 reforms) and its usefulness in enabling pre- and post-reform comparisons.
3. Consultation and liaison with key New Zealand stakeholders.
4. Consultation with international experts and key researchers in family law reform evaluation.
5. Holding a workshop with representatives from the key New Zealand stakeholder groups, to report back on the above activities and gauge sector/stakeholder interest in, and commitment to, an evaluation proposal.

Annotated Bibliography

A comprehensive literature search was conducted to identify: a) relevant New Zealand family law research; and b) evaluative research undertaken in the family law field domestically and internationally. This resulted in a database of 147 articles, reports and discussion documents (as listed Appendix A). The focus of this literature search was:

- a) To determine the existence of possible baseline data from New Zealand family law research to enable pre- and post-reform comparisons; and
- b) Ascertain research methods and measures that could be employed in evaluating the 2014 NZ reforms.

An annotated bibliography was completed for those articles that discussed empirical research that was either conducted in the family justice field in New Zealand or utilised or discussed evaluation methods that could be of relevance to this project. The topics, research designs and methods employed by the studies reviewed are summarised in Table 2 in Appendix B. This can be drawn upon to identify relevant methodologies and methods in the development of the next phase of the project.

Baseline New Zealand Family Law Research

Evaluations can utilise a variety of data sources including: available and compiled data that already exists in available data sets; data that is available but not compiled (for example, from agencies); and collectable but not available data (Coglianese, 2012).

No pre-reform baseline measures were specifically collected prior to the introduction of the Family Dispute Resolution Act 2013 for the purpose of evaluating the reforms. However, data already exists and is currently being collected in both available and compiled data sets and uncompiled data that could potentially allow pre- and post-reform comparisons. Such data sources include:

- Ministry of Justice Case Management System (CMS) data - Some Ministry of Justice statistics will be available and will also be published by the Ministry;
- Resolution Management System (RMS) data – This could provide information such as the number of cases, settlement conferences, Parenting through Separation attendees etc. However, RMS is largely an invoicing system for FDR providers, not a full case management system and therefore would not be suitable for extracting certain types of information (e.g., delays);
- Agencies' internal agency case management data and client feedback;
- Member surveys and consultations; and

- Child support data collected by the Inland Revenue Department.

Relevant New Zealand data also exists in research publications including journal articles and research reports. The most comprehensive programme of research into the New Zealand family law system was conducted in the late 1980s-early 1990s by the then Department for Courts following the major reforms of 1980. This involved a series of studies ascertaining the perspectives of family law professionals and parents on the Family Court and what was then known as custody and access. Since then, there has been no large-scale research concerning the family justice system undertaken in New Zealand.

However, a number of studies¹ on the following aspects of child and family law have been conducted covering the following topics:

- Children's participation in family law matters:
 - Child-inclusive mediation (Goldson, 2006)
 - Judicial approaches (Cochrane, 2005)
 - Custody and access arrangements (Gollop et al., 2000)
 - Children's views (Robinson, 2010; Robinson & Henaghan, 2011)
 - Children's rights (Taylor et al., 2000)
- Family Violence courts (Knaggs et al., 2008; Morgan, Coombes & McGray, 2007; Morgan, Coombes, Te Hiwi & McGray, 2007)
- Parenting arrangements (Colmar Brunton, 2009; Department of Justice, 1993; Hall, Lee & Harland, 1993; Harland, 1991a, 1991b; Hong, 1991; Lee, 1990; Maxwell et al., 1994; Robertson, Pryor & Moss, 2008; Smith et al., 1997; Tolmie et al., 2010)
- Parenting Hearings Programme (Knaggs & Harland, 2009a, 2009b; Zondag, 2009)
- Parenting Through Separation Programme (Ministry of Justice, 2011a; Roberston & Pryor, 2009, 2011)
- Family Court counselling/counsellors (Maxwell & Robertson, 1994a, 1994b; Maxwell et al., 1990)
- Counsel/Lawyer for the Child (Hong, 1991; Taylor et al., 1999; Taylor, Gollop & Smith, 2000a, 2000b)
- Parenting orders (Pryor, 2012)
- Stepfamilies (Pryor, 2004; Robertson, 2014)
- Protection orders (Robertson et al., 2007)

¹ See bibliography in Appendix A for the full references.

- Self represented litigants (Smith et al., 2009)
- Relocation (Gollop & Taylor, 2012; Taylor et al., 2010a, 2010b)
- Family mediation (Barwick & Gray, 2007)
- Complex cases (Barwick, Gray & Macky, 2003)
- Child support (Colmar Brunton, 2009)
- Domestic violence (Coombes et al., 2003; Robertson et al., 2007)
- Perceptions/experience of Family Court processes (Department of Justice, 1993; Hall, Lee & Harland, 1993; Harland, 1991a, 1991b; Lee, 1990; Maxwell et al., 1994; Ministry of Justice, 2012; Pitama, Ririnui & Mikaere, 2002; Pryor, 2012; Pryor & Major, 2012; Smith et al., 1997; Taylor, 2006)
- Children's perspectives (Goldson, 2006; Gollop et al., 1997, 2000; Henaghan, 1998; Smith & Gollop, 2001a, 2001b; Gollop, Smith & Taylor, 2000; Taylor, 2006)
- Post-separation issues for families (Mitchell & Chapman, 2006; Smith et al., 1997; Tolmie et al., 2010).

A total of 64 publications discussing 49 empirical studies undertaken in New Zealand were reviewed. Much of this research involved small-scale studies that were predominately qualitative in nature. Generally, the studies were either about a specific aspect of the family justice system (e.g., Counsel for the Child, parenting orders), evaluated a specific programme or pilot (e.g., Parenting Through Separation), or focused on broader issues such as stepfamilies, post-separation issues or child support.

While these studies provide valuable information they are limited in their usefulness for providing pre-reform measures due to their:

- lack of recency;
- qualitative nature;
- small sample sizes; and/or
- narrow, or conversely, broad focus.

In summary, there is limited existing pre-reform data that could be used as baseline data for a comprehensive pre- and post-reform comparison of the impact of the reforms. Specific pre-reform measures were not collected in New Zealand prior to the introduction of the Family Dispute Resolution Act 2013 and little data exists that could be used as baseline measures for an evaluation of the reforms. Our consultations with stakeholders also revealed very little appetite for such comparisons to be made. Rather, the view expressed was that with the reforms now in place it was more important to understand how well the new services are working, and where

any modifications might be needed, rather than to compare the current system with the previous one. However, pre- and post-reform comparisons could be possible by a reviewing court files and/or examining the perspectives of family law professionals on the family justice system pre- and post-reform.

The existing data does not provide an overall picture of separating families and the different pathways they take to resolve parenting disputes and the outcomes associated with those pathways. In fact, a clear profile of separated families does not exist in New Zealand and proxies such as child support and census data are used to provide estimates of the number of separated families or numbers of children affected by parental separation (Families Commission, 2009).

Consultation with New Zealand Stakeholders

An important aspect of effective evaluation is engagement and consultation with relevant stakeholders who have an interest in the process and outcome of any evaluation, and providing them with an opportunity to contribute to the research strategy (Kelly, 2008; Rossi & Freeman, 1993). Extensive consultation and liaison with the key New Zealand stakeholders from the family justice sector was therefore a major part of our project in order to ascertain:

- a) their interest in an evaluation of the 2014 reforms;
- b) any plans they had for undertaking independent or joint venture research in this field;
- c) details about previous research or possible baseline data they were aware of that could be utilised in any evaluation; and
- d) their interest in being part of a collaborative consortium to develop a research strategy to evaluate the reforms.

A Memorandum of Understanding exists between the New Zealand Law Foundation and the Ministry of Justice to establish a closer working relationship for their mutual benefit. This includes the provision for both organisations to assist each other with research projects. The Ministry's central role in the 2014 reforms meant that their Research and Evaluation Team was planning to evaluate certain aspects of the reforms from 2015. This was to include a consultation process with key stakeholders during 2014. When the New Zealand Law Foundation approved our project, which also incorporated a consultation process, it was agreed that it made good sense for these consultations to be undertaken jointly by the University of Otago research team (Associate Professor Nicola Taylor, Megan Gollop and Professor Mark Henaghan) and the Ministry of Justice (Sarah Talboys, Senior Advisor, Research and Evaluation).

During the period August to October 2014, 29 people from 14 agencies/organisations in New Zealand were consulted. The stakeholders consulted included representatives from those currently implementing the reforms or with an interest in them, including Government departments, agencies, the Family Court, family law professionals, academics and practitioners.

Consultations were undertaken with the following stakeholders:

The Ministry of Justice

- Angela Lee (Principal Advisor, Research and Evaluation)
- Sarah Talboys (Senior Advisor, Research and Evaluation)

NZ Family Court

- Principal Family Court Judge Laurence Ryan

Families Commission

- Dr Jeremy Robertson (Chief Advisor Social Science)
- Dr Radha Balakrishnan (Principal Social Policy Evaluation and Research Analyst - Justice and Family Violence)

Office of the Children's Commissioner

- Justine Cornwall (Deputy Children's Commissioner)

Inland Revenue Department

- Dr Michael Slyuzberg (Acting Manager, National Research and Evaluation Unit)
- Valmai Copeland (Principal Evaluator)

Family Law Section of the New Zealand Law Society

- Dr Allan Cooke (FLS Chair)
- Kath Moran (FLS Manager)

Relationships Aotearoa

- Bernie Holden (Director Service Development)
- Jacqui Akuhata-Brown (Chief Executive)

FairWay Resolution Limited

- Denise Evans (Business Director – Social Services; FDR Scheme Director)
- Anne Scragg (General Manager: Professional Excellence & Innovation)
- Kerri Morris (FDR Scheme Manager)

LEADR

- Catherine Cooper (General Manager NZ)

AMINZ

- Deborah Hart (Executive Director)

Family Works Northern

- Dr Rod Watts (CEO)

- Wendy Hoskin (FDR Hub)

Family Works Central

- Julia Hennessy (General Manager)
- Laurette Farr (FDR Coordinator)

Family Court Report Writers

- Dr Sarah Calvert
- Dr Suzanne Blackwell

Family Law Academics

- Professor Bill Atkin (Faculty of Law, Victoria University) and Sean Brennan (Research Assistant)
- Associate Professor John Caldwell (School of Law, University of Canterbury)
- Associate Professor Pauline Tapp (Faculty of Law, University of Auckland)
- Alison Cleland (Faculty of Law, University of Auckland) via phone
- Professor Fred Seymour (Psychology Department, University of Auckland)

Robert Ludbrook (Child Advocate)

Common Research Interests

Sector-level strategising about the priority evaluation questions is an essential aspect of social policy evaluation (Duignan, 2002). Our consultation process led to a number of common research interests being identified across the New Zealand family justice sector. These included:

- **The need for research and evaluation:** Given the extensive nature of the 2014 reforms it is considered important that they be properly evaluated. Those consulted lamented New Zealand's poor track record and lack of investment in research in the family justice field. Consumers' perspectives were considered especially important to ensure that the reforms were working as intended.
- **Knowledge, understanding and experience of the new system:** Ascertaining how family justice professionals, family members and the public were learning about the reforms and engaging with services and their understanding of the reforms was thought to be important. What are people's experiences of out-of-court and in-court processes and are these meeting their, and their children's, needs?
- **Impact of the reforms:**
 - On families and children;

- On attitudes, behaviour and practice;
- On family law professionals and practitioners.
- **Post-separation decision-making pathways:** With the new emphasis on out-of-court dispute resolution, those consulted were keen to learn: what pathways separated parents are now utilising; what outcomes are associated with different pathways; what determines different pathways; and what this might mean for service delivery. In addition, there was interest in the pathways taken by those who access the Family Court following FDR or via the 'without notice' track.
- **Families 'missing' from, or not engaging with, the system:** The reduction in the number of applications being filed under the Care of Children Act 2004 since the reforms took effect, and the current low throughput in FDR, are creating questions about where families are resolving the issues/disputes they would previously have brought to the Court. Are they, for example, resolving any issues between themselves or privately, reaching agreement following attendance at PTS, or avoiding the family justice system altogether?
- **Children's participation and views:** Given New Zealand's world-leading approach to ascertaining children's views in defended family law proceedings (sections 6 and 7, Care of Children Act 2004), those consulted wondered why opportunities for children's participation were so limited in the new out-of-court processes and what impact this would have on children.
- **Family violence concerns:** The quality of the intake, screening and assessment processes will be vital in ensuring that family members who are vulnerable, 'at risk' and/or experiencing family violence and abuse are placed on the appropriate track and afforded the protection they, and their children, need.
- **Durability of FDR agreements/court orders:** Those consulted were interested in having information collected that would shed light on the durability of both FDR agreements and Family Court orders, and in better understanding the intersection between the out-of-court and in-court processes in this regard.
- **Workforce capability, capacity and development:** FDR has created the demand for a new type of family justice practitioner and the consultations identified a range of workforce capability, capacity and development issues in relation to their recruitment, training, availability, mentoring and career development.

Table 1 presents a list of topics that the stakeholder consultations identified as being of particular interest to them in any evaluation of the 2014 reforms. These have been listed in order of the number of groups who raised each issue. The key stakeholders who were consulted

raised many issues and interests, but those presented in Table 1 were responses to being asked directly what areas they would like to see included in any evaluation.

Table 1: Areas of evaluative research interest raised during NZ consultations

Area of research interest	Number of stakeholder consultations where issue was raised
Family dispute resolution	8
Durability/sustainability of orders	7
Non-engagers/missing families	6
Children's participation/voice	6
Workforce development/capacity	3
Knowledge/understanding/experiences of new system	3
Parenting through Separation	3
Pathways to outcomes	3
Efficacy of new system	3
Impact on children	3
Family violence	2
Private schemes/providers	2
Intersection with other systems	2
Preparatory counselling	2
Lawyer for the Child	2
Without notice track	2
Exemption certificates	2
Self-represented litigants	1
Hard to reach families	1
Attitude/behavioural shifts	1
Family Legal Advice Service	1
Māori/cultural issues	1

As shown in Table 1 the most common area that the sector would like to see evaluated was Family Dispute Resolution, followed closely by the durability and sustainability of any orders or agreements made under the new system. Many of the stakeholder groups also identified the need for research about those families who do not engage with the system (as outlined above) and children's participation and voice (or lack of) within the new system.

In addition, many stakeholders generated a number of **specific research questions** that elaborate on their broader interests outlined above. This level of detail will be most helpful when consideration is being given to specific aspects of future evaluative research topics. These questions relate mainly to five areas of interest as follows:

Family Dispute Resolution

- What are the reasons for exemptions being granted?
- How prepared for FDR are parties as they no longer have the input of counselling, lawyers and judge-led mediation as they did before the reforms?
- Does FDR change how people manage conflict?
- Do parents perceive the new FDR process as the same as going to Court?
- What does 'resolution' mean in FDR agreements?
- How do parents select a FDR provider?
- How is online dispute resolution or technology used when parties live in different locations and/or where there are safety concerns?
- What are effective mediation strategies for men?
- Does delay occur as cases progress through the FDR process?
- What are parents' experiences of, and perspectives on, FDR? What expectations of FDR do parents have? How well-informed and knowledgeable do parents feel about FDR?
- What are parents' beliefs about children's needs and involvement?
- What are children's experiences of the new system? Are they informed? Do they feel listened to?
- How satisfied are families with the FDR process and outcome?
- What are Māori families' experiences of the new system?
- What are practitioners' experiences of, and perspectives on, FDR?
- What does the general public understand about the new FDR system?
- What is the process of a mediation session for clients and providers? What happens during FDR?

Orders/agreements – particularly in relation to durability/sustainability

- How can the system help families to resolve disputes quickly in sustainable way?
- How many people are re-entering the system, making multiple applications and/or coming back to Court?
- Is there a difference between FDR agreements and judge-led decisions? Do parents view them differently?
- What are parental perspectives on whether the agreement is fair and workable?
- What happens if only partial agreement is reached?

- Is an agreement sustainable or do parents want a judicial decision?
- How many FDR agreements are converted to consent orders?

Pathways for families

- What determines which pathways families take?
- What outcomes are associated with different pathways? e.g., Cost? Delay? Sustainability of orders? What is the best pathway for different types of families? What are the pathways and outcomes for families who do not engage with the system?
- Who drop out of the system and what are the reasons for this?
- Are people returning to the system?
- What is the most cost effective way for families to resolve disputes?
- What other services, including those beyond the family justice system, do families access?
- What is the impact of influences other than FDR?
- What is the interface with care and protection issues and the family justice system? What track do these families come in on?
- What pathways do hard-to-reach families take?
- What is happening for those who have either disengaged from, or never engaged, with the new system?

Workforce development/capacity

- What are FDR providers' skill and training needs?
- What is the impact of having different types of mediators from different backgrounds involved in FDR?
- What is the impact of different training pathways (LEADR, Law Society and AMINZ) on outcomes?
- What is the impact of the reforms on professionals/practitioners (lawyers, mediators, counsellors, lawyer for the child, judges) and agencies?
- What is the impact of the new system to the role of Lawyer for the Child?
- Will the reforms lead to a different type of professional – the FDR mediator?
- What is the capacity of the workforce to recognise issues such as domestic violence, unresolved grief or power issues?
- What is the capability for FRD providers to work with children?

Counselling

- How are preparatory counselling and PTS viewed? Are they a means to aid in resolution or are they necessary steps in order to access FDR? Is preparatory counselling an intervention in its own right or merely a prelude to FDR?

- How many people have disengaged with the family justice system after preparatory counselling?
- What are the implications of the six free counselling sessions no longer being available - particularly on parents who have not yet separated?
- Where are those people who would have attended counselling in the past going now?
- What does a counsellor need in terms of skill and training to help parents prepare for FDR?

Miscellaneous

- How can better opportunities for families not to litigate be facilitated?
- What access to legal advice is available for vulnerable populations (including children)?
- Is the reduction of affidavit evidence de-escalating positioning by parents?
- Are section 133 reports being sought more or less often than previously?
- How can the impact of family transitions on children be minimised?
- Can there be a comparison of families under the new system and those under the old system?
- What are the funding implications of the new system for parents who would not have gone to court in the previous system?
- What is the impact of the tactical use of an exemption certificate?
- What role does Parenting through Separation perform in assisting parents to reach agreement? What is the impact of PTS now being mandatory?
- What is the evidentiary expectation of the without-notice track?
- What are client and practitioner experiences of the Family Legal Advice Service (FLAS)?

Existing or Future Research Plans

During our consultations we also ascertained whether any research was being planned or undertaken in New Zealand that focused on the family justice sector and/or aspects of the reforms. This was important to identify as these projects could then be taken into account in the design of the strategy to evaluate the 2014 reforms and avoid duplication of effort by others. The consultation process identified the following projects:

Ministry of Justice

- The Ministry is currently planning a two-stage evaluation of those aspects of the reforms considered the most novel:
 1. Evaluations of a) FDR and b) self-represented litigants on the standard track (2014-2015); and
 2. Analysis of longer-term outcomes of the reforms (report due mid-2017).

Stage one will involve a literature/document scan, consultations with stakeholders and fieldwork. The literature scan has commenced, the consultations occurred in September/October 2014 (jointly with the University of Otago research team), and the fieldwork is planned for early 2015, with the final write-up being completed mid-late 2015. The research on FDR will focus on how it is being implemented, how it is running, whether its objectives are being met (policy perspective), who it is working for and who it is not working for, and whether there are any unintended consequences (positive and negative). A case study approach (in four sites) will be used to obtain a qualitative picture of what is happening, including interviews with FDR participants and key informants (such as FDR providers, legal advice providers and preparatory counsellors). The Ministry may also conduct a national survey of FDR providers.

Family Works Northern

- Research about client satisfaction with their FDR service utilising a Results Based Accountability (RBA) framework with a view to evaluating and improving their service. The research will be aligned with the Ministry of Justice FDR project in Auckland, with fieldwork occurring in March/April 2015.

Family Law Section, Law Society

- Survey of Auckland family lawyers.
- Possible nationwide survey on family lawyers' views on the changes that have been brought to the Court and to the operation of the family law justice system in this specific jurisdiction.

LEADR

- Possible member survey in 2015 to explore training and professional development needs.

Consultation with International Experts and Researchers

We were fortunate to have two highly experienced Australian researchers as consultants on the project. Dr Rae Kaspiew (Senior Research Fellow: Family Law, Australian Institute of Family Studies, Melbourne) and Associate Professor Bruce Smyth (ARC Future Fellow, College of Arts and Social Sciences, Australian National University, Canberra) were both key players in the design and implementation of large-scale research evaluating the 2006 Australian family law reforms.

Australia

In October 2014 Nicola Taylor and Megan Gollop travelled to Australia to meet with a range of agencies, researchers, family law experts and key stakeholders to gain a better understanding of the 2006 and 2012 family law reforms and their evaluation. We are very grateful for the experience shared with us during the following consultations:

Family Court of Australia and Federal Circuit Court

- Pam Hemphill (Principal, Child Dispute Services, Family Law Courts)

Australian Institute of Family Studies

- Dr Rae Kaspiew (Senior Research Fellow)
- Dr Lawrie Moloney (Senior Research Fellow)
- Ruth Weston (Assistant Director Research)
- Dr Lixia Qu (Senior Research Fellow)

Relationships Australia, Victoria

- Dr Andrew Bickerdike (Chief Executive Officer)
- John Corvan (FRC Manager, Melbourne CBD)

Australian National University

- Associate Professor Bruce Smyth
- Professor Bryan Rodgers

Attorney General's Department

- Tracy Ballantyne (Principal Legal Officer, Family Law Branch)
- Jackie Aumann (Senior Legal Officer Family Law Branch & Family Law Systems Integration & FDR)
- Jean Rollings

Family & Relationship Services Australia

- Jackie Brady (Executive Officer)
- Rose Beynon (Policy Officer)

Family Law Researchers/Experts

- Professor Belinda Fehlberg (University of Melbourne Law School)
- Juliet Behrens (Family lawyer, DDCS Lawyers, Canberra)
- Professor Richard Chisholm
- Sue Pidgeon (formerly Attorney General's Department)

England

While visiting the UK, Nicola Taylor also met with leading researchers on the *Mapping Paths to Family Justice* project at the University of Exeter on 28 November 2014 - Professor Anne Barlow (Professor of Family Law and Policy), Professor Liz Trinder (Professor of Socio-Legal Studies), and Jan Ewing (Research Associate). This ESRC-funded interdisciplinary project has provided critical evidence about the usage, experience and outcomes of the three different ADR forms of out-of-court dispute resolution in family law currently available in the UK: solicitor negotiation; mediation; and collaborative law. The project focused on answering the following questions:

1. How widely is each process actually used and how embedded has it become in the public mind as a means of resolving family disputes?;
2. How positive or negative have people's experiences of these ADRs been in the short and longer term?;
3. What norms of family dispute resolution are embedded in the different alternatives?; and
4. Are particular approaches more or less appropriate for particular kinds of cases and parties?

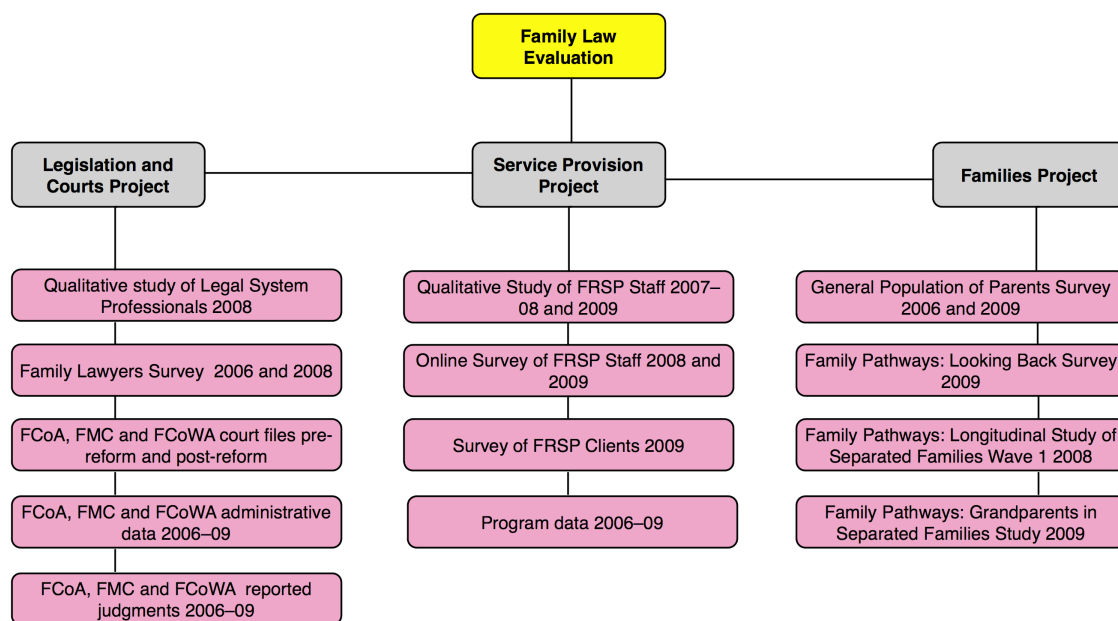
Key Messages from the International Consultations

New Zealand, like other jurisdictions, is grappling with the challenge of providing an effective and efficient family justice system. The international trend towards out-of-court family dispute resolution is in response to this and is being driven by several factors shared in common across different jurisdictions: the benefits of early intervention and consensual settlements, litigation/Court as a last resort, and the desirability of reducing cost. Australia introduced significant family law reforms in 2006, while the timing of those in England and Wales almost exactly matches our own changes here in New Zealand. The Children and Families Act 2014 implemented the Family Justice Review recommendations agreed by the British Government on

22 April 2014 (Family Justice Review Panel, 2011; UK Ministry of Justice and Department for Education, 2012).

These international consultations in Australia and England confirmed the importance of having an evaluative research strategy occurring in conjunction with law reforms and new programme or service delivery initiatives. Australia invested heavily in both infrastructure (for example, Family Relationship Centres (FRCs)) and research as part of their 2006 reform package. The Attorney-General's department contracted the Australian Institute of Family Studies to undertake a large-scale programme of research and evaluation that is continuing to pay dividends for their ongoing legal policy and practice developments (see Figure 1 below for a map of the scope and scale of the evaluation).

Figure 1: Overview of data collection for the Australian Institute of Family Studies evaluation (reproduced from Kaspiew et al., 2009)



The Australian data has shown that a) around 70% of separated couples manage to work out parenting arrangements themselves, and b) the pathways taken by those who engage with out-of-court and in-court dispute resolution processes. This enables the Australian Government to tailor legal policies and services to meet known needs within the parenting community and to put the impact of any reform measures into their wider context. Their evaluations have not only examined the effect of their 2006 reforms, but also served as a benchmark for other policy and practice changes over time (for example, with the current evaluation of the 2012 family violence reforms and where these issues intersect with the family law system).

Likewise in England, the ability to compare different types of dispute resolution modalities has provided important information about which approaches are best suited to particular groups of clients. This 'big-picture' dimension is currently missing in New Zealand.

Our consultations in Australia also revealed that their FDR system is continuing to evolve with a range of approaches being trialled and/or introduced regarding child participation, legal advice, relationship property and child support initiatives. This is to enable a more holistic approach to parental separation to be provided for families within Family Relationship Centres, professional services and the courts. We can likely expect similar developments in New Zealand as FDR becomes more embedded in our dispute resolution processes.

Wellington Workshop

On 30 October 2014 the University of Otago research team hosted a half-day workshop in Wellington with 30 people representing many of the agencies and personnel we had consulted in New Zealand throughout August to October 2014. The list of participants is in Appendix C, together with the names of the 18 people who sent their apologies. One of the international consultants to our project, Dr Rae Kaspiew (AIFS, Melbourne), delivered a keynote presentation highlighting the methodologies and key findings from the evaluations of the Australian 2006 and 2012 family law reform and their significance for New Zealand (see De Maio et al., 2013; Kaspiew et al., 2009 2012, 2013; Moloney et al., 2011; Qu et al., 2014 in Appendix A). She also emphasized the interface between research, policy and practice that can be achieved when a robust evidence-base is in existence. Those present at the workshop expressed their strong support for the development of a research strategy to evaluate our 2014 family law reforms and agreed with the proposed direction it is taking.

Evaluation Research

Evaluation is a broad term and there are numerous ways to describe and undertake it. It is usually taken to mean the systematic acquisition and assessment of information in order to understand the consequences of an intervention, programme, policy, initiative, or activity (Kelly, 2008; Kettunun, 2011; Trochim, 2006). Evaluation examines the structure, process, relationships, and products of programmes or projects at the individual and/or system level (Levin-Rozalis, 2003).

Evaluation research is a purposeful activity, undertaken to affect policy development, to shape the design and implementation of social interventions, and to improve the management of social programs. (Rossi & Freeman, 1993, p. 403)

A key aspect of any evaluation is to provide useful *feedback* to those responsible for designing or implementing the programme or project under consideration. The relevance and usefulness of the feedback it provides is a key indicator of its quality (Levin-Rozalis, 2003). Therefore, the primary goal of an evaluation to inform decision-makers, stakeholders and the general public whether programmes and policies have had the intended consequences (Kettunun, 2011).

There are two major evaluation designs – formative evaluation and summative evaluation (Duignan, 2002; Kettunun, 2011; Trochim, 2006) – with a distinction also made between process and outcome evaluation (Duignan, 2002).

Formative evaluation is concerned with monitoring the way in which a programme is implemented – how it is delivered, managed, administered or operated in order to improve the implementation process and/or to identify problems or issues that need to be addressed to optimise the programme efficiency. Such evaluations can assess whether the programme is being delivered as intended (implementation evaluation) or the process of delivering the programme (process evaluation). Four major data sources inform a monitoring/formative evaluation: direct observation; service records (such as case management systems); data from service providers; and information from the programme participants (Rossi & Freeman, 1993).

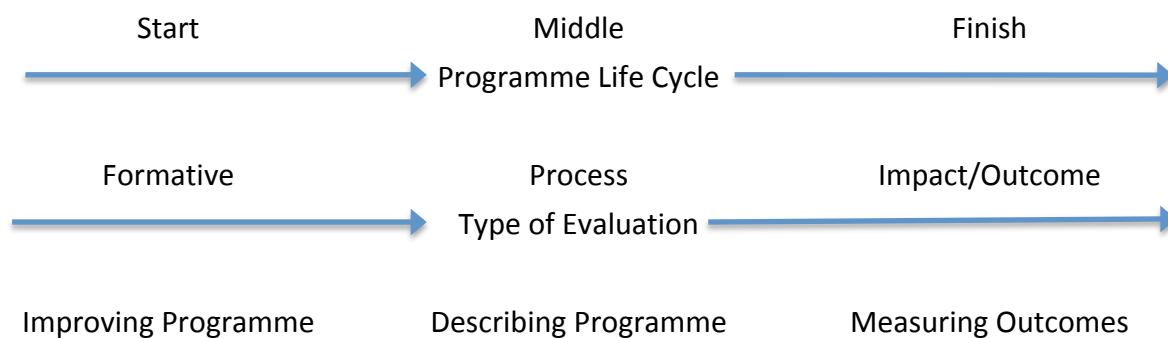
Process evaluation examines the process of delivering the programme by describing and documenting the process to assist in understanding it and interpreting the programme's outcomes (Duignan, 2002).

Summative evaluation examines the impact or outcome of the programme or initiative. This could be an assessment of whether the programme achieved what it was designed to do against

specified targets or stated goals (outcome evaluation) or an examination of the overall impact of the evaluation (impact evaluation) including both intended and unintended consequences. These outcomes and impacts can be short, intermediate or long-term and may also be hierarchical relating to impacts at the individual, community or policy level (Australian Institute of Family Studies, 2007; Duignan, 2002).

These evaluation types can be combined to form a three-way evaluation typology – formative, process and impact/outcome – that can be related to the stages or life-cycle of a programme or intervention as demonstrated in Figure 2 reproduced from Duignan (2002, p.183).

Figure 2: The relationship between types of evaluation and stages in the programme life cycle



When assessing a programme’s impact or outcomes, clear objectives of the programme must be articulated and the programme must be implemented as intended (Rossi & Freeman, 1993). The formal goals of policy or practice reform can be a good starting point for an evaluation, but such goals are not always precisely articulated (Kettunun, 2011), in which case the evaluator must be able to establish a set of objectives (Rossi & Freeman, 1993). For example, in the 2006 Australian family law reform evaluation, “big picture indicators” were derived from the reform objectives, which were then framed as specific evaluation questions (Australian Institute of Family Studies, 2007).

The critical issue in impact evaluation is establishing “whether or not the program produces desired levels of effects over and above what would have occurred either without the intervention or with an alternative intervention” (Rossi & Freeman, 1993, p. 220). Determining the impact of a programme requires the evaluator to establish causality i.e., demonstrating that the measured impact was due to the programme (Rossi & Freeman, 1993). The gold standard of impact evaluation is a randomised control study as this is the most powerful research design to establish causality. Such a design compares the outcomes for a randomly selected group of those who had participated in the programme/intervention with a randomly selected control group of those who did not participate. However, using such an experimental model is a challenge for evaluators for many reasons, including factors such as the impracticability of such

an approach, ethical concerns and time and cost constraints. It is also difficult to control and isolate findings that are directly attributable to the social interventions/programmes from other confounding processes and influences. For these reasons, it is often impossible for an evaluation to utilise the 'ideal' evaluation research design and evaluators need to choose the best possible design taking into account factors such as feasibility, practicality, usefulness and credibility (Rossi & Freeman, 1993).

A variety of other quasi-experimental research designs can be employed, such as non-randomised constructed-control designs using matched controls, either *ex ante* (prior to intervention) or *ex post* (after the start of the intervention). When control groups are not possible, repeated measures of participants before and after an intervention can also assess the impact of a programme or policy.

More realistic approaches to evaluation highlight the importance of understanding not only the impact of a programme, but also the process or mechanism of social change leading to the observed impacts. A process evaluation can provide a detailed description of what happens when an intervention is implemented (Kelly, 2008). The aim of such an evaluative approach is therefore to understand the relationship between the context, mechanism of change and the outcome (Kelly, 2008). Qualitative research methods (such as interviews, focus groups, document analysis, observations etc.) are particularly useful in understanding *how* an intervention has impact (Kelly, 2008). Qualitative approaches are also helpful in ascertaining people's experiences of any intervention and their views of the impact of the intervention on their lives.

Formative evaluation is usually conducted throughout programme delivery, but summative evaluation is most often conducted at the end. It can be beneficial to conduct both types of evaluation in order to gain a deeper and broader understanding and to set the findings in context. For instance, studies that monitor a programme's implementation using a formative evaluation design are important to understand and interpret the findings of a summative evaluation. If little or no impact is found in a summative evaluation, a formative evaluation may reveal that the programme or policy was implemented incorrectly or incompletely, thereby explaining the lack of impact or any unintended effects (Rossi & Freeman, 1993). A mixed method design, employing both quantitative and qualitative research methods and data collection, and undertaking both formative and summative evaluations will therefore provide a comprehensive evaluation design.

Timing of an evaluation

The timing of an evaluation is an important consideration. For feedback to decision-makers and programme implementers to be relevant and useful an evaluation ideally needs to be relatively immediate. A formative evaluation should therefore occur within a timespan that will allow the findings and conclusions to contribute to necessary changes in implementation and delivery to optimise the effectiveness and impact of the programme (Levin-Rozalis, 2003). However, impact evaluations should be conducted when the initiative has been in place long enough for any implementation issues to have been resolved (Rossi & Freeman, 1993). However, if the programme is designed to address a serious or important issue then it is desirable to learn if it is not working sooner rather than later in order to devise a more suitable alternative (Coglianese, 2012). Therefore, an effective evaluation strategy recognises that evaluation can occur across a programme's entire life cycle and is not limited to only outcome evaluation at the end of the programme (Duignan, 2002).

The Way Forward

While the goal of both evaluation and research is to gain knowledge and understanding, evaluation differs from research in that its focus is on using that knowledge and understanding to provide feedback on a concrete programme, project or initiative. The quality of an evaluation lies in whether it provides sufficient feedback to all levels of decision makers (Levin-Rozalis, 2003). The 2014 New Zealand family justice reforms impacted on a wide range of families, practitioners and decision makers at many different levels. A suite of several evaluative research studies is therefore likely to be necessary in order to provide effective and pertinent feedback to all relevant parties and stakeholders. This project has provided the platform on which to co-ordinate and develop this evaluative research strategy so that any future investment of funding, time and skill in this field can be optimised to best effect.

In essence, there are two levels of evaluation possible, each with different objectives and scope:

1. Smaller-scale studies evaluating particular individual components of the new family justice system at the individual programme/service level. Such studies are warranted for specific programmes, services or activities, such as:

- The Family Legal Advice Service (FLAS);
- Family Dispute Resolution (FDR);
- Parenting Through Separation;
- Preparatory Counselling;
- The Ministry of Justice website and call centre.

These services could then benefit from more immediate feedback on their role and activities, accessibility, client satisfaction, and so forth, in order to ascertain a) how well the service is operating, b) whether there are any implementation glitches that need attention, and c) how to improve service delivery to better meet client and practitioner needs. Evaluation studies such as these can incorporate both formative and summative aspects. Formative evaluation could assess how the services/programmes are implemented, delivered and operated, and how effective these processes are. Summative evaluations could examine what outcomes the services are achieving and if they result in any unintended consequences. Both types of evaluations could utilise and collect various types of data such as that collected or held by agencies and service providers (programme/administrative data); client feedback; and surveys (questionnaires, focus groups or interviews) with clients, staff/practitioners, service providers, and other professionals.

2. Larger-scale, more long-term, research evaluation taking a broader ‘whole system’ approach to evaluate the reforms as an entire package. Again, such evaluations could be both formative and summative. A formative evaluation should involve an examination of whether the programmes and services were being operated in accordance with the legislative and policy intent of the reforms (Australian Institute of Family Studies, 2007). This could involve an examination of how the entire package was rolled out, implemented and administered and could incorporate data from the smaller scale projects outlined above on how specific programmes/services are operating to ensure that they are being operated and implemented as intended.

A summative evaluation of the impact of the reforms could be approached in many different ways. An impact evaluation could examine the consequences of the reforms (both intended and unintended). Outcomes could be examined in a variety of ways as illustrated by the range of research questions provided during the consultations with stakeholders detailed earlier. This could be at the individual level (e.g., does FDR change how parents deal with conflict?; what are the outcomes for children?) as well as examining the impact of the reforms on professional bodies and on systems/organisations (e.g., the Family Court).

An outcome evaluation could also assess outcomes against the objectives of the reforms as outlined on page 3. For example, have the 2014 reforms made dispute resolution for separated families a faster and less expensive, acrimonious and adversarial experience for families; has the number of cases coming court declined; is the Family Court more efficient and effective; and so forth?

In their initial evaluation framework to evaluate the 2006 law reforms the Australian Institute of Family Studies (2007) advocated that to evaluate the reform package as a whole, data should be collected on:

- Outcomes for parents and children.
- The nature and quality of parental and parent-child relationships and interactions (such as contact patterns and levels of domestic violence).
- Preparedness to use, and ability to access, post-separation services for families.
- The effectiveness of those services.
- The extent to which services inter-relate and support each other; and
- Overall post-separation pathways for families.

They proposed that this could be achieved by an examination of the new system from the perspectives of families, service providers, and family law professionals, as well as an

examination of changes in community attitudes and behaviours relating to the family justice system.

There was also considerable interest amongst the stakeholders we consulted regarding the importance of gaining a broad-picture view of the family justice field from these multiple perspectives and also by incorporating both those families who engaged with the family justice system and those who did not. The benefits for socio-legal policy and practice of understanding the different pathways that family members take in seeking to resolve their parenting (and related) disputes was highly evident in Australia.

Proposed Cohort Study

We therefore propose that, in addition to the possible small-scale evaluation projects that various agencies and professional bodies are likely to undertake themselves, consideration be given to the development of a longitudinal cohort study of separating parents.

A cohort study is a type of observational study that observes the effect of something without influencing it. Such studies are useful in evaluative research when randomised control trials are not possible or ethical, such as the case for evaluating NZ family law reforms.

A cohort is a group of people who have some feature, characteristic or experience in common (for instance, separating parents). Cohort studies can be retrospective or prospective. A retrospective design looks backwards into the past to account for what is happening in the present, whereas a prospective design follows the cohort over time from the present into the future, i.e., it is longitudinal in nature with waves of data being collected over time. Prospective cohort studies are generally regarded as superior to retrospective or cross-sectional studies (where groups of people are compared at one point in time).

Such a design would involve recruiting a population-based sample of separating parents with dependent children from across New Zealand and following them over time, collecting data at various points in the future. This could involve interviews or surveys, collecting both quantitative and qualitative data. As highly relevant policy groups are often small in number, a large sample would be needed to capture enough of these parents in order to gain a complete picture of separating families. More in-depth understandings could also be gleaned from qualitative interviews with a subset of the larger cohort.

Prospective cohort studies can be expensive and time-consuming and, due to their longitudinal nature, they do take time to generate useful data. However, this is an important feature of the study design as law and policy reform can have short-, medium- and long-term consequences. Therefore, following people over time captures those longer-term impacts that may not be apparent if reforms are evaluated at only one point in time soon after their introduction.

A major advantage of such a study is that it enables the impact of the reforms to be seen within the wider context of what is happening in the general population of separating parents. A cohort study would capture the range of pathways that separated families take – privately, in out-of-court FDR, and in the Family Court, and the outcomes for families associated with different pathways. It would also allow comparison of those families who engage with the family justice system and those who remain outside it, and the reasons for this. It would also allow us to find out more about those families who have never utilised dispute resolution processes, or who may have previously done so but are not engaging now that the reforms are in place. Multiple pathways and their associated outcomes can be identified for separating families and would potentially enable identification of pathways that are more or less effective for particular families and circumstances.

Understanding post-separation pathways for families was a common research interest that emerged strongly from our consultations and was re-emphasised at the Wellington Workshop at the end of October 2014. Such a study would therefore provide a ‘big picture’ view of what is happening for *all* separated parents in NZ – not just those that engage with the family justice system. For instance, does a significant percentage of New Zealand separated couples work out their own post-separation parenting arrangements, as occurs in Australia? Currently we do not know the answer to this, yet clearly this will have great significance for the family justice sector.

We strongly agree with the Australian Institute of Family Studies (2007) that:

Identifying the effects of the effects of the reform package on children will be very difficult without a longitudinal design. ... Until longitudinal research that specifically focuses on parents’ pathways, and the reasons behind their decisions, is conducted, it is difficult to gauge how the family law system is operating as a whole, and how families can be helped to choose the best pathway for their particular needs. (p. 22)

Such a design would allow us to follow people through the system and examine the choices they make about utilising family justice services, the reasons for these choices, and their experience and satisfaction with the services they engage with. Understanding the pathways that separating families take over time then enables resources to be directed to where they are needed most, avoids duplication of effort and assists policy development, service delivery and workforce planning initiatives. As well, it could tell us about families’ engagement with other services outside the family law system, such as social services, welfare, health, education, iwi and NGOs and also the intersection between these sectors and services.

Another benefit that could accrue is information on some of the broader issues facing separated families - including the relationship between decisions about parenting arrangements and child

support and/or the division of relationship property. While these are interlinked, they are currently dealt with separately in the new system. Yet, as we have seen in Australia, FDR and the family justice system is evolving to find ways of better accommodating these aspects within service modalities that cater to the wider needs of separating families.

Such a study would also allow comparisons between subgroups within the cohort, comparing families who utilised a particular service within the system with those that did not. For example, comparing those that used FLAS and those that did not. This approximates a quasi-experimental impact evaluation design that enables the evaluation of individual components of the reforms or particular services (Rossi & Freeman, 1993).

We appreciate that the nature and scale of the proposed cohort study will require a collaborative approach with multiple partners and the obtaining of the necessary resources to undertake it. However, it is our view that the willing co-operation of the many stakeholders consulted throughout this project provides a strong base on which to develop such a study for the benefit of the family justice field. Depending on funding, waves of data collection could occur over time and the findings will help put the existing and planned studies and current agency data into context as well as informing future research. Such a study would also provide benchmark data for other policy and legislative changes in the future.

The timing of any evaluation is an important consideration. As discussed earlier, and as noted in several of our consultations, for those implementing aspects of the reforms and delivering services, more immediate feedback is important to optimise the effectiveness and impact of the services and make any necessary changes. However, the larger-scale 'whole system' evaluation should only be conducted once any implementation and/or delivery issues have been resolved and the reforms have bedded-in. Advice received from our project consultants Associate Professor Bruce Smyth and Dr Rae Kaspiew, was that a stand-down period of at least one year, but ideally two years, was optimal before any evaluation was commenced, particularly in relation to collecting parent data. It would be desirable to commence with a smaller scale pilot study with a diverse mix of recently separated parents (perhaps utilising focus groups or individual interviews) in order to get a feel for the data to inform the design of the larger cohort study.

Conclusion

There is a myriad of ways to evaluate aspects of the reforms and multiple evaluation studies, especially smaller-scale ones, are likely to be conducted in parallel and over time by different provider groups. Our research team is very willing to continue to provide leadership and co-ordination regarding the evaluative strategy. We are also very happy to provide advice to those who wish to design and undertake their own research, and to partner with them as desired. We

are committed to a planned and co-ordinated 'whole system' approach and believe that the existing and planned initiatives will make an important contribution to better understanding the effectiveness of the reforms and client and practitioner perspectives on the dispute resolution services now available. However, it is clear that new larger-scale research needs to be initiated with multi-partner collaboration and funding. We can never hope to emulate the Australian investment in family law reform evaluation, but nevertheless the next phase of this project, utilising a pilot study followed by a larger-scale cohort study, has the potential to provide an important evidence base to inform future decisions by policy-makers, funders, practitioners and disputing couples. To progress this initiative it will be vital for further consultation to occur between our research team, the New Zealand Law Foundation, the Ministry of Justice and the Families Commission² with a view to building a collaborative multi-sector interdisciplinary team to explore funding, methodological approaches and project feasibility in terms of scale, design and timing.

² In their 2013 submission to the Family Court Proceedings Reform Bill, the Families Commission noted that, "There may be a role for the Commission in monitoring and evaluating the impact of these changes on separated families" (p. 16).

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Appendix B: Summary of Empirical Research Reviewed in the Annotated Bibliography

Table 2: Summary of empirical research from annotated bibliography

Publication	Country	Qualitative	Quantitative	Interviews	Survey/ Questionnaire	Focus groups	Admin. data	Document review	File/case analysis	Professionals	Parents	Children	Topic
Bartlett (2006)	NZ		✓				✓						FC statistics
Barwick & Gray (2007)	NZ	✓	✓	✓	✓		✓	✓	✓	✓	✓		Family mediation
Barwick, Gray & Macky (2000)	NZ	✓	✓	✓	✓		✓		✓	✓	✓		Domestic Violence Act 1995
Barwick, Gray & Macky (2003)	NZ	✓		✓		✓				✓			Complex cases
Cochrane (2005)	NZ	✓		✓	✓					✓			Children's participation
Colmar Brunton (2009)	NZ	✓	✓	✓	✓						✓		Child support, parenting arrangements
Coombes, Morgan & McGray (2007)	NZ		✓				✓						Domestic violence
Department of Justice (1993)	NZ		✓		✓					✓			Custody and access, court processes
Goldson (2006)	NZ	✓		✓							✓	✓	Child-inclusive mediation
Hall, Lee & Harland (1993)	NZ		✓		✓					✓			Custody and access, court processes
Gollop et al. (1997, 2000); Smith et al. (1997); Henaghan et al. (1998)	NZ	✓		✓						✓	✓	✓	Access arrangements, post-separation life
Harland (1991a)	NZ	✓		✓							✓		Custody and access, court processes
Harland (1991b)	NZ	✓				✓				✓			Custody and access, court processes, counselling co-ordinators
Hong (1991)	NZ	✓	✓		✓					✓			Custody and access, court processes, counsel for the child, specialist report writers
Knaggs & Harland (2009a, 2009b)	NZ	✓	✓	✓	✓		✓			✓	✓		Parenting Hearings Programme
Knaggs et al. (2008)	NZ	✓	✓	✓			✓			✓	✓		Family Violence Courts
Lee (1990)	NZ		✓		✓						✓		Custody and access, court processes, child welfare, parental views & experiences
Loomis (1985)	NZ	✓	✓	✓			✓			✓	✓	✓	Evaluation of children's advocate scheme pilot

Publication	Country	Qualitative	Quantitative	Interviews	Survey/ Questionnaire	Focus groups	Admin. data	Document review	File/case analysis	Professionals	Parents	Children	Topic
Maxwell, Pritchard & Roberston (1990)	NZ		✓		✓					✓			FC counsellors' perspectives on Family Court
Maxwell & Robertson (1994a, 1994b)	NZ	✓	✓	✓	✓				✓		✓		Family Court counselling
Maxwell, Robertson & Vincent (1994)	NZ		✓	✓	✓				✓		✓		Care and contact arrangements, parents' perspectives
Ministry of Justice (2009)	NZ		✓				✓						Family Court statistics
Ministry of Justice (2010)	NZ		✓				✓						Family Court statistics
Ministry of Justice (2011a)	NZ		✓						✓				CoCA & RPA applications
Ministry of Justice (2011b)	NZ		✓		✓						✓		Parenting through Separation
Ministry of Justice (2012)	NZ	✓	✓		✓						✓		Experiences of Family Court
Mitchell & Chapman (2006)	NZ	✓				✓					✓		Father's post-separation perspectives and pathways
Morgan, Coombes & McGray (2007)	NZ	✓		✓		✓				✓			Family Violence Court protocols, evaluation
Morgan, Coombes, Te Hiwi & McGray (2007)	NZ	✓		✓						✓	✓		Family Violence Courts
Pitama, Ririnui & Mikaere (2002)	NZ	✓		✓						✓	✓		Māori experiences of the Family Court
Pryor (2004)	NZ	✓	✓	✓	✓					✓	✓	✓	Stepfamilies
Pryor (2012)	NZ		✓		✓						✓		Parents' experiences of Family Court, court orders
Pryor & Major (2012)	NZ	✓		✓						✓			Family Court processes, roles and professionals
Research & Evaluation, Department for Courts (2003)	NZ		✓				✓						Family Court statistics
Robertson (2014)	NZ	✓	✓	✓	✓						✓	✓	Stepfamilies
Robertson & Pryor (2009, 2011)	NZ	✓	✓	✓	✓		✓	✓		✓	✓	✓	Parenting Through Separation programme
Robertson, Pryor & Moss (2008)	NZ	✓		✓						✓	✓		Care arrangements for children, non-litigators, post-separation pathways

Publication	Country	Qualitative	Quantitative	Interviews	Survey/ Questionnaire	Focus groups	Admin. data	Document review	File/case analysis	Professionals	Parents	Children	Topic
Robertson et al. (2007a, 2007b, 2007c)	NZ	✓	✓	✓			✓			✓	✓		Protection orders, Domestic violence
Robinson (2010); Robinson & Henaghan (2011)	NZ	✓	✓						✓				Children's views
Roguski et al. (2008)	NZ	✓		✓							✓		Relationship support
Smith & Gollop (2001a, 2001b); Gollop, Smith & Taylor (2000)	NZ	✓		✓								✓	Children's perspectives
Smith, Banbury & Ong (2009)	NZ	✓	✓	✓			✓			✓	✓		Self-representing litigants
Su-Wuen, O (2005)	NZ		✓				✓						Family Court statistics
Taylor (2006)	NZ	✓		✓		✓				✓	✓	✓	Family Court and dispute resolution
Taylor, Gollop, Smith & Tapp (1999); Taylor, Gollop & Smith (2000a, 2000b)	NZ	✓		✓	✓					✓	✓	✓	Counsel for the Child
Taylor, Gollop & Henaghan (2010a, 2010b), Gollop & Taylor (2012)	NZ	✓		✓					✓		✓	✓	Relocation
Taylor, Gollop, Tapp, Gaffney, Smith & Henaghan (2000)	NZ	✓	✓						✓				Judgment analysis, children's rights
Tolmie, Elizabeth & Gavey (2010)	NZ	✓									✓		Women's experiences, care arrangement disputes
Zondag (2009)	NZ	✓	✓	✓	✓					✓			Parenting Hearings Programme
Akin Ojelabi, et al. (2011)	Australia		✓		✓		✓			✓	✓		FDR, cultural appropriateness
Allen Consulting (2013)	Australia		✓	✓	✓		✓	✓		✓	✓		Family law services
Armstrong (2006)	Australia							✓					Law reform
Armstrong (2011a)	Australia	✓		✓						✓			FDR, cultural appropriateness
Armstrong (2011a)	Australia	✓	✓	✓	✓					✓			FDR, cultural appropriateness
AGD & FaHCSIA (2010)	Australia			✓				✓		✓			Audit of Family Centres initiative

Publication	Country	Qualitative	Quantitative	Interviews	Survey/ Questionnaire	Focus groups	Admin. data	Document review	File/case analysis	Professionals	Parents	Children	Topic
AGD & Relationships Australia (2011)	Australia		✓		✓					✓	✓		Online FDR
Australian Institute of Family Studies (2007)	Australia	✓	✓	✓	✓		✓	✓		✓	✓		Evaluation framework
Bagshaw et al. (2010)	Australia		✓	✓	✓						✓	✓	Family violence
Brown (2010)	Australia	✓	✓	✓	✓	✓	✓			✓	✓		Family Relationship Centre
Carson, Fehlberg & Millward (2013)	Australia	✓		✓							✓		FDR and family law services
Caruana (2010)	Australia									✓			Collaborative law, FDR and family law conferencing services
Cashmore et al. (2010)	Australia	✓	✓	✓	✓		✓				✓	✓	Shared care
Community Services & Health Industry Skills Council (2012)	Australia	✓	✓	✓	✓					✓			FDR, training needs
De Maio et al. (2012)	Australia	✓	✓	✓							✓		Survey of Recently Separated Parents, experiences of family law system, family violence
Department of Families, Housing, Community Services and Indigenous Affairs (2013)	Australia	✓	✓	✓	✓	✓	✓		✓	✓	✓		Evaluation framework for place based income management
Graham, Fitzgerald & Phelps (2009)	Australia	✓		✓		✓				✓	✓	✓	Children's participation in FRCs
Kaspiew et al. (2013)	Australia	✓	✓	✓	✓			✓		✓	✓	✓	Independent Children's Lawyers
Kaspiew et al. (2012)	Australia	✓	✓	✓	✓	✓			✓	✓	✓		Evaluation of pilot of FDR in family violence cases
Kaspiew et al. (2009a, 2009b, 2011); Moloney et al. (2010); Moloney, Weston & Hand (2013)	Australia	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	Evaluation of 2009 reforms
KPMG (2008)	Australia	✓	✓	✓	✓	✓				✓	✓		FDRL and legal aid commissions
Lodge & Alexander (2010)	Australia	✓	✓	✓								✓	Adolescents' experiences of parental separation

Publication	Country	Qualitative	Quantitative	Interviews	Survey/ Questionnaire	Focus groups	Admin. data	Document review	File/case analysis	Professionals	Parents	Children	Topic
McArthur et al. (2011)	Australia	✓	✓	✓	✓		✓			✓	✓	✓	Evaluation of Supporting children after separation and Post separation cooperative parenting programmes
McIntosh & Long (2006), McIntosh, Long & Wells (2009)	Australia	✓	✓	✓	✓						✓	✓	Child-inclusive and child-focused mediation
Moloney et al. (2011a, 2001b, 2013)	Australia	✓	✓	✓	✓					✓	✓		Evaluation of Family Relationship Centre legal assistance partnerships programme
Morgan, Boxall, Terer & Harris (2012)	Australia	✓	✓	✓	✓		✓	✓		✓	✓		Evaluation of alternative dispute resolution in children's court
Qu & Weston (2010); Qu, Weston, Moloney, Kaspiew & Dunstan (2014)	Australia		✓	✓							✓		Post-separation parenting dynamics (Longitudinal Study of Separated Families)
Smyth, Rodgers, Son, Allen & Vnuk (2012)	Australia		✓	✓							✓		Child support and parenting arrangements knowledge pre- and post-reform
Smyth, Chisholm, Rodgers & Son (2014)	Australia		✓	✓			✓				✓		Child support, shared parenting
Bacon (2004)	Canada	✓	✓	✓	✓					✓	✓		Post-separation parenting programme evaluation
Bacon & McKenzie (2001, 2004)	Canada	✓	✓	✓	✓	✓				✓	✓		Evaluation of post-separation parenting programmes
Irving & Benjamin (1992)	Canada		✓	✓	✓					✓	✓		Evaluation of private mediation
Sieppert, Lybarger, Bertrand & Hornick (1999)	Canada		✓	✓	✓						✓		Evaluation of post-separation parenting programmes
Gray, Verdieck, Smith & Freed (1997)	USA		✓		✓						✓		Evaluation of Making it Work parenting workshops
Shifflett & Cummings (1999)	USA		✓		✓						✓		Evaluation of post-separation parenting programme

Publication	Country	Qualitative	Quantitative	Interviews	Survey/ Questionnaire	Focus groups	Admin. data	Document review	File/case analysis	Professionals	Parents	Children	Topic
Barlow, Hunter, Smithson & Ewing (2014)	UK	✓	✓	✓	✓					✓	✓		Out-of-court dispute resolution
Trinder et al. (2014)	UK	✓		✓		✓			✓	✓			Litigants in person

Appendix C: Workshop Participants

New Zealand Law Foundation

- Lynda Hagen, Executive Director

Australian Institute of Family Studies, Melbourne

- Rae Kaspiew, Senior Research Fellow, Family Law

University of Otago

- Mark Henaghan, Dean, Faculty of Law
- Megan Gollop, Senior Research Fellow, Children's Issues Centre
- Nicola Taylor, Director, Children's Issues Centre

Ministry of Justice

- Angela Lee, Principal Advisor, Research and Evaluation
- Sarah Talboys, Senior Advisor, Research and Evaluation
- Linda Biddle, General Manager Family Justice
- Rohan Wong, Principal Advisor, Family Justice
- Caroline Greaney, Policy Manager
- Sandra Porteous, Senior Advisor

Families Commission

- Radha Balakrishnan, Principal Social Policy Evaluation and Research Analyst (Justice and Family Violence)

Family Law Section of the NZ Law Society

- Allan Cooke, FLS Chair
- Kath Moran, FLS Manager
- Michelle Duggan (FLS Executive)
- Tim Black (FLS Executive)
- Catriona Doyle (Deputy Chair)
- Emma Parsons (Senior family law barrister, Auckland)

FairWay Resolution Ltd

- Anne Scragg, *General Manager: Professional Excellence & Innovation*
- Daniel Bellam, Research Assistant
- Principal Family Court Judge Laurence Ryan
- Deborah Hart, Executive Director, AMINZ
- Catherine Cooper, General Manager NZ, LEADR
- Cary Hayward, Principal Strategic Advisor Practice & Quality, Relationships Aotearoa

- Bronwyn Williams, GM Community Support, Family Works Central
- Annie Weir (Impact Research NZ) – on behalf of Family Works Northern
- Bill Atkin, Faculty of Law, Victoria University
- Alison Cleland, Faculty of Law, University of Auckland
- Jill Goldson, Director, Family Matters Centre, Auckland
- Robert Ludbrook, Wellington

Apologies

- Justine Cornwall (Deputy Commissioner), Office of the Children’s Commissioner
- Rod Watts (CEO) and Wendy Hoskin (FDR Hub), Family Works Northern
- Julia Hennessy (General Manager), Laurette Farr (FDR Co-ordinator) and Chris Graham (CEO), Family Works Central
- Keri Morris (Resolution Co-ordinator) and Denise Evans (*Business Director - Social Services and FDR Scheme Director*), FairWay Resolution Ltd
- Jacqui Akuhata-Brown (Chief Executive) and Colin Foy, Relationships Aotearoa
- John Caldwell, School of Law, University of Canterbury
- Pauline Tapp, Faculty of Law, University of Auckland
- Fred Seymour, Psychology Department, University of Auckland
- Suzie Blackwell, Psychologist / University of Auckland
- Sarah Calvert, Psychologist / Report writer
- Michael Slyuzberg (Acting Manager, National Research and Evaluation Unit) and Valmai Copeland (Principal Evaluator), IRD
- Jeremy Robertson, Chief Advisor Social Science, Families Commission