



**PARENTING ARRANGEMENTS AFTER
SEPARATION STUDY: EVALUATING THE
2014 FAMILY LAW REFORMS**

**Family Justice
Professionals' Perspectives**

**Research Report for the
New Zealand Law Foundation**

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Executive Summary

Research Overview

The reforms introduced on 31 March 2014 were intended to shift the emphasis in New Zealand's family justice system away from in-Court to out-of-Court processes. In 2014 the New Zealand Law Foundation generously funded an independent two-phase research project to evaluate these reforms. Phase One (2014-2015) involved the initial scoping, consultation and planning for implementation of the Phase Two nationwide mixed methods study undertaken during 2016-2019.

In Phase Two, an online survey for professionals who had worked in the family justice system since the reforms took effect was open for two months from May to July 2018 on the study website. This ascertained their experiences of, and satisfaction with, the reforms four years following their implementation and with the current family justice system. The survey was completed by 364 family justice professionals including lawyers, psychologists, counsellors, Parenting Through Separation (PTS) providers, Family Dispute Resolution (FDR) providers, Community Law Centre and Family Court personnel. Many had more than one role. Lawyers (including those providing advice and representing parties, Lawyers for the Child and FLAS providers) comprised the largest group of survey respondents. Just over a fifth (21%) were FDR mediators, 12% were counsellors, 10% were mediators in private practice, and 9% were Parenting Through Separation providers/facilitators. The majority of the family justice professionals were female (76%). Most (95%) had a tertiary qualification. They worked across all regions of New Zealand and many worked across multiple regions. The largest proportion (26%) worked in the Auckland region, followed by Canterbury (16%) and Wellington (15%).

One hundred (27%) of these 364 family justice professionals also participated in a telephone interview with a member of the research team.¹ The majority were legal practitioners. However, the proportion of mediators was higher in the interview sample than in the survey sample. Otherwise, the interview sub-sample of family justice professionals was generally representative of the survey sample.

Impact of the Reforms on Professionals' Work

The reforms had a **strong impact** on family justice professionals' work - 84% reported that they had either a major (50%) or moderate (34%) effect on their work/role.

For over three quarters (77%), the nature of their work changed; 28% took on additional roles; 10% changed their role within the family justice sector; and 8% lost their existing role. Only 11% reported that nothing changed for them as a result of the reforms and 1% left the sector entirely.

¹ A separate online survey was completed by 655 separated parents/caregivers who had made or changed parenting arrangements since the reforms took effect; 429 of them completed online follow-up surveys; and 180 participated in an interview. The parent/caregiver survey and interview data is being presented in other reports by the research team.

Training and Professional Development

Most professionals (76%) had undertaken some *initial* (re)training or professional development during 2013 and/or 2014 to prepare for their role in the reformed family justice system. This was most commonly provided by the Family Law Section of the NZ Law Society (70%) and the Ministry of Justice (52%). This initial training was a mix of learning general information about the reforms and operation of the family justice system (91%), and specific training to deliver one or more of the family justice services (64%). The majority (81%) found this training (both general and specific) to be helpful or very helpful, with very few (7%) finding it unhelpful or very unhelpful. Of those who knew how much their training had cost ($n=213$), nearly a third paid nothing, with almost half paying \$3000 or less, and 10% paying over \$5000. Overall, nearly three quarters (73%) thought the amount they paid was reasonable.

Nearly all professionals (95%) reported receiving *ongoing* training and/or professional development, primarily through seminars or conferences (79%), webinars (72%), or professional supervision (44%). Most (83%) thought they had adequate opportunities to receive ongoing training or professional development. However, nearly all (91%) identified one or more topics/areas they would like further training/professional development on - the most popular of which were engaging with children and/or ascertaining their views (54%); cultural competency (51%); family violence (47%); and professional/practice policies, protocols and guidelines (42%).

Family Justice Services

In the online survey, professionals were asked for their views and experiences of the following six family justice services available to assist parents and caregivers to make parenting arrangements or resolve parenting disputes – either from their own experience or from what others (e.g., clients or colleagues) had told them:

- Ministry of Justice website regarding post-separation care of children
- Ministry of Justice 0800 2 AGREE phone line
- Parenting Through Separation (PTS)
- Family Legal Advice Service (FLAS)
- Family Dispute Resolution (FDR)
- Family Court

For each service participants were asked if they had views they wished to share about the service *since the reforms took effect on 31 March 2014*. If so, they had the option of answering specific questions about the service or commenting more generally. If the latter, they were directed to an open-ended question asking for their comments. If they elected to answer specific questions about the service they were asked about their:

- experience of using, delivering or working within the service and their satisfaction with this;
- views on the helpfulness of the service;
- views on what aspects (if any) of the service were working well;
- suggestions for additions or improvements to the service;
- practice and views on directing/referring and recommending the service to separated parents making parenting arrangements;
- final thoughts/comments about the service.

The survey questions relating to family justice services were a mix of rating scales and open-ended questions and a content analysis was undertaken to identify and code the common issues. A separate content analysis was also undertaken with the interview data by coding the professionals' perspectives of each service in their transcripts.

Ministry of Justice Website

Of those who answered specific survey questions about the website ($n=163$), almost all (99%) had first-hand experience of accessing it. Most (92%) had directed other people (mostly parents/caregivers and their whānau) to the website. Nearly half (48%) said they would recommend the website to separated parents, 37% said they might, and 15% indicated they would not. Just over half (53%) rated the website as helpful or very helpful for separated parents, with a quarter (25%) saying it was unhelpful or very unhelpful.

Responses about the website from the open-text survey data ($n=214$) and interviews ($n=14$) indicated that the professionals valued the website's provision of useful general information, the tools it provides (including videos, fact sheets, parenting plan guidelines, useful contacts and links to other sites), and the ability to access the forms online.

However, there were many concerns expressed about the website, mostly relating to its design, navigation, functionality and lack of user-friendliness. The website's content elicited the second highest number of negative responses, especially regarding the Ministry of Justice forms that are featured on, or generated through, the website. Professionals found these forms difficult to identify and locate on the website and said they also had functional and design issues making them difficult to complete and to save. Two lawyers also noted the forms were not legally accurate. Professionals were concerned about the challenges faced by clients and self-representing litigants trying to access and use the forms on the website. The quality and presentation of the information on the website was another aspect raised in relation to its content. It was suggested that new information be added about the overall process and pathways to follow, Family Dispute Resolution, and more specific legal information.

Expecting the website to be the first port of call for clients was criticised, as was the accessibility of the website for clients without computers, printers or internet access. Lacking literacy or language skills, feeling overwhelmed or in crisis was also thought to impede clients' ability to understand the information presented on the website. Some reported that clients were reluctant to utilise computers in public libraries when directed there. Others were concerned that the website gave the impression to separated parents that navigating their way through the family justice system was a straightforward do-it-yourself process, whereas legal advice may be needed.

The professionals suggested numerous improvements and innovations to the website, including its design, layout, accessibility, user-friendliness, content, forms, and links to other services, websites and directory lists.

Ministry of Justice 0800 2 AGREE Phone Line

Of those who answered specific survey questions about the 0800 2 AGREE phone line ($n=49$), 74% had first-hand experience of calling the phone line and over two-thirds (67%) had directed other people (mostly parents/caregivers and their whānau) to it. However, 61%

stated they would not recommend the phone line to separated parents/caregivers. Several mentioned that feedback from clients had not been positive. Over half (58%) rated the phone line as unhelpful or very unhelpful, with only 16% indicating it was helpful or very helpful for separated parents/caregivers making parenting arrangements.

Responses about the 0800 2 AGREE phone line from the open-text survey data ($n=63$) and interviews ($n=5$) were predominately negative. The two major complaints related to the information and advice provided by the service and difficulties getting through to an operator and/or Family Court staff member. Phone operators' lack of knowledge and provision of unhelpful or incorrect advice was a commonly expressed concern. Professionals were frustrated with phone line staff not being able to answer their questions about files and having to use the phone line to access the Court to discuss cases. Lengthy waiting times for the phone to be answered, being put on hold, or having to leave messages for Court staff to ring back were added sources of frustration.

Concern was expressed about the appropriateness of the name of the phone line. The professionals also suggested that the service could be improved by having a more specialised and responsive call centre with well-trained staff, perhaps with legal training, and having a separate or direct line to the Family Court. The professionals ($n=13$) who provided a positive response to the open-ended survey questions commended the helpfulness of the phone line staff and the ability to refer separated parents to counselling, PTS and FDR.

Parenting Through Separation (PTS)

Of those who answered specific survey questions about PTS ($n=186$), almost all (96%) had directed/referred parents and caregivers to PTS, and 23% ($n=43$) had experience of delivering or providing PTS. The majority (86%) of these 43 professionals were satisfied or very satisfied with delivering or providing PTS; less than 10% reported being dissatisfied or very dissatisfied. The majority (89%) of the 186 professionals said they would recommend PTS to separated parents/caregivers making parenting arrangements, and less than 3% indicated they would not. The majority (84%) also rated PTS as helpful or very helpful for separated parents, with only 10% rating it as unhelpful or very unhelpful.

Responses about PTS from the open-text survey data ($n=242$) and interview data ($n=40$) indicated that PTS is a highly regarded programme, with mixed views or concerns expressed by only a minority of these family justice professionals. Most described PTS in positive or very positive terms, received positive feedback from their clients on it, and recommended or referred clients to it. Some lawyers attended PTS themselves to better understand what the programme was about. The professionals particularly liked PTS' emphasis on placing children at the centre of the process and assisting parents to better understand the impact of their separation on their children.

The professionals described a diverse range of separated parents participating in PTS from those recently separated, to those attending FDR, or engaged in Family Court proceedings. Exposing clients to the views and experiences of other separated parents in the group sessions prompted clients to develop greater insight into, and empathy for, their ex-partner's attitudes and behaviours. PTS was also thought to make a noticeable difference in clients' readiness to mediate, focus on their children, and avoid ending up in the Family Court. However, there were concerns expressed about the Western model underpinning PTS, the lack of cultural competency, and the suitability of PTS for grandparents and other

caregivers who were not separated parents, for the very recently separated, and for those with entrenched views as a result of lengthy engagement in Family Court proceedings. While PTS was now more widely available as a result of the 2014 reforms, professionals were concerned about its accessibility in provincial areas and in some cities where there was insufficient capacity to meet demand leading to time delays for parents in attending the programme. Greater promotion was also thought desirable to increase awareness and understanding of PTS as the first or early step in the process for clients. There were mixed views on whether PTS should be mandatory – some professionals questioned whether requiring parents to attend diminished its impact on them, while others were strongly committed to PTS as a mandatory programme, particularly prior to participation in FDR or the issuing of a final Parenting Order by the Family Court. There were also mixed views on the two-year time-span for the PTS certificate.

Several professionals made specific suggestions to improve the content of PTS regarding, for example, co-parenting, the impact of alienation on children, communication skills and eliciting children's views. One professional recommended extending PTS through the addition of a new layer to cater for separated parents in complex or high-conflict cases, while a PTS facilitator suggested adding regular informal sessions for previous attendees to drop into as needed. Other suggestions related to cultural competency; increased funding; the provision of online sessions; greater diversity to avoid a 'one-size-fits-all' approach; and programmes for grandparents and for children.

PTS facilitators emphasised the rewarding nature of their role, but also the emotional toll it exacted on them. They wanted more professional development opportunities and greater interaction with other professionals in the family justice sector. Some were happy with the current four-hour duration of PTS, but others felt it was too pressured to get through the material in an interactive and engaging way that was meaningful and effective for the clients. Several commented on the insufficient time for in-depth discussion. Nevertheless, the widely held view of most of the professionals was of PTS as a worthwhile and effective programme with the ability to shift parents' attitudes.

Family Legal Advice Service (FLAS)

Of those who answered specific survey questions about FLAS ($n=143$), most (82%) had referred or directed separated parents/caregivers to FLAS, and 82% had experience of providing FLAS. However, 16% of those who had provided FLAS were not doing so at the time they completed the survey. FLAS provision was not particularly frequent – 37% indicated they provided FLAS infrequently or irregularly, and an equal number reported seeing between one and four clients a month. Only 10% saw five or more new FLAS clients per month. However, over half (55%) said the number of referrals they received was about right, while 37% thought they received too few. Nearly 60% rated themselves as dissatisfied or very dissatisfied with their FLAS role, while 19% were satisfied or very satisfied. While over 90% said they would, or might, recommend FLAS to separating parents/caregivers, this was often because there was no other alternative for parents to obtain legal advice or because they had no choice. Less than half (49%) thought FLAS was helpful or very helpful for separated parents/caregivers making parenting arrangements, and just over a quarter (27%) rated it as unhelpful or very unhelpful.

Responses about FLAS from the open-text survey data ($n=182$) and interview data ($n=38$) indicated that FLAS was regarded as helpful in providing people with initial information

about family justice services and processes as well as limited legal advice, and for preparing people for, or referring them to, family justice services, particularly FDR.

However, opinions were often mixed, with participants seeing FLAS as limited in the service it could provide, particularly for vulnerable people and those with complex situations. FLAS was also considered limited in scope, and regarded as too generic and superficial, when clients really needed more in-depth advice specific to their situation. There were concerns that the funding available, particularly for FLAS 2, was insufficient and therefore there was not enough time to adequately assist clients with completing Court documents and forms. Generally, the professionals were more positive about FLAS 1 than FLAS 2.

Professionals also expressed concerns about access to justice with the FLAS model and raised issues relating to awareness, understanding, uptake and accessibility of the service. FLAS' limited scope meant that some lawyers felt compromised not being able to provide the same level of service that they gave to their paying clients. The professionals also reported that FLAS clients were sometimes confused about the limited nature of the service and their inability to access ongoing legal advice, support and/or representation from their FLAS provider.

The professionals expressed dissatisfaction with the funding of FLAS, both in terms of the number of funded hours and the remuneration rate, and with the administration involved, which was considered onerous, time-consuming and confusing by most. The inadequacy of the funding and the administrative burden meant that some lawyers were doing a lot of unfunded work, providing the service pro bono, or had stopped providing FLAS altogether. The most common reasons given for no longer providing FLAS, or for doing so irregularly, included: the administrative burden involved; low remuneration and funding; lack of confidence in the effectiveness and quality of the service; low demand or lack of referrals; and workload. There were concerns that this could lead to a shortage of lawyers offering FLAS or the quality of the service being diminished.

Some participants wished to see FLAS abolished entirely and/or a return to lawyers being able to represent clients from the outset. Others thought it was a valuable service that could be improved by broadening its scope, increasing awareness and publicity about the service, and/or making it freely available to all separated parents.

Family Dispute Resolution (FDR)

Of those who answered specific survey questions about FDR ($n=197$), the majority (95%) had referred or directed separated parents/caregivers to FDR, and 48% had experience of providing some aspect of FDR, most commonly as an FDR mediator (40%). However, 19% of those with experience of providing FDR mediation were not doing so at the time they completed the survey.

The majority (55%) of those currently delivering FDR reported seeing between one and four new cases per month, 14% were seeing between 5 and 19 new cases per month, and 12% indicated they provided FDR infrequently or irregularly. The FDR mediators were evenly split in their satisfaction with the number of FDR referrals they received: 47% said the number of referrals was about right, while 48% said it was too few. Only 5% reported receiving too many referrals. The mode of FDR delivery for joint mediation sessions was primarily face-to-face, but many mediators also reported using shuttle or caucus mediation (68%), videoconferences (53%) and teleconferences or the telephone (41%). Just over half (53%)

were satisfied or very satisfied with their role in providing FDR mediation, and nearly a third (32%) reported they were dissatisfied or very dissatisfied. They were generally positive in their ratings of FDR. Less than 5% would *not* recommend it to separated parents/caregivers, while 70% indicated they would recommend FDR, and 26% said they might. Sixty-eight percent thought that FDR was helpful or very helpful for separated parents/caregivers, with only 12% rating it as unhelpful or very unhelpful.

When asked about children's thoughts, feelings and views, almost all of the FDR mediators indicated that they took children's thoughts, feelings and views into account within their mediation practice in some manner, most commonly by discussing these with the parties (93%) or through the use of some other professional or a child consultant (69%). Nearly a quarter (24%) of the mediators spoke directly with children themselves and seven mediators had children attend part of the mediation sessions. When a third party was utilised to ascertain children's thoughts, feelings and views the most commonly mentioned professionals were Lawyer for the Child, followed by counsellors and psychologists. Social workers, other mediators and teachers were also mentioned by a few professionals. Involving family members, either parents, siblings and/or extended family members, was also a practice some mediators employed. Some professionals commented that how children's thoughts, feelings and views were ascertained depended on the situation, and Lawyer for the Child had been appointed. Involving parents in the decision about the best professional to talk with their children was also mentioned.

Responses about FDR from the open-text survey data ($n=256$) and interview data ($n=73$) indicated that FDR was regarded positively for providing an out-of-Court opportunity for parents/caregivers to communicate in a non-adversarial manner and reach agreement about their children's parenting arrangements. Other aspects of FDR that were particularly commended included its cost effectiveness; high success rate; reduction in the level of conflict between the parties; assistance to parents in expressing emotion and improving their communication skills; equipping parents to better deal with any future conflicts about their children; reducing the number of cases going to the Family Court; and positive client feedback. However, there was a view that FDR was primarily suitable for straightforward cases and therefore inappropriate for more challenging or complex disputes between separated parents and caregivers. The 12-hour model introduced in 2016 was widely considered to be a significant improvement on the 2014 model, but some professionals were critical that the number of funded hours was still insufficient. This was particularly so for child participation (especially with sibling groups), discretionary hours for use with particularly complicated cases, high quality assessment and opportunities to review and tweak FDR agreements. Several mediators indicated they did unfunded FDR work as a result.

The professionals also expressed concerns about a wide range of other issues including the lack of publicity to promote FDR to the public and increase uptake (especially when it was first introduced); clients still having the mindset that it was necessary to consult a lawyer; inconsistent service delivery; inadequate screening processes (particularly intake assessments undertaken via telephone); lawyers' and judges' perceived resistance and negative attitudes towards FDR; the timing of FDR being too early in the dispute resolution process for emotionally unready clients; the pressure on clients to reach agreement at FDR; cultural competency in relation to both the FDR model and the lack of Māori, Pasifika and Asian mediators; and administration and contractual issues. The unsatisfactory waiting times and delays in accessing FDR were attributed to i) the FDR suppliers; and ii) the reliance on clients' understanding the FDR process, co-operating with the referral, and engagement of the second party into the FDR process.

The widely varying level of mediators' skills and expertise was criticised. This primarily centred on whether the mediators came from legal or social science (e.g., counselling, social work, psychology) backgrounds. While there was support for diversity in the FDR mediator pool, lawyers were particularly critical of the non-lawyer mediators' lack of legal knowledge and poor construction of FDR agreements, which were said to be impractical, lack detailed content and unable to be easily converted into consent orders due to their lengthy or ineffectual nature. The unenforceability of FDR agreements was generally considered problematic as consent orders were being sought in only a small number of cases. Some professionals wanted parents to have access to legal advice prior to and/or during the mediation process, and others emphasised the need for lawyers or Lawyer for the Child to be present at FDR mediation sessions. The former EIP model of counsel-led mediation was preferred by a number of lawyers who believed it produced better outcomes than FDR and should be reinstated.

The \$897 cost of FDR was said to be unaffordable and a barrier to service uptake for many (potential) clients. The majority of those commenting on the cost wanted the FDR service to be free for all clients. The current approach to making FDR free for a party who met the financial eligibility criteria, but not for their ex-partner who had to self-fund, was said to create animosity between the parties and detrimentally affect FDR uptake.

The dissatisfaction expressed with the remuneration that FDR mediators received was related to their level of pay not reflecting the skill level required, the inadequate number of funded hours to complete all the administrative tasks required, and the erratic and unpredictable flow of referrals from FDR suppliers. Several FDR mediators had withdrawn from the role due to its lack of financial viability.

There were mixed views on whether FDR should be mandatory or optional, but the majority of professionals commenting on this did not want FDR to be a mandatory first step in the dispute resolution process. There was a preference for FDR being an optional service for a variety of reasons: the suitability of the parties or their disputes for FDR; reducing the pressure on parents/caregivers to reach agreement; and avoiding the delays that resulted in Court-ordered outcomes for cases that failed to reach agreement at FDR. The mandatory nature of FDR, coupled with a reluctance by some lawyers to encourage clients to engage with the process, was said to have contributed to the much higher number of without notice applications being made to the Family Court. It was also thought desirable to reinstate the former counselling service both prior to and/or in combination with FDR.

Many FDR mediators acknowledged the rewarding nature of their role and the high level of job satisfaction that resulted from their work. They felt they were making a valuable contribution to their clients' lives. The role was considered quite nuanced, with ongoing training, peer support and supervision being important. Collaboration, partnership and interdisciplinarity were also emphasised.

FDR's placement outside of the Family Court process was supported by the FDR mediators in the study, but a number of other professionals considered this to be problematic because it fragmented the dispute resolution process for clients; stymied cohesion between the FDR service and the Family Court; and inhibited referrals to FDR by Family Court personnel.

Other suggestions to improve FDR included better integration between FDR and the Family Court; the introduction of guidelines on when a case should be referred back to FDR; re-

introducing counselling; providing greater support for mediators; and extending FDR to include the division of relationship property and the PPPR Act.

Family Court

Of those who answered specific survey questions about the Family Court ($n=258$), the majority (91%) had referred or directed separated parents/caregivers to the Court. Most (93%) had some experience of working in the Family Court. The majority (84%) had experience of doing so before and after the 2014 reforms, with 9% only having experience after the reforms came into effect. These professionals indicated great dissatisfaction with working in the Family Court since the introduction of the reforms. Only 4% reported they were satisfied, while 83% indicated they were dissatisfied or very dissatisfied with this work. Less than half (45%) rated the Family Court as helpful or very helpful for separated parents/caregivers making parenting arrangements, with just over a quarter (28%) rating it as unhelpful or very unhelpful.

Open-text responses by 290 professionals to 14 survey questions about the Family Court addressed how well the following aspects of the Family Court were working in relation to making parenting arrangements:

The Family Court Tracks ($n=207$): Nearly half (44%) of the professionals commented on the tracks in general terms. A minority liked the track concept in principle, but were uncertain how well it worked in practice. Eighteen professionals said the tracks were working well, but many more ($n=68$) said they were meaningless, pointless, inconsistent, confusing, made no difference and were not working as anticipated. The **simple track** ($n=45$) could be helpful when matters were not contentious. However, it was rare for a case to be seen on the simple track, and those that were on this track experienced huge delays as they were not a priority. The **standard track** ($n=53$) could work well, but was also seldom used, too slow and bogged down - “a slow boat to nowhere.” Standard track matters were often pushed back to accommodate urgent cases. The lack of legal representation on this track was also criticised as denying access to justice and making it difficult for parents to complete and file their own applications. The **without notice/urgent track** ($n=108$) was spoken of positively by 13 professionals for dealing with applications immediately and enabling progress on cases. Applications on this track had increased significantly since the 2014 reforms, such that it had now become the norm. This increase was attributed, in part, to the without notice/urgent track being the most straightforward way of cases being given some urgency and getting dealt with by the Family Court in a timely fashion. However, many professionals were concerned the without notice/urgent track was now overloaded and were frustrated by the delays that had resulted. Lawyers were criticised for their overuse/misuse of the track, by applying too often and without merit, as a means of enabling legal representation from the outset, accessing Legal Aid and “fast-tracking” cases. The track was said to be “frankly abused at times.” Some professionals were also concerned that lawyers were filing without notice applications to bypass FDR. The **complex track** ($n=12$) was commended for enabling one judge to manage a case and providing greater flexibility, but some professionals were concerned that the lack of judge time constrained the progression of complex matters within the Court. Fifteen professionals recommended the introduction of a new “semi-urgent” track for cases that do not meet the without notice threshold, but are nevertheless urgent. The ability to reduce or abridge time was also suggested.

Self-representation ($n=222$): There were said to now be more litigants in person than previously, partly due to the restrictions on legal representation under s7A. Parents’ right to

self-represent was recognised and sympathy expressed with the challenges they faced which could be overwhelming and stressful at a difficult time in their lives. However, the majority of professionals were critical of the detrimental impact that litigants in person were having on the Family Court. Their three most common complaints concerned i) self-representing litigants' lack of knowledge/direction, unrealistic expectations and high emotions; ii) the time-consuming nature of having litigants in person involved in a case and the slowness, delays and poorer outcomes that resulted; and iii) the extra work and stress that self-representation created for the Family Court staff, judges and lawyers. There was also concern about the tolerance, latitude and overcompensation accorded to litigants in person within the Family Court and the injustices that could result. Many thought it was inappropriate to encourage self-representation and were concerned about the financial impact on the other represented party. Lawyers for the Child were acknowledged as important in assisting litigants in person, but the implications of this for their role and workload were considered problematic.

The Appointment and Role of Lawyer for the Child (n=209): Most professionals regarded Lawyer for the Child as working well, essential, heavily relied upon and the saving grace of the Family Court which would otherwise grind to a halt without them. A minority (9%) expressed mixed or negative views as the helpfulness of Lawyer for the Child was highly variable depending on their skills and responsiveness. There were criticisms that Lawyer for the Child could, at times, be ill-equipped to undertake the role, lacked expertise about children, failed to spend enough time with children, did not remain impartial, sabotaged out-of-Court processes, or acted obstructively with colleagues or family members. Initial fears the 2014 reforms would lead to fewer appointments of Lawyer for the Child had not materialised and the situation was largely unchanged. However, what had changed since the reforms was an expansion of Lawyer for the Child's role and the work being more complex and harder. This was attributed to the increase in self-representing litigants in the Family Court and the expectation (by parties and the Court) that Lawyer for the Child would undertake additional tasks to compensate for the lack of parties' legal representation. This meant the role could go far beyond the brief. Mixed opinions were expressed about the timing of Lawyer for the Child appointments. Most thought the timing was about right, but some thought they were appointed too late or too often, or were sometimes not appointed when they should have been. Aspects of the Lawyer for the Child role that were particularly valued included their neutral representation of children, ensuring children have a voice and are protected, progressing cases, performing an assistance/negotiation/resolution role, assisting significantly in reaching (earlier) resolution and reducing delay. Their role in Round Table Meetings generated mixed opinions. Some regarded their pivotal role in these meetings as very effective and helping to prevent matters from proceeding to hearings unnecessarily, while others said this was not ideal and compromised their ability to concentrate on their role as the child's representative and advocate. The poor hourly rate paid to Lawyer for the Child was strongly criticised, had not been increased for 20 years, and was in urgent need of review. Cost Contribution Orders were considered to have a detrimental impact on the Lawyer for the Child role as they could be unfair and had the potential to deter people from agreeing to the appointment. Improved initial training and ongoing professional development were both suggested as ways of improving practice and achieving greater consistency with the role of Lawyer for the Child.

The Appointment and Role of Specialist Report Writers (n=190): Most professionals regarded specialist reports positively as a very important, valuable and necessary tool within the Family Court. Specialist report writers were particularly commended for providing impartial, objective and clinical insights that greatly assisted in resolution, particularly with

complex or intractable cases. Only a minority (5%) expressed mixed or negative views, criticising some specialist reports for their poor or variable quality, bias toward a particular parent, outdated understandings about children; report writers' influence on judicial decisions or, conversely, their unwillingness to express an opinion, and the report's potentially devastating impact on families. While a few professionals said the availability of specialist reports had not changed significantly since the 2014 reforms, the general view was that the number of reports had decreased and it was now harder to convince a judge to appoint a specialist report writer. The nationwide shortage of specialist report writers, which had implications for the decreased number of reports being ordered and the delays experienced in obtaining them, was commented on by 30% of the professionals. Report writers were overworked, under-resourced and overstretched, and more were needed. Delay was the most frequently raised concern about specialist reports by 43% of professionals who felt the wait time of six, nine or twelve months was unacceptable and detrimentally impacted upon resolution time frames. These delays meant that a specialist report would often need updating to be of value for the hearing. The shortage of report writers was attributed, in part, to the risk of complaint that report writers endured and which needed attention by the Ministry of Justice. Cost Contribution Orders were thought to make some judges reluctant to direct reports, while others felt these made no difference. Other issues raised included the time of their appointment being too late in the process, having them available in FDR, having an assessment focus on parents (not just the child), utilising family therapy appointments with a family therapist, more funding, implementing succession planning, reviewing the selection criteria to expand the report writing pool to include other psychologists (e.g., educational psychologists) and social workers with specialist training, and providing scope for parents to comment on and respond to draft reports and to meet with the report writer before the hearing. Twelve per cent of professionals raised s132 reports and said that delays were also a concern with these reports by social workers. They were also criticised by some for their inconsistent quality, but others said they were of a high standard, provided essential information about a child's safety, and were sometimes being sought by the Family Court when a s133 report was unlikely because of the shortage of report writers or delay.

Round Table Meetings Led by Lawyer for the Child (n=216): The majority of professionals (82%) were positive or very positive about Round Table Meetings and said they were working well and often necessary. Round Table Meetings were happening frequently and were particularly helpful in keeping momentum, getting the parties together and talking, narrowing the issues, resolving interim arrangements or final decisions. They provided a quicker means of resolution than waiting for Settlement Conferences and often led to resolution. The minority of professionals expressing mixed (n=9) or negative (n=5) responses were concerned that Round Table Meetings varied enormously in practice and outcome depending on the training and skill of Lawyer for the Child, clients feeling unprepared for the meeting or feeling bullied into agreements, and FDR being a preferable means of dispute resolution. Round Table Meetings were criticised for being used more often than FDR or for bypassing or duplicating FDR. However, others believed that Round Table Meetings were more effective than FDR and preferred by clients. Many more professionals (n=22) expressed a strong preference for the pre-2014 counsel-led mediation and EIP processes. The most frequently expressed concern about Round Table Meetings (n=29) was the challenging dual role these meetings presented for Lawyer for the Child in both representing the child and running the meeting as a neutral chairperson. Round Table Meetings were said to work best when both parties were legally represented - they were made much more difficult when self-representing parties were involved. Legal Aid funding was said to now be largely resolved with the ability of judges to direct Lawyer for the Child to convene a Round

Table Meeting in appropriate cases. There was a preference, however, for this becoming part of the standard brief rather than requiring judicial direction for Legal Aid purposes.

Judicial Conferences and Hearings ($n=190$): Many professionals ($n=81$, 43%) said that judicial conferences and hearings work well and are necessary. Some thought there was no major difference in the way they were being used since the 2014 reforms. Judges were complimented for working hard, being thoughtful, thorough and compassionate and for making good use of conferences and hearings to move the parties closer to resolution. However, several professionals expressed concerns about some judges' lack of preparation, inefficiency, mood and limited skills at conferences and hearings. Time pressures and insufficient resources were recognised as accounting for some of these issues. Delay was the most frequently mentioned concern regarding conferences and hearings ($n=83$) as the allocation of dates was too slow and led to lengthy waiting times. This was said to be noticeably worse since the 2014 reforms. There was also criticism that the time allocated was insufficient (particularly for hearings) and well outside of children's timeframes. The difficulties that self-represented litigants face at judicial conferences and hearings meant these Court events were inevitably slowed down by their presence and therefore took longer. The sheer number of conferences and Court events to now get to a hearing was also criticised. Greater use of teleconferences and telephone meetings was suggested. Separating the conferences into the different types now available was thought to be confusing and arbitrary, and the Family Court's use of back-up dates was problematic for Court staff, counsel and parties.

Applications, Filing, Affidavits and Forms ($n=211$): Most (91%) of the professionals commented on the forms, with the majority ($n=188$) regarding them as one of the worst aspects of the 2014 reforms. They described the forms in very negative terms as complex, too long, unhelpful, appalling, confusing, the bane of our lives, hated with a passion, not allowing for a straightforward chronology of events and creating an excessive amount of paper. Most wanted the forms urgently revised, simplified or scrapped. Only 10 professionals said the forms were fine and worked well now they were used to them. To circumvent the issues with the forms, many lawyers said they had, with judges' approval, reverted to filing old-style affidavits setting out all the evidence and attaching these as extra pages to the forms. They wanted the forms to be optional for lawyers to use so they could instead prepare and attach Court documents as they were trained to do and had done prior to the 2014 reforms. The forms provided useful guidance for lay people and self-representing litigants and should really only be used by them. However, concern was expressed about the challenges they faced with understanding, accessing and completing the forms and fulfilling the filing procedures – self-represented people were said to struggle with, and be overwhelmed by, this. The most frequent complaint the professionals made about filing concerned documents being filed on time, but not actually making it to the Court file. Suggestions to improve filing included reconsidering the need for original affidavits to be filed as a hard copy, the registry being stricter on accepting documents that do not comply, installing a drop-box near a Court counter for documents, improving the forms generator, and introducing an electronic filing and management system.

e-Duty ($n=198$): The majority of professionals (79%) were positive or very positive about e-Duty, and said that it was working well. The rapid turnaround of urgent applications resulting in quick decisions was particularly appreciated, and there was sympathy for judges' heavy workloads on the e-Duty platform. However, the high volume of applications that were, at times, overloading the e-Duty platform was the most frequent concern. It was particularly irksome when an urgent application filed prior to the registry's daily cut-off time,

was held over for review by a judge the following day. Other concerns included inconsistency and variability of the decisions being made on the e-Duty platform, and judges' lack of accessibility to case files which could result in poor knowledge of the history of a case. Some preferred that urgent applications be dealt with by a local judge who was familiar with local cases.

Caseflow Management ($n=179$): Nearly a quarter (24%) of the professionals said that case management was working well. However, the majority (76%) said it was not. Their most frequently mentioned concern related to lack of timeliness and delays - for example, with processing on-notice applications, report writer referrals and availability of reports, referrals to counselling, receiving minutes back and getting Court orders issued. Other criticisms concerned the inability to reach a case officer directly; lost files, files not being at the Court, or registrars not taking ownership of a file; centralisation; unrealistic time frames; the inefficiency of a registry; understaffing; inadequate training; inexperienced staff; increased registry workloads and lack of resourcing.

Cost Contribution Orders (CCOs) ($n=168$): The majority of the professionals did not consider that CCOs were working well, while around a fifth were positive about them. They were noted as being seldom made because clients were primarily legally aided and therefore exempt or because judges were reluctant to impose such orders on parties. Where CCOs were made, concern was expressed about their administrative cost-effectiveness, the lengthy delays in issuing the CCO to the parties, and the fairness of imposing them i) on private clients who sat just above the Legal Aid threshold or were middle income earners, ii) on grandparents caring for their grandchildren, and iii) on clients whose ex-partners were the ones engaging in unreasonable, vexatious or obstructive conduct. Client affordability was questioned, as was the impact of CCOs on clients' perceptions about the use of Lawyer for the Child and specialists within the Family Court.

Ways in which the Family Court is Working Well ($n=210$): A fifth (21%) of the professionals said the Family Court was *not* working well or had deteriorated. However, the majority (79%) provided positive responses and directed their most frequent praise to the people, staff, professionals and practitioners working within the Family Court generally. The Family Court's role in attending to urgent/without notice applications was the second most frequently mentioned aspect that was said to be working well, followed by the Court's decision-making ability in achieving resolutions and outcomes for families, the appointment and role of Lawyer for the Child, the availability of hearings and time in front of a judge, the Court being a good avenue or forum for families to turn to, the availability of settlement conferences, counselling (particularly communication counselling), e-Duty, out-of-Court processes like PTS and FDR, and specialist reports.

Ways in which the Family Court Could Be Improved: Around three-quarters of the 364 professionals completing the survey commented on how the Family Court could be improved in relation to the making of parenting arrangements. Their diverse range of suggestions varied from overarching or general statements to very specific and detailed recommendations about the 2014 reforms; legal representation/access to justice; judges; case management; delay; Family Court staffing; forms; funding and resources; counselling; FDR; EIP; specialist report writers; Lawyer for the Child; training, supervision, peer support and networking; Legal Aid; Family Court tracks; triage; lawyers; self-representing litigants; and legislation/rules.

Summary of Professionals' Ratings of the Six Family Justice Services

Comparing the common variables across the survey data highlighted that, on the whole, the professionals supported the family justice services, with the exception of the Ministry of Justice 0800 2 AGREE phone line which was rated negatively in comparison with the other services. The majority of professionals rated PTS (84%), FDR (68%) and the Ministry of Justice website (53%) as very helpful or helpful to parents/caregivers making parenting arrangements. However, the proportion rating the Family Court (45%) and FLAS (49%) as very helpful or helpful to parents/caregivers was lower, and much lower for the 0800 2 AGREE phone line (16%).

The majority of professionals had referred or directed parents/caregivers to the Ministry of Justice website (92%), the 0800 2 AGREE phone line (67%), PTS (96%), FLAS (82%), FDR (95%), and the Family Court (91%). Only a minority indicated they would *not* recommend services to separated parents/caregivers: the Ministry of Justice website (15%), PTS (3%), FLAS (9%), and FDR (5%). However, 61% would not recommend the 0800 2 AGREE phone line to parents/caregivers.

The majority of those delivering PTS (86%) were very satisfied or satisfied with providing this service, compared with 19% providing FLAS, 53% providing FDR, and 4% working in the Family Court.

The 2014 Family Law Reforms

The family justice professionals were generally negative about the changes to the family justice system as a result of the 2014 reforms. Overall, more professionals were dissatisfied than satisfied with the changes. The only change the majority (57%) indicated they were satisfied or very satisfied with was making PTS mandatory prior to proceeding to the Family Court. Satisfaction with the provision of FLAS and the introduction of FDR was evenly split, with no major differences between the numbers indicating they were dissatisfied or very dissatisfied and those who were satisfied or very satisfied. However, for three changes the majority of the professionals expressed strong dissatisfaction:

- the reduction in the availability of Family Court counselling (92% were dissatisfied or very dissatisfied);
- limiting legal representation/self-representation (80% were dissatisfied or very dissatisfied);
- FDR costing \$897 (67% were dissatisfied or very dissatisfied).

More professionals were dissatisfied or very dissatisfied with parties being required to attend FDR prior to making an application to the Family Court than were satisfied or very satisfied (51% compared with 33%). Nearly twice as many were dissatisfied than satisfied with having three Family Court tracks (40% compared with 23%).

In addition to being largely dissatisfied with the majority of the changes resulting from the 2014 reforms, most professionals considered that a key objective of the 2014 reforms had not been achieved. Only 7% agreed or strongly agreed that the reforms had achieved the purpose of ensuring “a modern, accessible family justice system that is responsive to

children and vulnerable people, and is efficient and effective,”² while 81% disagreed or strongly disagreed that this objective had been met.

Several other objectives of the 2014 reforms were also not considered to have been achieved. The majority of professionals indicated the following objectives were either *not achieved at all* or had *very limited achievement with extensive shortcomings*:

- Faster resolution of family disputes (through the use of out-of-Court services) – 74%.
- Less adversarial resolution of family disputes (through the use of out-of-Court services) – 69%.
- More efficient and effective operation of the Family Court – 83%.
- Less adversarial Court proceedings – 78%.
- Improved Family Court response to victims of domestic violence – 53%.
- Better targeting of resources to ensure that the family justice system remains affordable in the future – 75%.
- Better targeting of resources to support those children and vulnerable people who most need protection – 77%.

The majority (73%) of the professionals identified at least one unintended effect of the reforms, and all were negative. They noted an increase in without notice applications and attributed this to people attempting to bypass FDR, avoid delays and/or to access legal representation. Concerns were expressed about the validity of some without notice applications and the flow-on effect of parties exaggerating safety concerns, such as parental conflict being exacerbated and impacting negatively on children. Self-representation was said to disadvantage vulnerable people, increase delays and negatively impact on those working in the Family Court. Delays in the system increasing, rather than decreasing (as was intended), were another unintended effect of the reforms raised by the professionals. Delays were said to occur due to backlogs in the Court system as a result of the increase in without notice applications and parties representing themselves. The impact of these delays included a prolonging of disputes, resulting in parties becoming more entrenched in their positions, and children being negatively affected by a lack of contact with a parent while the dispute remained unresolved and by the exacerbation of their parents’/caregivers’ conflict. The reforms were also thought to have limited access to justice, disadvantaging vulnerable people and those on low incomes. This meant that some people were not engaging with services and therefore not resolving their disputes and/or were remaining in unsafe or difficult situations.

Many professionals spoke movingly in their interviews about the impact of the 2014 reforms on the family justice sector. A few were positive about the changes, particularly the addition of out-of-Court services, but most – particularly lawyers – were critical of many, if not most, aspects of the reforms. One described it as a shift “from a Rolls Royce system” to “a sort of Ford Prefect system.” Another used the analogy that “it feels like taking the nurses out of the hospitals” where “the patients” are supposed to “be treating themselves while relying on the surgeons to fix them up.”

The reforms were considered to have had a detrimental impact on children due to the lengthier delays and consequential exacerbation of family conflict. Despite a key objective of the reforms being the creation of a “family justice system that is responsive to children”,

² The purpose of the reforms as stated in the General Policy Statement included in the Family Court Proceedings Reform Bill.

many professionals considered that children had largely been invisible in the changes and that delays meant decisions were not being made and implemented in a time frame appropriate to a child's sense of time (as required by s4(2)(a)(i) of the Care of Children Act 2004). Children's participatory rights under Article 12 of the United Nations Convention on the Rights of the Child were also said to be being breached and a strong call was made to provide greater opportunities for children to have a voice in the out-of-Court processes. There was also concern that the delays in proceedings and lack of supervised contact services meant some children did not see a parent for a considerable period of time.

The impact of the 2014 reforms within the family justice sector varied across the different professional disciplines. Parenting Through Separation became mandatory, which pleased the PTS providers and facilitators (and other professionals), but did not really affect their day-to-day role. Counsellors found their much-valued role in s9 and s10 counselling had disappeared and many had to rethink their future role in the sector. The greater use of s46G as the reforms bedded in has, however, brought counselling somewhat back into the picture, but not as an initial step as occurred previously. Mediators were excited by the introduction of FDR, regarding this as a welcome and long overdue opportunity to develop out-of-Court dispute resolution processes in New Zealand for the benefit of separated parents/caregivers. Lawyers found the changes very challenging given, for example, the constraints imposed on legal representation, the rise of self-representing litigants, the introduction of new, but inadequate, forms, the rapid growth of without notice applications, more extensive delays within Family Court proceedings, and the pervasive sense that their role was misunderstood and undervalued by those promoting the changes. Community Law Centres experienced an increase in their family law workload. The role of specialist report writers continued much as it had previously, but the shortage of psychologists, the increasing complexity of their work, the risk of complaints and the lack of resourcing has taken its toll. The then Minister of Justice and the Ministry of Justice came under fire for the reforms, the staff turnover that resulted, the new forms, and the implications of the reforms for the sector generally. In the face of inadequate resourcing and too few staff, front-line staff became overworked and overwhelmed by the rise in without notice applications and dealing with the flow of people, including self-representing litigants, to their counters for advice and support.

The 2014 reforms were called "changes" not reforms by many lawyers who objected to their lack of reformatory direction. However, fewer lawyers were now doing family law work and some had left the sector entirely, creating a shortage of experienced family lawyers. The reforms/changes and Legal Aid were noted as having impacted on the ability of junior lawyers to obtain employment in the family law field. Failure to acquire the necessary experience at the entry level, or "burning-out" young lawyers with the challenging nature of (Legal Aid) family law work, will have significant downstream consequences for the sector moving forward as the current echelon of senior family lawyers retire. Despite initial fears about the impact of the changes on their businesses, lawyers remained busy and the gloom and anxiety in 2014 had energised some lawyers to up their game and rethink how they deliver their services. Many lawyers felt completely undervalued by the reforms, said they had been "treated like absolute dirt in this process" and had "the rug" pulled out from under them. They were particularly incensed by the way they were characterised and "dumped on" when the reforms were first proposed, and then implemented. Lawyers spoke of the importance of their role as front-line workers in the family justice sector and the value that effective family lawyers bring to post-separation dispute resolution processes. They liked building relationships with their clients, getting in early and nipping things in the bud, discerning what was urgent, calming people down, acting as a buffer, reality testing clients'

expectations and beliefs, making referrals, breaking the family violence cycle, helping clients find a good practical result, ideally with litigation as a last resort. Given the escalation of social problems, skilled family lawyers are never going to be more needed.

Suggestions made to improve the family justice system included training and professional development opportunities, the Family Court having a more visible presence in the community, reinstating Family Court co-ordinators, utilising low-cost tools like *Our Family Wizard*, and introducing Parenting Co-ordination to assist families beyond the Court once Parenting Orders have been made. The development of a new “second-tier gateway” or “middle” pathway was also proposed for applications that were not so urgent they needed the without notice track, but still required prompt attention within the Family Court. This more immediate step would particularly assist those parents requiring urgent help, but where there’s no safety risk. Abridgment of time, counselling and Collaborative Law were also mentioned as possible middle roads.

The 2018 announcement by the Minister of Justice, the Hon. Andrew Little, that he would be appointing an Independent Panel to review the 2014 reforms occurred during the period the research team was interviewing the family justice professionals for this study. They were asked whether, in light of the then forthcoming review, they had any comments they wished to make about it. Some lawyers suggested that the Minister should scrap, bin or reverse the 2014 reforms or wind the clock back. Other lawyers recognised that starting from scratch was likely to be unrealistic. Other professionals expressed the more moderate approach of retaining the beneficial elements of the 2014 reforms (particularly in the out-of-Court sphere) and undoing, modifying or tweaking the problematic aspects. Resourcing would be important in achieving this. Non-lawyers were concerned the Minister might favour the reinstatement of lawyers to the detriment of the now four-year-old out-of-Court processes. The professionals recommended that the review engage directly with the consumers using the family justice system and the practitioners working in it as there was disappointment this grass roots advice had “fallen on deaf ears last time.” Others suggested the Minister should focus on the reinstatement of counselling, tackling the without notice track, obtaining more funding, resources and judges, better valuing the family justice system and re-centring it “around children’s best interests because that is actually the heart of the Care of Children Act 2004.”

New Zealand’s Current Family Justice System

Twice as many professionals believed New Zealand’s family justice system did well in ascertaining children’s views and taking them into account (27%) than thought it did so poorly or inadequately (13%). The majority thought the system was variable and depended on the skill and competence of Lawyer for the Child and whether the matter was out-of-Court or in-Court. Generally, the in-Court system, using Lawyer for the Child and specialist report writers, was regarded as doing well in ascertaining children’s views and taking them into account. However, pre-Court processes such as FDR were regarded as doing this poorly or inadequately. Concern was expressed by some participants about the appropriateness of using lawyers to ascertain children’s views and they instead suggested that other professionals and specialised interviewers should be utilised. Challenges in ascertaining and taking children’s views into account included concerns about children’s abilities and the burden placed on children; the degree to which children’s views were heard and listened to; and how children’s views could be misrepresented or influenced by both parents and professionals.

The majority (70%) of the professionals rated the New Zealand family justice system relating to post-separation care of children as somewhat worse (23%) or much worse (47%) than before the reforms. Only 17% rated it as somewhat improved (14%) or much improved (3%). Overall, the majority (69%) were dissatisfied (46%) or very dissatisfied (23%) with the current family justice system. Only 13% were satisfied (12%) or very satisfied (0.6%) with it.

The five most frequently mentioned aspects of the current family justice system that were said to be working well were: FDR/mediation; without notice track applications/e-Duty/e-platform; Parenting Through Separation; Lawyer for the Child; and the professionalism and dedication of those working in the family justice sector. Numerous suggestions were made to improve the current family justice system, the most frequent of which involved allowing legal representation from the outset. Other key improvements included reinstating counselling services; better resourcing, such as more staff (particularly judges and registry staff); reversing the detrimental aspects of the 2014 reforms; improving FDR; simplifying or scrapping the forms; reducing wait times and delays; and making better provision for children.

Professionals were concerned about the increasing complexity of cases they were dealing with in the family justice system as a result of social issues, parental separation, alcohol and drug use (particularly methamphetamine), mental health, domestic violence, trauma, parental alienation, child abuse allegations, illiteracy, parents who may not have lived together, and grandparents caring for grandchildren.

Conclusion

The timing of this research project fortuitously meant that the findings were able to be provided to the Independent Panel appointed by the Minister of Justice to review the 2014 reforms. While this latest 2018-2019 review had not been anticipated at the time we proposed independently evaluating the 2014 reforms, and then commenced our study, it provided a welcome avenue for the experiences and perspectives of the several hundred family justice professionals who participated in our online survey and interviews to contribute directly to the future of New Zealand's family justice system. This valuable evidence base complemented the Panel's own nationwide consultations and helped to underpin their extensive recommendations.³ As the Minister now considers the Independent Panel's Final Report, it is to be hoped that the strong and clear views of family justice professionals across the country about what is working well and, more importantly, the many aspects that require immediate attention, are acted upon. We are very pleased to have had the opportunity, through our research, to provide the 'grass roots' or 'coal face' perspective that so many considered was missing when the 2014 changes were contemplated and then implemented. We look forward to continuing to work together to develop the child-centred and joined-up family justice system envisaged and desired.

³ Independent Panel. (2019, May). *Te Korowai Ture ā-Whanau: The Final Report of the Independent Panel Examining the 2014 Family Justice Reforms*. Wellington, New Zealand: Ministry of Justice.

Project Overview

This report presents data from a two-phase research project generously funded by the New Zealand Law Foundation. Phase One was undertaken during 2014-2015 and involved the initial scoping, consultation and planning for implementation of the Phase Two nationwide study from 2016. **Phase One** involved:

- Compiling an annotated bibliography of domestic and international research literature pertaining to New Zealand family law research and family law evaluation research;
- 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;
- Consultation and liaison with key New Zealand stakeholders;
- Consultation with international experts and key researchers in family law reform evaluation;
- Holding a workshop in Wellington on 30 October 2014 with stakeholder representatives to a) report back on the above activities and the themes that emerged from the consultation process; and b) to gauge sector/stakeholder interest in, and commitment to, an evaluation proposal.⁴

The primary purpose of **Phase Two** (1 August 2016 to 31 January 2020) was to undertake the empirical components of a large-scale nationwide mixed-methods study to evaluate the 2014 family law reforms. This phase addressed the following research questions:

- What are parents' and family justice professionals' perceptions and experiences of post-separation family dispute resolution processes regarding decisions about children's care arrangements post-31 March 2014?
- Which family justice systems/services/processes are working well for families and family justice professionals and which are not?
- How and why do parents choose different dispute resolution pathways (e.g., self-resolution, private agreement, out-of-Court or in-Court dispute resolution) and are they associated with different experiences, perspectives and outcomes (such as stability of care arrangements, conflict reduction)?

The Phase Two study involved the following data collection methods:

1. An anonymous nationwide online survey with separated parents/caregivers ($n=655$).
2. Interviews with a sub-set of parent survey participants ($n=180$).
3. Follow-up online surveys with separated parents/caregivers ($n=429$).
4. An anonymous nationwide online survey with family justice professionals ($n=364$).
5. Interviews with a sub-set of family justice professionals ($n=100$).

This report focuses on data from the **family justice professionals** (points 4 and 5 above). Two future reports will present the parent/caregiver survey and interview findings.

The study was approved by the University of Otago Human Ethics Committee (Reference number 16/164) on December 8, 2016. The University of Otago Māori consultation process was also undertaken with the Ngāi Tahu Research Consultation Committee in October 2016.

⁴ For the Phase One research report, see: Gollop, M.M., Taylor, N.J., & Henaghan, R.M. (2015). *Evaluation of the 2014 Family Law Reforms: Phase One*. Report to the New Zealand Law Foundation. Dunedin, New Zealand: Children's Issues Centre, University of Otago.

Method

Family justice professionals were surveyed about their experiences of, and satisfaction with, New Zealand's 2014 family law reforms and its current family justice system during 2018, four years after the reforms took effect. The data was collected through: i) An anonymous **online survey**; and ii) Individual telephone **interviews** with a sub-sample of professionals who completed the online survey.

Participant Recruitment

Family justice professionals were recruited to take part in the study by invitations to complete the online survey. Information about the survey was distributed widely within the family justice sector, largely via email. Emails providing information about the study including a link to the online survey with an attached information sheet (see Appendix A) were sent to the following individuals or organisations/agencies:

- Family Legal Advice Service providers.
- Parenting Through Separation providers (Barnardos New Zealand, Lifewise, Royal New Zealand Plunket Trust, Family Works Northern, Presbyterian Support, Birthright Hawke's Bay Child and Family Care, Methodist Social Services, Parentline Manawatu, The Methodist Mission, Family Works Central, Skylight).
- Members of the Family Law Section of the New Zealand Law Society.
- Community Law Centres.
- Ministry of Justice (and Family Court) staff.
- FairWay Resolution (*FDR provider*).
- Family Works Central (*FDR provider*).
- Family Works Northern (*FDR provider*).
- FDR Centre (*FDR provider*).
- Arbitrators' and Mediators' Institute of New Zealand (AMINZ) (*Approved Dispute Resolution Organisation (ADRO)*).
- Resolution Institute (*Approved Dispute Resolution Organisation (ADRO)*).
- Family Law Section of the New Zealand Law Society (*Approved Dispute Resolution Organisation (ADRO)*).
- Family Courts Associations (Christchurch, Invercargill, Dunedin, Wellington, Auckland).
- New Zealand Association of Counsellors.
- Family Court accredited counsellors.
- Family Court specialist report writers.
- Citizens Advice Bureau offices.

Contact was either made directly with professionals if their email addresses were publicly available or through a contact person who then agreed to distribute the email to their members, staff or colleagues who were involved in assisting families with making post-separation parenting arrangements for children. Reminder emails were sent to many potential participants when the survey was near to closing. Articles about the survey were also published in the *Family Advocate* and the newsletters of several professional bodies.

Data Collection

Online Survey

The anonymous online survey was administered through the study website and was open for almost 10 weeks from 9th May until 16th July 2018. Participants were self-selected and opted to complete the anonymous survey after receiving information about the study via email or word of mouth. They either clicked on a link to the survey that was embedded in their email invitation or accessed the survey directly via the study website. After accessing the survey, participants were asked a screening question to ensure they met the criteria of being professionals, practitioners or staff members with experience of working in the New Zealand family justice sector since 31 March 2014, relating to post-separation day-to-day care and contact arrangements. If not, they were directed away from the survey and invited to share their views in another format available on the study website.

Participants who met the inclusion criteria were provided with an Information Sheet about the study (see Appendix A) and a Consent Form (see Appendix B), which could be read online and/or downloaded. Once participants indicated they had read the Information Sheet and the Consent Form, and had agreed to take part, they were given instructions on how to complete the survey.

The survey took around 20-30 minutes to complete and had six sections that asked about respondents' views and experiences of:

1. Their role within the New Zealand family justice sector.
2. Training and professional development.
3. New Zealand family justice services.
4. The 2014 family law reforms
5. The current family justice system.
6. Demographic information.

The survey (see Appendix C) was designed such that respondents elected whether they wished to answer questions about particular family justice services available to assist parents and caregivers to make parenting arrangements or resolve parenting disputes. Those with limited, or no, knowledge of a particular service could elect to omit questions about the service entirely, while others could choose to comment generally on a service or answer a series of questions about the service in more detail. Participants were also free to skip any questions they did not wish to answer.

Participants who started, but did not complete, the survey were sent a reminder email with a link to their partially completed survey one day, one week and two weeks after they began it. They could then resume where they left off. Sixty-six respondents began the survey, but did not complete it, and their partial data has not been included in the dataset.

Interviews

At the end of the survey respondents were asked if they wished to express their interest in taking part in a telephone interview with a member of the research team to share, in more depth, their views on current family justice services and/or the impact of the 2014 reforms. Those who indicated their interest were asked for their contact details, followed up by email and sent an Information Sheet and Consent Form (see Appendices A and D).

Thirty-nine per cent ($n=143$) of the professionals who completed the survey indicated their interest in participating in an interview. Ultimately, 100 professionals (27% of the total survey respondent sample) were interviewed. Forty-three participants either decided not to be interviewed, did not respond to requests to schedule an interview time, or were unavailable during the period the interviews were being conducted.

The interviews were conducted via telephone and participants' verbal consent was obtained at the beginning of the interview, which was audio-recorded. The interviews were undertaken by three experienced interviewers (Dr Megan Gollop, Associate Professor Nicola Taylor and Dr Margaret Mitchell) and ranged in duration from 10 to 60 minutes.

The semi-structured interview schedule (see Appendix E) covered similar topics to the survey and included the following areas:

1. The service(s) the family justice professional provided for separated parents.
2. How the service(s) they provided, or their role(s), changed as a result of the 2014 family law reforms.
3. Their views on the impact of the 2014 family law reforms.
4. Their perspectives and/or experiences of the current family justice system and the services available to assist parents to make parenting arrangements and resolve parenting disputes.
5. What issues they believed needed to be addressed in the review of the reforms being undertaken.

However, participants were also free to raise other relevant issues and topics that they wished to comment on.

All interviews were transcribed.

Participants

Online Survey Sample

The online survey was completed by 364 family justice professionals who had experience of working in the family justice system in New Zealand since 31 March 2014 (when the reforms took effect). Participants were asked what their current roles(s) were in the New Zealand family justice sector relating to separated parents/caregivers making parenting arrangements and these are presented in Table 1. Many respondents had more than one role, therefore percentages do not sum to 100.

Table 1: Survey respondents' current roles

Role	<i>n</i>	Percent
Lawyer providing advice/representing parties	240	65.9%
Lawyer for the Child	139	38.2%
Family Legal Advice Service (FLAS) provider	130	35.7%
Community Law Centre staff member or volunteer	32	8.8%
Family Dispute Resolution (FDR) Mediator	76	20.9%
Staff member working for a FDR supplier	6	1.6%
Mediator (private practice)	37	10.2%
Judge	2	0.5%
Counsellor	42	11.5%
Psychologist	13	3.6%
Therapist	4	1.1%
Social worker	8	2.2%
Specialist report writer	6	1.6%
Child consultant	5	1.4%
Parenting Through Separation provider/facilitator	32	8.8%
Ministry of Justice/Court staff member	10	2.7%
Social service staff member or volunteer	3	0.8%
Citizens Advice Bureau staff member or volunteer	8	2.2%
Professional association staff member	1	0.3%
Other	4	1.1%
Not currently working in family justice system	7	1.9%

Note: Multiple selection was possible. Hence, percentages do not sum to 100.

As shown by Table 1, legal practitioners (including lawyers providing advice and representing parties, Lawyer for the Child and FLAS providers) comprised the largest group of survey respondents. Just over a fifth (21%) of the survey respondents were FDR mediators, 12% were counsellors, 10% were mediators in private practice, and 9% were Parenting Through Separation providers/facilitators. Seven people indicated they were not currently working in the family justice sector, but had done so at some stage since 31 March 2014 when the reforms came into force. These included four previous Family Court counsellors, two specialist report writers (psychologists), a lawyer and FLAS provider, and one FDR provider.⁵

⁵ One of these participants had held two roles in the sector, hence $n=8$.

Of the 76 FDR Mediators who completed the survey, 59% had professional qualifications or expertise in law.

Nearly one fifth (18%, $n=67$) of the participants had previously worked in roles in the family justice sector other than their current role. These roles included: family lawyers, FLAS providers, specialist report writers, social workers, mediators, Family Court counsellors, FDR mediators, Lawyer for the Child, PTS providers/facilitators, Oranga Tamariki lawyers, DVA programme providers/facilitators, research counsel, Judges' clerk, Family Court registrars/officer, psychologist and roles in mental health.

The family justice professionals worked across all regions of New Zealand and many worked across multiple regions, as shown in Table 2. The largest proportion (26%) worked in the Auckland region, followed by Canterbury (16%) and Wellington (15%).

Table 2: Location(s) where the survey respondents currently worked

Region	<i>n</i>	Percent
Northland	17	4.7%
Auckland	95	26.1%
Waikato	28	7.7%
Bay of Plenty	29	8.0%
Gisborne	4	1.1%
Taranaki	21	5.8%
Hawke's Bay	23	6.3%
Manawatu-Wanganui	19	5.2%
Wellington	53	14.6%
Tasman	2	0.5%
Nelson	21	5.8%
Marlborough	15	4.1%
West Coast	14	3.8%
Canterbury	58	15.9%
Otago	29	8.0%
Southland	12	3.3%
Nationwide	3	0.8%

Note: Multiple selection was possible. Hence, percentages do not sum to 100.

The majority (76%) of respondents were female, 22% were male and nine participants (2.5%) preferred not to answer this question. Most (95%) had a tertiary qualification. Table 3 presents the ethnicity of the survey respondents ($n=356$). Eight participants preferred not to answer this question. Since multiple ethnicities could be endorsed, percentages do not add to 100%.

Table 3: Participants' ethnicity

Ethnicity	<i>n</i>	Percent
New Zealand European	318	89.3%
Māori	19	5.3%
Samoan	6	1.7%
Cook Islands Māori	1	0.3%
Tongan	2	0.6%
Niuean	-	-
Chinese	2	0.6%
Indian	3	0.8%
Other	27	7.6%
<i>Missing</i>	8	2.2%

Note: Multiple selection was possible. Hence, percentages do not sum to 100.

As shown by Table 3, the majority (89%) of participants endorsed New Zealand European, with just over 5% endorsing Māori, 3% endorsing a Pacific ethnicity, and 1.4% endorsing an Asian ethnicity. Other ethnicities included Dutch (4), British (3), North American (3), Irish (3), Australian (2), Scottish (1), South African (1), German (1), Israeli (1), Latin (1), Celtic (1), and Non-New Zealand European (1), with four participants not specifying their 'Other' ethnicity. Two participants specified 'Polynesian' or 'Pasifika' and have been included in the Pasifika percentage above.

Nearly a third (32%) of the family justice professionals had personally been involved in making or changing parenting arrangements in their own family/whānau, although the majority (81%) of these professionals had not used any family justice services as a client. Service use as a client included: using the Ministry of Justice website (11%); phoning the Ministry of Justice 0800 2 AGREE phone line (2%); attending a Parenting Through Separation course (3.7%); using the Family Legal Advice Service (1.4%); using the Family Dispute Resolution Service (2.3%); and going to the Family Court (12.7%).

Interview Sample

A subset of 27% ($n=100$) of the total survey respondent sample was interviewed; 73% female and 27% male. The participants' roles are detailed in Table 4, along with the roles of the total survey sample for comparison.

Table 4: Interview respondents' current roles

Role	Survey sample	Interview sub-sample
Lawyer providing advice/representing parties	65.9%	64.0%
Lawyer for the Child	38.2%	40.0%
Family Legal Advice Service (FLAS) provider	35.7%	39.0%
Community Law Centre staff member or volunteer	8.8%	11.0%
Family Dispute Resolution (FDR) Mediator	20.9%	31.0%
Staff member working for a FDR supplier	1.6%	1.0%
Mediator (private practice)	10.2%	15.0%
Judge	0.5%	-
Counsellor	11.5%	16.0%
Psychologist	3.6%	3.0%
Therapist	1.1%	2.0%
Social worker	2.2%	3.0%
Specialist report writer	1.6%	3.0%
Child consultant	1.4%	4.0%
Parenting Through Separation provider/facilitator	8.8%	8.0%
Ministry of Justice/Court staff member	2.7%	3.0%
Social service staff member or volunteer	0.8%	-
Citizens Advice Bureau staff member or volunteer	2.2%	2.0%
Professional association staff member	0.3%	1.0%
Other	1.1%	1.0%
Not currently working in family justice system	1.9%	1.0%

Note: Multiple selection was possible. Hence, percentages do not sum to 100.

As shown by Table 4, like the total survey sample, the majority of interview respondents were legal practitioners. However, the proportion of FDR Mediators and mediators in private practice was higher in the interview sample (31% and 15% respectively, compared with 21% and 10% in the total survey sample). Otherwise, the interview sub-sample of family justice professionals was generally representative of the survey sample.

Findings

Impact of the Reforms on Professionals' Work

Professionals were asked about the implications of the reforms on both themselves and on their work in the family justice sector. Specifically, they were questioned about how much the reforms affected their work/role, what changed for them as a result of the reforms, and the personal impact of these changes.

Table 5 presents the participants' views on how much the reforms affected their work/role and Table 6 details the nature of any changes to the professionals' role(s) because of the reforms.

Table 5: How much did the reforms affect your work/role?

	<i>n</i>	Percent
Not at all	22	6.1%
Minor effect	35	9.7%
Moderate effect	121	33.7%
Major effect	181	50.4%
Total	359	100%

Table 6: Changes to professionals' roles as a result of the reforms

	<i>n</i>	Percent
The nature of my work changed (e.g., type of client, workload etc.)	278	77.2%
I lost my existing role(s)	30	8.3%
I took on additional role(s)	103	28.6%
I changed roles within the family justice sector	36	10.0%
I left the family justice sector entirely	5	1.4%
Other	13	3.6%
None of the above – nothing changed for me	41	11.4%

Note: Multiple selection was possible. Hence, percentages do not sum to 100.

The 2014 family law reforms had a significant impact on professionals working in the family justice sector. The majority (84%) rated the reforms as having a moderate or major effect on their work or role. For over three-quarters of the professionals, the nature of their work changed, and over a quarter took on additional roles.

Training and Professional Development

The professionals were asked about their views and experiences of training and professional development – during both the initial lead up to, and implementation of, the 2014 reforms, and any ongoing training and development.

Initial Training/Professional Development

Over three-quarters (76%) of the professionals had undertaken some initial (re)training or professional development during 2013 and/or 2014 to prepare for their role in the reformed family justice system. This was most commonly provided by the Family Law Section of the NZ Law Society (70%) and the Ministry of Justice (52%) (see Table 7).

Table 7: Who provided your (re)training/professional development?

	<i>n</i>	Percent
Ministry of Justice	142	51.8%
AMINZ (Arbitrators' and Mediators' Institute of New Zealand)	49	17.9%
Resolution Institute (formerly LEADR)	41	15.0%
Family Law Section/NZ Law Society	192	70.1%
A Parenting Through Separation provider	29	10.6%
A Family Dispute Resolution (FDR) supplier	62	22.6%
Institute of Judicial Studies	-	-
A professional association/society	20	7.3%
My employer	24	8.8%
A community organisation/agency/NGO	9	3.3%
A tertiary education provider	12	4.4%
Other	8	2.9%

Note: Multiple selection was possible. Hence, percentages do not sum to 100.

The initial training undertaken by professionals was a mix of learning general information about the reforms and operation of the family justice system (91%) and specific training to deliver one or more of the family justice services (64%). For those 176 professionals who said they received specific training, the most common training undertaken was learning about the new Family Court processes (78%), how to use the Ministry of Justice's Resolution Management System (RMS)⁶ (75%), and changes to Legal Aid (54%); and to become a FLAS provider (60%) or a FDR mediator (52%) (see Table 8).

⁶ RMS is an online recording and reporting tool for recording and tracking family resolution services. FLAS providers use RMS to access and record information about clients receiving the service and to claim remuneration for their work.

Table 8: What was the specific training for?

	<i>n</i>	Percent
To be able to inform others (e.g., colleagues, clients) about the new system	86	48.9%
To deliver the Parenting Through Separation programme	16	9.1%
To become a Family Legal Advice Service (FLAS) provider	106	60.2%
To become a Family Dispute Resolution (FDR) mediator	91	51.7%
To undertake pre-mediation Intake and Assessment for FDR	37	21.0%
To learn about the new Family Court processes	138	78.4%
To learn about the changes to Legal Aid	95	54.0%
To learn how to use RMS	132	75.0%
Other	3	1.7%

Note: Multiple selection was possible. Hence, percentages do not sum to 100.

The **cost to professionals personally** of their training/professional development and any accreditation processes, ranged from nothing to more than \$5000 (see Table 9). Of those who knew how much their training had cost ($n=213$), nearly a third paid nothing, with almost half paying \$3000 or less, and one in ten paying over \$5000. The participants were asked if they thought what they had paid was reasonable (as also shown in Table 9). Unsurprisingly, the percentage of those professionals who thought the cost of their training was reasonable decreased as the cost went up, with the exception of those who paid over \$5000; 68% of whom thought this level of expenditure was reasonable. Overall, nearly three quarters (73%) of the professionals thought the amount they paid was reasonable.

Table 9: Overall, how much did your training/professional development and/or any related accreditation processes cost you personally?

	<i>n</i>	Percent	Thought cost reasonable
Nothing	66	31.0%	91.9%
\$1-\$1000	49	23.0%	85.7%
\$1001-\$3000	49	23.0%	55.1%
\$3001-\$5000	28	13.1%	39.2%
\$5001 or more	21	9.9%	68.4%
Total	213	100%	

The majority (81%) of the professionals found the training (both general and specific) they received to prepare them for working in the reformed family justice sector to be helpful or very helpful, with very few (7%) finding it unhelpful or very unhelpful (see Table 10).

Table 10: Overall, how helpful was the (initial) training/professional development you received?

	<i>n</i>	Percent
Very unhelpful	8	2.9%
Unhelpful	10	3.6%
Neither helpful nor unhelpful	33	12.0%
Helpful	185	67.5%
Very helpful	38	13.9%
Total	274	100%

Ongoing Training and Professional Development

Nearly all professionals (95%) reported receiving ongoing training and/or professional development. As shown in Table 11, the top three most common ways this was undertaken was through seminars or conferences (79%), webinars (72%), or professional supervision (44%).

Table 11: Ways of receiving ongoing training/professional development

	<i>n</i>	Percent
In-house sessions provided by my employer/supplier	98	27.0%
Webinars	261	71.9%
Mentoring	113	31.1%
Professional supervision	158	43.5%
Seminars/conferences	288	79.3%
Professional specialty training, e.g., for Lawyer for the Child, Specialist report writing	127	35.0%
Tertiary study	18	5.0%
Other	30	8.3%
None of the above – I don't receive ongoing training/professional development	20	5.5%

Note: Multiple selection was possible. Hence, percentages do not sum to 100.

Most professionals (83%) thought that they had adequate opportunities to receive ongoing training or professional development. However, nearly all (91%) selected one or more topics or areas they would like further training/professional development on (see Table 12).

Table 12: On what topics (if any) would you like to undertake further training/professional development?

	<i>n</i>	Percent
Engaging with children and/or ascertaining their views	194	54.0%
Cultural competency	184	51.3%
Family violence	168	46.8%
How the family justice sector operates	90	25.1%
Legislation (e.g., Care of Children Act 2004)	129	35.9%
Regulations/rules	107	29.8%
Professional/practice policies, protocols and/or guidelines	151	42.1%
Ethics	81	22.6%
Administrative requirements (e.g., RMS)	45	12.5%
Other	26	7.2%
None of the above	33	9.2%

Note: Multiple selection was possible. Hence, percentages do not sum to 100.

Other topics that professionals stated they would like to undertake further training and professional development on included the following:

- Parental alienation
- High conflict/complex cases – family dynamics, impact on children, conflict resolution

- Oranga Tamariki – legislation, policy, and application/practice
- Child development/Developmental psychology – children’s needs, brain development, impact of separation
- Adolescent development – drug and alcohol use, mental health and criminal offending, brain development
- Family violence – interplay between how District and Family Courts deal with it
- Family and couples counselling theories, Family dynamics and systems
- International abduction and reunification
- Mediation
- Alternative Dispute Resolution/Collaboration, Facilitation
- Restorative justice
- Intervention methods – legal and therapeutic, interventions with children resisting contact
- Workplace stress and well-being
- Mental health, Factitious disorders
- Legal skills – evidence, cross examination
- Practical skills (rather than theory) – litigation skills, mediation skills
- Family Legal Advice Service (FLAS)
- Legal aid applications and invoicing
- Substance abuse, drug testing
- Court processes

Oranga Tamariki legislation, how it works in practice, what other lawyers do, how it is put into practice differently in different areas, what judges might be prepared to do (as it differs), techniques/tools for getting the best for Lawyer for the Child clients (and clients in general). (2303, Lawyer, Lawyer for the Child; Survey)

As a counsellor/mediator I would like to know more about the Court processes and other aspects that impact on my work e.g., processes such as settlement conferences, directions conferences that clients mention. Often the FDR mediation runs parallel to in-Court processes arranged by the clients and their lawyers and hence understanding these legal processes is very helpful. In addition, having some knowledge of issues such as maintenance (through IRD) based on the number of nights that a child or children are with each caregiver would be very helpful as there is often another agenda operating in the background between parties while mediation is taking place. (2363, FDR Mediator; Survey)

As I work in the Family Court I would like more of an opportunity to be kept up with current practises and changes relating to children, custody, separation, developmental psychology, to name a few. (2424, Lawyer, FLAS Provider; Survey)

How to deal with alienation/alignment in our current Court system particularly given delays. (2577, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

The fundamental psychological concepts that are relevant to child development and the family justice system, Oranga Tamariki applications. (2418, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Further input on the psychological and emotional impact on children over time, of sustained parental conflict and hostility. I believe I have an okay understanding of this

- but this is such an important area, and one I believe that parents often do not grasp, as they get so wound up in point-scoring, and the justification of their own behaviour. I also believe that the Ministry of Justice, and Lawyer for the Child do not fully grasp the implications for children. (2426, Counsellor; Survey)

Summary

Most professionals (76%) had undertaken some *initial* (re)training or professional development during 2013 and/or 2014 to prepare for their role in the reformed family justice system. This was most commonly provided by the Family Law Section of the NZ Law Society (70%) and the Ministry of Justice (52%). This initial training was a mix of learning general information about the reforms and operation of the family justice system (91%), and specific training to deliver one or more of the family justice services (64%). The majority (81%) found this training (both general and specific) to be helpful or very helpful, with very few (7%) finding it unhelpful or very unhelpful. Of those who knew how much their training had cost ($n=213$), nearly a third paid nothing, with almost half paying \$3000 or less, and 10% paying over \$5000. Overall, nearly three quarters (73%) thought the amount they paid was reasonable.

Nearly all professionals (95%) reported receiving *ongoing* training and/or professional development, primarily through seminars or conferences (79%), webinars (72%), or professional supervision (44%). Most (83%) thought they had adequate opportunities to receive ongoing training or professional development. However, nearly all (91%) identified one or more topics/areas they would like further training/professional development on - the most popular of which were engaging with children and/or ascertaining their views (54%); cultural competency (51%); family violence (47%); and professional/practice policies, protocols and guidelines (42%).

Family Justice Services

In the online survey professionals were asked for their views and experiences of the current family justice services available to assist parents and caregivers to make parenting arrangements or resolve parenting disputes – either from their own experience or from what others (e.g., clients or colleagues) have told them. The survey included evaluative questions about the following six services:

- Ministry of Justice website regarding post-separation care of children
- Ministry of Justice 0800 2 AGREE phone line
- Parenting Through Separation (PTS)
- Family Legal Advice Service (FLAS)
- Family Dispute Resolution (FDR)
- Family Court

For each service participants were asked if they had views they wished to share about the service *since the reforms took effect on 31 March 2014*. If so, they had the option of answering specific questions about the service or commenting more generally. If the latter, they were directed to an open-ended question asking for their comments.

If they elected to answer specific questions about the service they were asked about their:

- experience of using, delivering or working within the service and their satisfaction with this;
- views on the helpfulness of the service;
- views on what aspects (if any) of the service were working well;
- suggestions for additions or improvements to the service;
- practice and views on directing/referring and recommending the service to separated parents making parenting arrangements;
- final thoughts/comments about the service.

The survey questions relating to family justice services were a mix of rating scales and open-ended questions (see Appendix C). Professionals' responses to the open-ended questions were often not discrete and contained evaluative statements relevant to other questions. Therefore, responses to the open-ended questions were amalgamated for each family justice service and a content analysis undertaken to identify and code common issues that emerged from the responses across multiple questions. A separate content analysis was also undertaken with the interview data by coding the professionals' perspectives of each service extracted from their transcripts.

For each service, findings from the online survey are reported first, followed by findings from the interviews.⁷

⁷ Open-text survey responses and interview quotes have been edited for ease of reading. Regions, cities and towns named by participants have been deleted to ensure anonymity.

Ministry of Justice Website

Survey Findings

Sixty-three percent of the survey participants ($n=231$) elected to answer questions about the Ministry of Justice website, either by answering specific questions ($n=163$) or commenting more generally ($n=68$).

Of those who elected to answer specific questions, almost all (99%, $n=161$) had experience of accessing the website and so had first-hand knowledge of the service. Most (92%) had directed other people (mostly parents/caregivers and their whānau) to the website (see Table 13). Only 15% indicated they would *not* recommend the website to separated parents (see Table 14).

Table 13: Who participants have directed to the Ministry of Justice website

	<i>n</i>	Percent
Separated parents/caregivers	142	87.7%
Grandparents and wider family/whānau	116	71.6%
Colleagues/co-workers	89	54.9%
Other professionals	63	38.9%
Other people	24	14.8%
None of the above	13	8.0%

Note: Multiple selection was possible. Hence, percentages do not sum to 100.

Table 14: Would you recommend the Ministry of Justice website to separated parents/caregivers making parenting arrangements?

	<i>n</i>	Percent
Yes	78	48.4%
Maybe	59	36.6%
No	24	14.9%
Total	161	100%

Nearly half said they would recommend the website to separated parents, but almost 37% were less definite, giving a 'Maybe' response.

Table 15 presents information about how helpful professionals thought the website was for separated parents. Again, participants were moderate in their views about the website. Just over half (53%) rated the website as helpful or very helpful for separated parents, with a quarter (25%) thinking it was unhelpful or very unhelpful.

Table 15: In general, how helpful do you think the Ministry of Justice website regarding post-separation care of children is for separated parents/caregivers making parenting arrangements?

	<i>n</i>	Percent
Very unhelpful	9	5.7%
Unhelpful	30	18.9%
Neither helpful nor unhelpful	36	22.6%
Helpful	77	48.4%
Very helpful	7	4.4%
Total	159	100%

The following content analysis of open-ended responses in the survey to questions about the website provides more detail about participants' views on the helpfulness of the website and areas that could be improved.

Of the 231 participants who answered questions about the website, 214 (93%) provided a codable response to at least one of three open-ended questions. These asked participants for their views on what aspects (if any) of the website were helpful and how it could be improved, as well as any other comments. All responses to these questions were coded as positive, negative or as a suggested improvement.

Positive Comments About the Website

Positive comments about some aspect of the website were made by 121 professionals (57%). These included responses about the website providing **useful general information**, the **ability to generate forms**, the availability of **useful tools** such as videos, fact sheets and parenting plan guidelines and **links to useful contacts**.

It is comprehensive and I refer parents to it during my course. (2260, PTS Facilitator; Survey)

The information sheets and paragraphs are helpful. (2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I have heard from parents I mediate for, that this website is very good. (2378, FDR Mediator; Survey)

Most of the positive comments referred to **the tools and resources the website provides**. These included videos, links to other sites and fact sheets.

I like directing co-parents and others to the videos which are particularly helpful and informative. That is all I use now and I send people the links via text or email and then send them a 'pack' that I make up to back-up the video clips. They can then process what they have heard and then seen and are then able to come back to me with questions for clarification if needed. (2250, FDR Mediator, Mediator (Private Practice), Counsellor, Therapist, Social Worker; Survey)

The wealth of videos aimed at the effects of separation on parents and children. The explanations about Court process. (2480, Mediator (Private Practice), PTS Facilitator; Survey)

The fact sheets are good. I probably don't direct clients to them enough. (2457, Lawyer, Lawyer for the Child; Survey)

Twenty-one professionals, all lawyers, said it was helpful to have the **form generator** and to be able to **access the forms online**. Many, however, commented that the website needed improvement as the forms were difficult to find and/or difficult to use.

The online form generator is a great help to people acting for themselves (assuming they know what orders they are actually seeking). (2303, Lawyer, Lawyer for the Child; Survey)

The online forms are improving with the ability to save to file and resave. (2488, Lawyer; Survey)

Concerns About the Website and Suggested Improvements

Negative comments about some aspect of the website were made by 187 professionals (87%). Most related to navigation issues and the design of the website, followed by concerns about the website's content regarding the forms and the quality and presentation of the information on it. Other concerns related to clients' lack of accessibility to the website, the inappropriateness of a website as the first port of call for separated parents, and the desirability of adding links to other websites and directory lists. Eighty-nine professionals (42%) suggested improvements to the website.

Navigation and Design of the Website

The majority of the negative comments related specifically to **navigation issues** and the **functionality of the website**.

It has shocking navigation. I print out pages about course delivery for Parenting Through Separation all the time because my clients cannot locate how to navigate there. I had a group I was running education for on PPPR and they found it difficult to find the forms online as they didn't know what they were called and the main body of the information had side-tabs that were not obvious either. (2496, Lawyer, FLAS Provider; Survey)

The website should be sacked. It is hopeless and people can't find anything. In particular, it is difficult for me as a lawyer to find forms. Just imagine what it is like for the client! This website is like something developed a decade ago before we got modern user-friendly interfaces. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

Even when I know what I'm looking for, it can be difficult to find e.g., ordering Ministry of Justice brochures. (2368, FDR Mediator, Counsellor; Survey)

They need to go out to the people who the Family Court services and ask their opinion about what would work better for them. I don't have a sense that clients know the website is there and that it does have lots of information that would assist them make

decisions. Maybe there needs to be a less formal website running alongside the more detailed formal site. (2403, Counsellor; Survey)

Many professionals expressed frustration with the **layout and usability of the website** generally and over a fifth (23%, $n=49$) **suggested improvements** in this regard.

Make it easier to navigate. I cannot find the forms I need sometimes and have no idea how self-represented litigants who struggle with literacy manage (I know they don't). (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

The website should use every-day English and have an easy to follow design. I often have to show enquirers who want to self-represent where to find things on the website, because it is not easy. The Google search engine is better than the search engine on the Ministry of Justice website. I have shown clients how to Google to look for forms as it is easier than showing them round the website. It's a bit of joke if people are expected to self-represent. (2448, Lawyer, FLAS Provider, Community Law Staff Member/Volunteer; Survey)

[Change] just about everything! The structure/taxonomy of the site is not user-friendly. A user has to have a fairly detailed knowledge of the process in the first place in order to be able to find their way around and access useful information. It needs an overhaul by expert website designers working together with end-users/lawyers etc. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Respondents often had difficulty locating what they required on the website and they also felt that their clients were poorly served by the website. They believed the website navigation needed to be simplified to allow easier use by a wider range of people.

Specific suggestions for improvement included:

- improving the functionality of specific word searching;
- breaking up pages of complex information into a list of links about each topic;
- simplifying the layout to reduce the number of pathways through the site;
- providing a visual overview of how the Family Justice Service works from Out-of-Court options to Court options, with the ability to click on these links for more detail; and
- Inclusion of diagrams to demonstrate the process so that users can then navigate the site accordingly.

Website Content

Forty-one percent ($n=76$) of the participants who made negative responses about the website had concerns about aspects of its content – primarily the forms, followed by the quality and presentation of the information on the website.

Forms

The content that most participants ($n=44$) referred to as negative related to the Ministry of Justice forms that are featured on, or generated through, the website. The majority of responses referred to two key issues: firstly, the difficulty in identifying and locating the required forms and, secondly, that the forms themselves have functional and design issues.

Comments that **the forms were inaccessible and hard to locate** were common.

Eventually one can find the forms required for various applications, but it isn't made easy! (2225, Lawyer, FLAS Provider; Survey)

The forms are difficult to locate and are lengthy and difficult to complete. (2384, MOJ Staff Member; Survey)

Equally common were comments about the **design and functionality of the forms** themselves.

On the face of it, helpful information, but the forms are a nightmare to complete, are too prescriptive ... repetitive and do not allow sufficient flexibility. There also appears to be an incompatibility with MAC computers (which I use) so any completed forms I send cannot always be viewed by clients or other lawyers. Calls to the Ministry of Justice have been met with a "We can't do anything about it." (2572, Lawyer, Lawyer for the Child; Survey)

I was working for the Ministry of Justice when the website was changed and we, as registrars, found it very difficult. It is a wonder that any self-represented person can find the appropriate forms to fill out. There also seem to be forms missing, like the Memorandum for Directions Conference (or perhaps I just still cannot find it!). I avoid this website where possible. (2272, Lawyer; Survey)

Participants thus voiced concerns about their own challenges in finding and using the forms, as well as the difficulties their clients or self-representing litigants faced. Eighteen responses suggested that **the forms should be easier to find or the search engine for finding the forms should be improved**. Real frustration was expressed by some respondents about their experience of trying to locate the correct forms. **Suggested improvements** included:

Clearer forms all in the one place. A list of forms in usual chronological order would be great i.e., 1. COCA pack 2. Notice of Response 3. Memo for Directions Conference, and so on. (2272, Lawyer; Survey)

Make the forms easier to find. That's what most people are looking for when they go there, yet they are hard to find. It's like they don't want people to be able to find them ... e.g., the forms are in neither numerical order nor alphabetical order. The Parenting Order stuff is under the 22nd link in the list, and even then it is under "Care of Children form generator" rather than "Parenting Order" as members of the public might expect. (2223, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Staff Member/Volunteer; Survey)

Simpler access to the necessary forms. While I have experience, unfortunately, of using the website, I have no idea how any person new to it or with limited English or literacy issues would have any chance of using it. I have assisted other practitioners to find the necessary forms at times because of how bad it is. Someone wishing to make an application or to respond to an application has to jump through a lot of hoops to find the appropriate forms. They should be a very prominent and easy to find link. There seems to be a deliberate effort by the Ministry to make it hard and to limit access to the Courts - given the inability to access lawyers for assistance for many cases it must be incredibly hard for a lot of people. (2559, Lawyer; Survey)

The improvements suggested related to both the technical functions of the forms and to their content and layout. Suggestions regarding the **technical aspects of the forms** generally related to the **inability to save data while filling out the online forms**.

Have Word versions of application/ response Court forms, not just PDFs that can't be saved. Make it easier to navigate the site. (2216, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The forms are too cumbersome. They should be able to be downloaded in Word versions. (2462, Lawyer; Survey)

Forms completely online need to ensure you can save data input into them. (2232, Lawyer, Lawyer for the Child, FLAS provider; Survey)

Professionals frequently expressed concerns that the forms did not cater for clients with limited literacy and/or limited legal knowledge. They suggested **improving the actual content and layout of forms**, particularly their **user-friendliness**.

Sort out the forms - they are not user-friendly and anyone with less than average literacy would be lost trying to fill them in. (2195, Lawyer, Lawyer for the Child; Survey)

Less jargon in the names of forms, and more explanation of what you are actually asking the Court when you make each application. (2206, Lawyer, FLAS Provider; Survey)

The forms for Care of Children need to be reworked completely. They are not user-friendly in any way. The main issue I have is that an affidavit is about telling the story as a client sees it and it is so disruptive that it cannot easily be done. (2321, Lawyer, Lawyer for the Child; Survey)

Two professionals stated that the **forms were not legally accurate** and needed to be rewritten to address this.

The forms need revision so that they match the statutory criteria. (2423, Lawyer, FLAS Provider; Survey)

The forms have been drafted by someone who doesn't even know the law e.g., Order Preventing Removal, having to certify that the applicant has, or will be, applying for a Parenting Order. There is no requirement that there be a Parenting Order. (2223, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Staff Member/Volunteer; Survey)

Quality and Presentation of the Website Information

The quality and presentation of the website content was the third most frequently raised issue about the website with 37 participants (20%) suggesting improvements - the most common of which was for the website to **include more information about the overall process that clients are entering into and the pathways to follow**.

[The website would be improved] by better explaining the complex pathway prescribed by the Family Court Rules - Part 5A - if that was possible. (2501, Lawyer, Lawyer for the Child, Mediator (Private Practice); Survey)

The process needs to be clear on a step-by-step approach. Has there been violence or any other safety concerns for the children in either parent's care? Yes - see a lawyer; No - then ring FDR (details) and complete the Parenting Through Separation programme. If the dispute is still not resolved then you may apply to Court (FLAS details) - no solicitors can act. (2280, Lawyer, Lawyer for the Child; Survey)

Linked with this was the desire for the **provision of more specific legal information.**

More thorough information and proper legal statutory referencing. (2418, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

More information on the legal view of separation. (2191, PTS Facilitator; Survey)

Four responses from FDR mediators, private practice mediators and lawyers highlighted the **lack of adequate information about FDR on the website**, leading to confusion on the part of both professionals and their clients.

Be clear and upfront about the costs and number of hours parties are entitled to by example e.g., Both parties funded - entitlement is 12 hours in a given year - includes PFM counselling; Parties not funded - both will pay \$390 plus GST - 5 hours - no PFM Counselling. BE TRANSPARENT AND CLEAR ON THE WEBSITE. (2166, Mediator (Private Practice), Counsellor; Survey)

Update the videos and info about FDR to show it's now up to 12 hours, not necessarily in the same room if the mediator decides other arrangements are preferable; also to explain Preparation for Mediation. (2184, Lawyer, FLAS Provider; Survey)

Informing people about **other dispute resolution processes**, including collaborative law, was also recommended by one respondent.

Provide more information on dispute resolution processes available, such as collaborative practice and provide links. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

Eight participants went beyond critiquing the existing features of the website to suggest **new innovations**. These included providing separate, detailed sections on the website for the different professionals to access; an area for children to access; more information and resources relating to the long-term impacts of separation on families and ways to deal with these; and an information, advice and advocacy service that more accurately reflects the changes in the family justice system since 2014.

More on what to do when you hit road bumps with your ex or as children's needs change could help. (2457, Lawyer, Lawyer for the Child; Survey)

It could provide info about the benefits of counselling and links to relevant services, particularly family violence courses for all involved; info about the effects of violence

on children; links to services that can help children in difficult situations; advise people to seek advice from professionals if they are unsure about what is the best course of action for them and their children, including Family Court lawyers. (2562, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Needs evidence-based information about the impact on the psychology of the rearranged family, specifically children. (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Survey)

Add YouTube videos with experts talking on their subject. How to and walk-thru demonstrations of form identification and form filling. A flow-chart type process that shows people how to proceed. Expert tips from lawyers on how to write evidence for the self-representing litigant. A 24/7 online live chat to hook up with a FLAS advisor and/or request provision of other services (i.e., counselling, preparation for mediation etc). The website should be emblematic of DISPUTE RESOLUTION! It is [currently] all about Court and legal stuff and not about FAMILY DISPUTE RESOLUTION. If the Ministry of Justice wants people to sort their family issues themselves then it has to develop an information, advice and advocacy service focused on DISPUTE AVOIDANCE, DISPUTE CONTAINMENT and DISPUTE RESOLUTION. That's entirely missing in the reformed family justice system. In other words, the Ministry of Justice to all intents and purposes continues to present itself to its users as if it were still operating in an entirely UNREFORMED system. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

Clients' Lack of Accessibility to the Website

Clients' lack of accessibility to the website was also raised by the respondents. This related to concerns that many clients may not have access to the Internet and/or a computer and to the challenges some clients face when they lack the necessary skills or experience to understand the information presented.

It is a great place for people to access information, but the government ignores the fact that a vast majority of people have difficulty accessing the information due to - lack of education required to understand it, access to a computer or printer is limited, reading it on a phone is difficult, having the funds to access the internet is difficult. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It needs to be remembered that most people have a reading age of 12 years or less; sadly, many people have less than that. What reads well to someone with an MBA may not work well for the person seeking information. The Ministry do not appear to understand this issue. (2518, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

There is a lot of information available that is relevant and concise. However, a lot of clients have limited skills with reading and comprehension and need assistance to work through their rights and what forms are required. (2289, Lawyer, Lawyer for the Child, Community Law Staff Member/Volunteer; Survey)

The information provided on the website is comprehensive, but can be very confusing to people with no prior knowledge of the process relating to care of children disputes. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

The Website as the First Port of Call for Separated Parents

While the information provided on the website may have been regarded as helpful to some people, four professionals commented that **using a website as a first port of call for clients** did not meet the clients' needs:

The difficulty is people don't want algorithms, but human contact to navigate their way through the rapids. (2200, Lawyer; Survey)

Often parties at this stage of their lives just want to talk to someone, more so than look at a website. (2502, MOJ Staff Member; Survey)

I am not convinced that website-based information as a primary source of information, is particularly useful. Many people who come to me say that they can read fluently and are familiar with websites, but when you are emotionally involved in a problem, you don't always take in the information very effectively. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Survey)

Three lawyers and a judge also felt that the website should better **encourage separated parents to seek legal advice** and not give the impression that navigating their way through the family justice system was a **straightforward tick-in-the-box or do-it-yourself process**.

It should not give the impression the Family Court is a 'do-it-yourself' process and should not facilitate that. (2322, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

It makes it appear straightforward and 'tick-in-the-box' like. There needs to be advice noting that legal advice may be helpful and why. (2536, Judge; Survey)

It would be helpful for the Ministry to provide information about how to contact lawyers, rather than treating lawyers as persona non grata. This is not about self-promotion. We know from experience that people with family/legal disputes want lawyers to help them navigate their way through the legal system. The website implies that they can simply 'do it themselves' by filing some basic documents, which is misleading and gets people into real problems. (2342, Lawyer, Lawyer for the Child; Survey)

Due to having to cater for people with no legal knowledge, the website, by necessity, considerably simplifies complex legal issues, the law and the various applications that can be made. People who have used the website themselves to make applications often comment later, when they get to see a lawyer, that they wish they had seen a lawyer from the beginning to obtain more detailed and comprehensive discussion and advice about Court proceedings. (2325, Lawyer; Survey)

Website Directory/Links

Eight participants suggested improvements and/or innovations in the linking to other websites and directory lists, particularly to increase the provision of information outside the legal process and to link to a wider range of services. Clients were also thought to need assistance to access support services and some help to navigate the process via the website.

I think it would be helpful for the website to provide a link to “Find a family lawyer” website so people have easy access to this information. (2217, Lawyer, FLAS Provider; Survey)

[It could be improved] by adding places and people that someone using the website can contact for further assistance. (2319; FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Survey)

More information on where to go to seek help for the children of separation (classes, professional assistance, counselling, etc). (2191, PTS Facilitator; Survey)

Would be good to have a directory of PTS courses, not just providers. Yes, someone would have to do it! Also, a link to online courses (overseas or NZ) for parents who can't readily access PTS. There are several similar courses online, from overseas providers, but covering the same info. (2184, Lawyer, FLAS Provider; Survey)

Interview Findings

Fourteen of the 100 professionals who were interviewed in this study mentioned the Ministry of Justice website. Their responses were consistent with the issues raised by professionals in the survey findings discussed above.

Five professionals were **generally positive** about the website in terms of its design, the range of information it provides, and the availability of forms for downloading.

I talk about the website a little bit [to clients]. I think the website is superbly designed and with so much information. Anyone who does want to represent themselves can find out everything they need to know. So, yeah, I think that service is great. (2385, PTS Facilitator; Interview)

The website seems to be very good. There's good information. People have access to the application form and to fill it out themselves if they wish. (2374, Lawyer, FLAS Provider; Interview)

The family justice system website is very good. The Ministry of Justice one has got a lot of information and it's got a lot of very comprehensive stuff on it. It's reasonably easy to navigate as well. There is information there, it's just that it's trying to get the information when people actually need it. (2339, Community Law Centre Staff Member/Volunteer, PTS Facilitator; Interview)

I think the Ministry of Justice website is actually very informative and quite user-friendly. It's great for a certain sector of our community. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

The website's fantastic but even that, in itself, can be very overwhelming for people. (2412, PTS Facilitator; Interview)

Two lawyers, however, found it **difficult to access the forms on the website**:

My experience of just trying to find simple forms on the website is a bit of a mission. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I personally struggle with the electronic forms and trying to find them on the Ministry of Justice website. I guess there's just so much procedural stuff - because any case can go any direction depending on what happens on the day. So [there's] just so much procedural stuff that I think people don't know about. (2165, Lawyer, FDR Mediator; Interview)

The most common issue, reported by half of the professionals ($n=7$), concerned **clients' lack of accessibility to the website**. This related to i) clients' not having computers, printers or internet access and being reluctant to utilise computers in public libraries when directed there; and ii) clients' lacking literacy skills, feeling overwhelmed or in crisis.

In terms of the clientele, none would have access to the internet, or very few, and that was raised city-wide. They said, "Oh, they can go a library." But it's like, these people don't have \$2 to get a bus. They're not going to the library. Their literacy skills are not at a level. It just doesn't fit what's going on. (2310, Lawyer, Lawyer for the Child, FLAS, Community Law Centre Staff Member/Volunteer, Citizens Advice Bureau Staff Member/Volunteer, Interview)

They don't often have computers. They don't have access to printers. They're not computer literate and so on lots of occasions, for nothing, I sit them down with my PA and we complete the forms here for them because they just can't do it themselves. ... So we draw these diagrams and spend half to three quarters of an hour with them, and that's all good. Then I say to them, "And now you need to go onto the website." "Oh, I don't have a computer." "Okay, cool, so you could go down to the library." "Oh, I don't want to do that - I don't want people seeing it. How else do I do this?" "Well, that's the only way you can get this information." "Yeah, well, I don't have access to that." Half of these guys don't have credit on their phones let alone to be able to sit down on the internet. And even if they can, they just don't understand it and it's not because it's not dumbed down; it's because they're in crisis anyway and we expect them to sit there and just calmly read what they have to do next. There's no understanding that these people are at crisis point. (2186, Lawyer, Lawyer for the Child; Interview)

[The website] is a bit more difficult perhaps if you are ... a mother of three and you're in a pretty rough area of [city]. You have got no internet access unless it's wifi through your phone, which is only free. How are you going to access that stuff? (2527, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

There's also an access to technology issue. I know that a lot of people who can get the forms, download them onto their computer and type them. That's fine, but for those who can't they're going to have to go to the Court. The Court will print them for them, but that doesn't really leave them with much guidance. (2173, Lawyer FLAS Provider; Interview)

I refer people to [the website] and they say, "Oh, it's just too heavy. It's just too heavy." ... I'm accustomed to data and I like information. The more information there the better. It does have to be a bit more user-friendly, I think, because often the people have not got a high level of education. That's not a criticism, that's just an observance. We live in a world where everything is in short sentences. (2403, Counsellor; Interview)

There's an extensive group of people that we deal with who can't read or write. They can't access the websites. They actually need to go and have the face-to-face contact with a lawyer. (2508, Lawyer, Lawyer for the Child; Interview)

We're dealing with them when they're filing their initial applications and things. ... I think they get a bit overwhelmed by the documents. I know they are supposed to be user-friendly, but I think they do get a bit overwhelmed. A lot of our clients in this area don't have access to the internet so they're at a bit of a disadvantage because of that. They're coming in and we're printing off the documents for them so they can access it that way. A lot of them are not capable of completing the forms on the internet anyway. (2415, MOJ Staff Member; Interview)

One lawyer raised a concern about the **unrealistic expectations** that generalised information on the website (for example, about 50/50 shared care) could create for separated parents.

The experience I've had is people take from it what they think supports their own opinions. I had a hearing the other day and the Dad was absolutely determined that he would get a 50/50 role in the child's life. I said, "Well, where did you get that from?" "I went onto the website and this is what I'm going to get." I said, "Well, I think you're wrong." I was Lawyer for the Child. I said, "There's no fixed proportion that you're going to automatically get. It's about this child, these circumstances, the best interests of this child." He came in, he was all fired up, self-representing, and this was what he was going to get because this is what this website said he could get. I think he got it wrong, but it served to reinforce his own preconceived idea. (2518, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Interview)

Summary

Sixty-three percent of the survey participants ($n=231$) elected to answer questions about the Ministry of Justice website, either by answering specific questions ($n=163$) or commenting more generally ($n=68$). Of those who elected to answer specific questions, almost all (99%, $n=161$) had first-hand experience of accessing the website. Most (92%) had directed other people (mostly parents/caregivers and their whānau) to the website. Nearly half (48%) said they would recommend the website to separated parents, while 15% indicated they would not recommend it. Just over half (53%) rated the website as helpful or very helpful for separated parents, with a quarter (25%) saying it was unhelpful or very unhelpful.

Of the 231 participants who answered questions about the website, 214 (93%) responded to at least one of three open-ended survey questions regarding the website. Fourteen family justice professionals also commented on the website in their interview with a member of the research team. The professionals valued the website's provision of useful general information, the tools it provides (including videos, fact sheets, parenting plan guidelines, useful contacts and links to other sites), and the ability to access the forms online.

However, there were many concerns expressed about the website, mostly relating to its design, navigation, functionality and lack of user-friendliness. The website's content elicited the second highest number of negative responses, especially regarding the Ministry of Justice forms that are featured on, or generated through, the website. Professionals found these forms difficult to identify and locate on the website and said they also had functional and design issues making them difficult to complete and to save. Two lawyers also noted the forms were not legally accurate. Professionals were concerned about the challenges faced

by clients and self-representing litigants trying to access and use the forms on the website. The quality and presentation of the information on the website was another aspect raised in relation to its content. It was suggested that new information be added about the overall process and pathways to follow, Family Dispute Resolution, and more specific legal information.

Expecting the website to be the first port of call for clients was criticised, as was the accessibility of the website for clients without computers, printers or internet access. Lacking literacy or language skills, feeling overwhelmed or in crisis was also thought to impede clients' ability to understand the information presented on the website. Some reported that clients were reluctant to utilise computers in public libraries when directed there. Others were concerned that the website gave the impression to separated parents that navigating their way through the family justice system was a straightforward do-it-yourself process, whereas legal advice may be needed.

The professionals suggested numerous improvements and innovations to the website, including its design, layout, accessibility, user-friendliness, content, forms, and links to other services, websites and directory lists.

Ministry of Justice 0800 2 AGREE Phone Line

Survey Findings

A fifth of the participants ($n=73$) had views they wished to share about the Ministry of Justice phone line either by answering specific questions ($n=49$) or commenting more generally ($n=24$). Of those who elected to answer specific questions, 73.5% ($n=36$) had experience of calling the phone line and over two-thirds (67%, $n=33$) had directed other people (mostly parents/caregivers and their whānau) to the phone line, as shown in Table 16.

Table 16: Who participants have directed to the Ministry of Justice phone line

	<i>n</i>	Percent
Separated parents/caregivers	32	65.3%
Grandparents and wider family/whānau	23	46.9%
Colleagues/co-workers	11	22.4%
Other professionals	9	18.4%
Other people	3	6.1%
None of the above	16	32.7%

Note: Multiple selection was possible. Hence, percentages do not sum to 100.

Table 17: Would you recommend the Ministry of Justice phone line to separated parents/caregivers making parenting arrangements?

	<i>n</i>	Percent
Yes	11	23.9%
Maybe	7	15.2%
No	28	60.9%
Total	46	100%

While around two-thirds had directed others to the phone line, nearly the same proportion (61%) of participants stated they would *not* recommend it to separated parents/caregivers (see Table 17). Several mentioned that feedback from clients had not been positive.

Table 18 shows how helpful the participants rated the Ministry of Justice phone line. In line with the majority not recommending the phone line, over half (58%) rated it as unhelpful or very unhelpful. Only 16% thought it was helpful or very helpful for separated parents/caregivers making parenting arrangements.

Table 18: In general, how helpful do you think the Ministry of Justice phone line is for separated parents/caregivers making parenting arrangements?

	<i>n</i>	Percent
Very unhelpful	8	17.8%
Unhelpful	18	40.0%
Neither helpful nor unhelpful	12	26.7%
Helpful	3	6.7%
Very helpful	4	8.9%
Total	45	100%

Of the 73 participants who elected to answer specific questions or to comment generally on the 0800 2 AGREE phone line, 71 (97%) provided a response to at least one of three open-ended questions about the phone line. These asked participants for their views on what ways (if any) the phone line was working well, how it could be improved, as well as any other comments. However, four people commented only that they did not know of the phone line’s existence, and another four reported they had never used it themselves and/or known anyone else who had. Ultimately, this resulted in 63 professionals (86%) with some experience of, or knowledge about, the service who provided codable responses to at least one open-ended question about the phone line. Their views were based on their own experience and/or what others, particularly their clients, had reported to them.

Positive Aspects of the Phone Line

Just over a fifth (21%, *n*=13) provided a positive response to open-ended questions about the phone line. Their comments generally related to the service being able to refer people to counselling, PTS and FDR, or to the staff being helpful.

It started off okay, quite helpful, they would speak to clients. Ask them where they live and tell them the closest PTS provider etc., and/or assist with FDR provider referral - but service has dwindled, they don't do that anymore. (2238, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

People are usually friendly, polite and do seem to want to help. (2272, Lawyer; Survey)

Someone eventually answers the phone. You get to interact with a human. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

You can get through to someone who is able to give you answers to basic questions, can often get information you need when you can't get hold of the registrar because of their busy workloads. (2274, Lawyer; Survey)

More general positive comments included:

I have not used this myself, but frequently refer clients to it and they seem to have success in getting through. (2203, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I've never used [it], but my clients have and they seem to have had no major concerns. (2533, FDR Mediator; Survey)

However, of 39 participants who responded to a question asking in what ways (if any) the phone line was working well, over half (54%, $n=21$) indicated that they either believed **the phone line was not working well** or provided a **negative comment**. These comments have therefore been amalgamated with responses to a separate question about how the phone line could be improved and other general comments. An analysis of these responses revealed the **two most common issues** with the 0800 2 AGREE phone line reported by survey participants related to: i) the information and advice provided; and ii) difficulties getting through to an operator and/or Family Court staff.

Negative Aspects of the Phone Line

The professionals identified several negative aspects about the phone line, including the information and advice it provided and difficulties getting through to an operator or Family Court staff member.

The Information and Advice Provided

The most common issue, reported by almost half of the professionals ($n=31$, 49%), related to the **information and advice provided by the operators** to parents and to professionals using the phone line. The professionals reported that feedback from their clients on the 0800 2 AGREE phone line was that the information they were given was too general, not helpful or incorrect.

It is too vague, people don't seem to understand what is going on after they have phoned. (2221, Lawyer, FLAS Provider; Survey)

Feedback is that ... the advice is not useful. (2185, Judge; Survey)

The support people can get [from the phone line] to use the website is minimal. (2303, Lawyer, Lawyer for the Child; Survey)

They have no idea what they are talking about. This is not Kmart. (2333, Lawyer, Lawyer for the Child; Survey)

I have also been told [by] my clients they find it confusing as you call and sometimes have to explain what you would like three or four times. (2217, Lawyer, FLAS Provider; Survey)

The information being given to callers needs to be CORRECT. ... I think it should be helpful, but I know in some cases, callers are given incorrect information about where to find services relating to PTS. ... That can make things difficult when dealing with a person who has been given incorrect information. (2191, PTS Facilitator; Survey)

We speak to people who have called this number and have found it frustrating as they have not received the information they have asked for. (2295, FDR Mediator, FDR supplier Staff Member; Survey)

I do not know whether it provides any help at all. Anecdotally, people tell me they do not know what to do and how to find out and no-one is able to help them. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, PTS Facilitator; Survey)

Clients I've spoken to have said the person on the phone didn't know anything and told them to come into the Court. (2417, MOJ/Family Court Staff Member; Survey)

I have heard mixed reviews about whether the call centre operators know what they are doing. (2567, Lawyer, Lawyer for the Child, FLAS Provider)

Several professionals complained about the **operators' lack of knowledge, particularly in relation to legal matters**, and instances where incorrect advice had been given to callers.

I started by referring people to the 0800 2 AGREE number. ... However, feedback came back from [the] community about incorrect advice being given to callers, particularly in relation to relocation cases, so I stopped giving them the number. (2162, Lawyer, Community Law Centre Staff Member/Volunteer; Survey)

I have had a matter where the opposing party gave evidence in the fixture that she had received advice from the phone line that she could relocate with the children without consent of the other parent. If this is true, I have concerns about the phone line giving advice to parties. (2411, Lawyer, FLAS Provider; Survey)

It is not working well as the people who are answering the calls have no idea about how the Family Court system operates or what would constitute an urgent referral to a lawyer. (2472, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Concern was also expressed over the **limitations of a phone line providing general advice** rather than localised or more personalised legal advice.

Telephone advice is extremely limited in its application, and must be given circumspectly. Full details of all matters must be canvassed to ensure the best advice is given. Clearly that has not happened on a number of occasions, and trying to improve on something that has failed the community credibility test would be difficult. Qualified and experienced people would need to be involved in developing any possible improvements. (2162, Lawyer, Community Law Centre Staff Member/Volunteer; Survey)

Get rid of it, and have local operators who are knowledgeable about the local resources which can be co-ordinated. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

People want legal advice - who answers the phones? Do they have any legal qualifications? (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, CAB Staff Member/Volunteer; Survey)

I do not believe in this sort of info process. I give free advice to anyone who contacts me before they become a client. It is too subtle for push button phone answers. (2574, Lawyer, Lawyer for the Child; Survey)

Several participants suggested having a **more specialised call centre and/or staff with legal expertise/training** to better assist parents.

Significant training and/or Family Court experience (legal) [would improve the service]. (2472, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

By having an auto-link to a FLAS provider so people can get legal information and advice, not just procedural, about their case/proceedings. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

[It] could actually be a specific Family Justice phone line rather than transfer to the generic Court call centre to people who don't know what they are doing or how to be helpful. (2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Perhaps a centralised phone line for general enquiries. However, once a matter is on foot, people need direct access to people who have expertise in the legal area and an ability to address specific issues relating to their matter. (2361, Lawyer, Lawyer for the Child; Survey)

A direct phone line that goes to professional and experienced staff in matters relating to the Family Court, not a generalised call centre response, should be provided. (2352, Psychologist, Specialist Report Writer; Survey)

Further training required. Perhaps they should all be trained in specific areas rather than them all having some knowledge on all areas. (2272, Lawyer; Survey)

As well as concerns about the information provided to parents, the professionals also reported issues with their own use of the phone line to ring the Family Court in relation to their own practice. They expressed **frustration with the lack of knowledge the phone line staff had about specific files in the Courts** and having to **use the 0800 number to access Court staff** to discuss cases.

It doesn't [work well]. I have tried it a few times and have given up. ... My preference is not to use it and I don't. My problem is that the registries where I mainly work do not have dedicated case officers. So if you get put through to a person, he or she has no knowledge of the file and therefore any assistance is limited. (2501, Lawyer, Lawyer for the Child, Private Mediator; Survey)

Impossible, time wasting, frustrating, do not understand the issues. Particularly dealing with [city] Courts. Staff [in another city] give us their direct dials thank god! (2558, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The person answering the phone cannot answer anything other than very basic queries. They don't know the legal ins and outs, don't know the files and don't appear to have any feel for the types of issues that arise in family cases. In probably 98% of calls I have made the person cannot address the issue. Attempts to transfer calls to the registry almost always result in the need to leave a message as they don't answer calls. Phone calls are not an effective way to get hold of the registry. This is really regrettable, as it used previously to be the case that we could contact the case manager, who knew the file and could address concerns. (2342, Lawyer, Lawyer for the Child; Survey)

They do not always seem to have a working knowledge of [the] Family Court. At times when I have wanted information, i.e., who the case manager is, I have not been given correct or clear information. I have also before been on hold for an hour. Other times half an hour is a usual wait time. This is particularly frustrating when I have files managed in the [city] Court as the phone number given is 0800 2 AGREE so I have no

choice but to wait and wait, only to be given incorrect information. (2272, Lawyer; Survey)

The 0800 Courts number, when answered after being on hold for a while, [the] people answering the call often cannot assist with queries. They have stock replies that actually do not address the question being asked. This has been my repeated experience. I do not bother ringing it anymore. If I cannot reach a direct contact at the Court I give up, even if it is urgent. (2303, Lawyer, Lawyer for the Child; Survey)

The operators can only deal with basic questions about files. If they can't answer the question you are directed to CMT email, which is frustrating as you often don't get a response when using this email address. (2331, Lawyer; Survey)

Difficulties Getting Through to an Operator and/or Family Court Staff

In addition to complaints about the lack of knowledge and helpfulness of the information provided by the phone line, the next most commonly reported issue by 29% ($n=18$) related to **lengthy waiting times** for the phone line to be answered and being **put on hold** for long periods of time. This was most commonly reported by professionals using the number to ring the Family Court in relation to their own practice, but they also reported feedback from clients experiencing delays.

The biggest issue with the phone line is the wait line for people who are calling wanting information. If I am referring clients to mediation and Parenting Through Separation, I often provide them with the direct phone numbers to the organisations so they do not have to wait. I have also been told by clients they find it confusing as you call and sometimes have to explain what you would like three or four times. (2217, Lawyer, FLAS Provider; Survey)

It is hard to get a person to talk to – my clients find it frustrating. (2241, Lawyer, FLAS Provider; Survey)

I have been on hold for up to 20 minutes. The security questions, at times, border on over the top, especially when it is a simple query. (2274, Lawyer; Survey)

There are sometimes significant delays in the phone being answered. (2303, Lawyer, Lawyer for the Child; Survey)

Professionals having to ring the 0800 2 AGREE phone line to speak to a Court registrar or someone at the Family Court in relation to a particular case found these **delays very frustrating**, especially when after a lengthy wait they did not get to speak to anyone who could answer their queries.

Very slow to get through to someone, can only get very general answers, and often need to speak to case officer, but cannot get through. Have waited at times for 30 minutes to get through to someone only to have my query not be answered. (2454, Lawyer, FLAS Provider; Survey)

I think the phone line is not working well. My direct experiences have been that using the service is impossible. Waiting times are on average 5 minutes of piped music and being told the service is busy etc., before getting through to a call centre person who

answers as 'Ministry of Justice' not 'Family Court'. You say you want to get through to the Family Court and they ask you, "What is it about?" This is not a response that I like from a non-qualified person who is simply directing the calls from a central call centre. When you are passed on there is usually another lengthy wait before being told that no-one is available and would you like to leave a voice message. So 15 minutes spent on the phone seeking to speak to someone and then being asked to leave a message for them to call back. Essentially I think this is not providing access and is a non-service. I will not recommend people use this 0800 line anymore. I worry that perhaps the lack of use will be interpreted as success? – when, in fact, an adequate service is not being provided. (2352, Psychologist, Specialist Report Writer; Survey)

Often as lawyers we call the phone number only to be told that the specific Court registrar you need to speak with is unavailable, thereby wasting 20 minutes of your time on hold. ...They could have more call takers so that you are not on hold. They could have a separate phone number for lawyers. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Attempts to transfer calls to the registry almost always result in the need to leave a message as they don't answer calls. Phone calls are not an effective way to get hold of the registry. This is really regrettable, as it used previously to be the case that we could contact the case manager, who knew the file and could address concerns. (2342, Lawyer, Lawyer for the Child; Survey)

Nine professionals suggested having a **separate phone line** to the Family Court or reverting back to being able to **direct dial case workers or Court staff**.

Get rid of it. Revert back to the previous practice where files had case workers and case workers had phone lines. (2320, Lawyer, Lawyer for the Child; Survey)

Lawyers should not be required to use the phone line to access registrars at their local Courts. It is frustrating and time-consuming to be on hold or have to explain a case to a third party when the matter just needs to be directed to the case officer at the Court. There are sometimes significant delays in the phone being answered. (2315, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

A direct phone line that goes to professional and experienced staff in matters relating to the Family Court, not a generalised call centre response, should be provided. (2352, Psychologist, Specialist Report Writer; Survey)

Every time I have called it has taken an age to get through. Then when you do, the people managing the calls do not know what to do. We need to get back to having direct access to Ministry of Justice workers, who have specific responsibility for files. This centralised system for complex matters just does not work. (2361, Lawyer, Lawyer for the Child; Survey)

Extremely long wait time. I generally just want to talk to the registrar managing my case or another registrar who is available. It would be better if we had direct access. Often when I ask to be put through, they put me through and then it goes straight to voicemail and I have to ring back and go through the waiting process all over again if I want to talk to an available registrar. (2458, Lawyer; Survey)

They could have a separate phone number for lawyers. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Other Issues Raised

Other issues about the phone line that were reported by professionals included **general negative comments**, or **miscellaneous complaints**.

I think it is an awful service. (2352, Psychologist, Specialist Report Writer; Survey)

The voice tape is muffled, cannot be clearly heard and options given [are] confusing. (2364, FDR Mediator, Counsellor, Social Worker; Survey)

I have had experience of parents being resistant to this, for a range of reasons no doubt. (2575, Lawyer, Lawyer for the Child; Survey)

There needs to be more publicity about the existence of this phone line and the services it offers. (2215, Lawyer, FLAS Provider; Survey)

I have referred clients to it and they have got back to me saying they were basically just told to ring another number. (2562, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Six participants **objected to the phone words 'To Agree'** in the name of the phone line, describing it as "ridiculous and patronising", "stupid" and "condescending".

It's badly named. ... Change the name - it should be 0800 2 INFORM. (2471, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

Change the name. At the time people are making contact they are wanting advice. One client said to me, "Why would I ring a number with that name?" (2563, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Given the predominately negative view of the 0800 2 AGREE phone line, three participants suggested that it should be abolished altogether and eight said they either did not refer clients to the phone line or only did this if they were required to do so.

I only recommend it because it is mandated for parents who do not have direct access to Court. (2221, Lawyer, FLAS Provider; Survey)

I would only recommend parents call the 0800 number if there is information they need from the Court - I do not see that it would be helpful in them trying to make arrangements. (2274, Lawyer; Survey)

I only ever referred people to it at the start - no client has told me positive things. It is in our FLAS advice letter, but I wouldn't actively recommend people to call it. (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

I only refer people to the phone line if they are FLAS clients and I am required to do so. (2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Interview Findings

Five of the 100 professionals who were interviewed spoke about the 0800 2 AGREE phone line. Two professionals commented in **generally positive** terms about it.

The system of them ringing 0800 numbers and finding out about FLAS and about mediation, I think that is working perfectly well. People don't complain to me it's not working well. It takes them a bit of time, but they do get answers. (2476, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

People will call us, that they're separated, and they don't quite know where to go. We say, "Look, ring the 0800 2 AGREE number. You really need an opportunity to see if you guys can sort this out. It might be that you don't need us at all." So yeah, they're doing it, but it's not the magic wand that the previous government made out. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

However, three others were **sceptical about the value of 0800 phone lines for separated parents**.

I've never used the 0800 number, but that's me being sceptical of ringing an 0800 number for any government department. I haven't recommended that to my clients. If a client comes in, I'm talking to them personally, not telling them to go off to a phone line, and likewise with a website. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I know there's the phone number to call as well, but that's not really very supportive. (2412, PTS Facilitator; Interview)

The idea for some people of ringing an 0800 number and getting questioned over the phone and having to fill in forms and sign things, it's all too hard for people. (2304, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Interview)

Summary

Seventy-three professionals shared their views about the Ministry of Justice 0800 2 AGREE phone line either by answering specific questions ($n=49$) or commenting more generally ($n=24$). Of those who elected to answer specific questions, 73.5% ($n=36$) had experience of calling the phone line and over two-thirds (67%, $n=33$) had directed other people (mostly parents/caregivers and their whānau) to it. However, 61% stated they would not recommend the phone line to separated parents/caregivers. Several mentioned that feedback from clients had not been positive. Over half (58%) rated the phone line as unhelpful or very unhelpful, with only 16% indicating it was helpful or very helpful for separated parents/caregivers making parenting arrangements.

Of the 73 participants who answered specific or general questions about the phone line, 63 (86%) with personal experience of, or client feedback on, the phone line responded to at least one of three open-ended survey questions regarding the phone line. Five family justice professionals also commented on the phone line in their interview with a member of the research team. Overall, these participants expressed predominately negative views about the 0800 2 AGREE phone line. The two major complaints related to the information and advice provided by the service and difficulties getting through to an operator and/or Family

Court staff. Phone operators' lack of knowledge and provision of unhelpful or incorrect advice was a commonly expressed concern. Professionals were frustrated with phone line staff not being able to answer their questions about files and having to use the phone line to access the Court to discuss cases. Lengthy waiting times for the phone to be answered, being put on hold, or having to leave messages for Court staff to ring back were added sources of frustration.

Concern was expressed about the appropriateness of the name of the phone line. The professionals also suggested that the service could be improved by having a more specialised and responsive call centre with well-trained staff, perhaps with legal training, and having a separate or direct line to the Family Court.

The 13 professionals who provided a positive response to open-ended questions about the phone line commended the helpfulness of the staff and the ability to refer parents to counselling, PTS and FDR.

Parenting Through Separation (PTS)

Survey Findings

Sixty-eight percent of the participants ($n=246$) had views they wished to share about Parenting Through Separation (PTS), either by answering specific questions ($n=186$) or commenting more generally ($n=60$). Of those who elected to answer specific questions, almost all (96%) had directed/referred parents/caregivers to PTS, and 23% ($n=43$) had experience of delivering or providing PTS.

Those 43 participants with experience of delivering or providing PTS were asked how satisfied they were with delivering or providing this service. As shown in Table 19, the majority (86%) were satisfied or very satisfied with delivering or providing PTS, with less than 10% reporting being dissatisfied or very dissatisfied.

Table 19: How satisfied are you with delivering or providing PTS?

	<i>n</i>	Percent
Very dissatisfied	2	4.7%
Dissatisfied	2	4.7%
Neither satisfied nor dissatisfied	2	4.7%
Satisfied	25	58.1%
Very satisfied	12	27.9%
Total	43	100%

Table 20 shows the percentage of participants who would recommend PTS to separated parents/caregivers making parenting arrangements. The vast majority (89%) indicated they would recommend PTS, while less than 3% said they would not.

Table 20: Would you recommend PTS to separated parents/caregivers making parenting arrangements?

	<i>n</i>	Percent
Yes	166	89.2%
Maybe	15	8.1%
No	5	2.7%
Total	186	100%

Table 21: In general, how helpful do you think PTS is for separated parents/caregivers making parenting arrangements?

	<i>n</i>	Percent
Very unhelpful	14	7.6%
Unhelpful	4	2.2%
Neither helpful nor unhelpful	11	5.9%
Helpful	99	53.5%
Very helpful	57	30.8%
Total	185	100%

As shown in Table 21, the majority (84%) rated PTS as helpful or very helpful for separated parents, with only one in ten (10%) rating it as unhelpful or very unhelpful.

The content analysis that follows details the participants' responses to open-ended survey questions about PTS, the majority (86%) of whom provided positive statements.

Of the 246 professionals who elected to answer specific questions or to comment generally on PTS, 242 (98%) provided a codable response to at least one of seven open-ended questions about PTS. These responses were coded as positive, negative or suggested improvements. Two hundred and seven professionals (86%) made one or more positive responses, 45 (19%) made one or more negative responses, and 118 (49%) made specific suggestions about how PTS could be improved.

Positive Comments about PTS

The 207 (86%) professionals who made **positive comments** about PTS commended the programme based on:

- client feedback they had received.
- their belief it was a good programme overall.
- its encouragement of parents to place their children at the centre of the process.
- the help it provided to parents to learn how to deal with separation amicably.
- its preparation of parents for the FDR mediation process.
- the forum it provided for parents to share their experiences and attend to any feelings of isolation.

Some professionals also felt that being a free programme contributed to the success of PTS and widened its accessibility to parents.

Forty-four percent ($n=91$) of those professionals making positive comments about PTS commented that the **feedback they had received from clients/parents** who had attended the programme influenced their positive impression of PTS. They reported that parents were positive about the programme and had found it helpful.

Clients generally comment how helpful this course is to them and often show much more insight after attending. (2586, Lawyer, FLAS Provider; Survey)

All feedback I have had from clients is that it was helpful. In the absence of any counselling or other support provided to separating parents by the Ministry of Justice this is an important resource and because it is free it is accessible. (2280, Lawyer, FLAS Provider; Survey)

The parties I deal with who have done it have all got something positive out of it, to a greater or lesser degree. (2568, Lawyer, Lawyer for the Child; Survey)

Heard positive comments from parents/clients - saying it did help them focus on their children's needs and voices, did help them feel "normal" meeting others going through similar experiences and sharing with them. (2314, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, FDR Mediator; Survey)

Clients speak positively about PTS once they have completed it. (2317, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

The people I come into contact with that have done PTS find it really helpful. (2429, FDR Supplier Staff Member; Survey)

PTS was also regarded by a diverse range of professionals (n=52) as a **good programme “overall.”**

I think this programme is really positive. As a lawyer we always get really good feedback from clients about this. I think it could be utilised even more than it currently is. (2208, Lawyer, FLAS Provider, Citizens Advice Staff Member/Volunteer; Survey)

Although clients are often resistant to having to attend PTS, for some it provides them with an opportunity to be heard and discuss ways in which you deal with the other parent. (2217, Lawyer, FLAS Provider; Survey)

Good 1st point of call. (2293, FDR Mediator; Survey)

I think people really get a lot out of it, by finding out they're not alone, and by getting the information from really empathetic people. People find when they go along that they can ask questions and get an idea about the bigger picture. People who have done it have always reported finding it a positive experience. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

It gives parents/caregivers some good information and strategies for dealing with the separation. As FDR mediators we present at our local course. We find this is invaluable as people are more likely to contact us if they have met us. (2167, FDR Mediator; Survey)

This course benefits our clients greatly, which means we are benefitting the children of our community. Our courses are extremely busy each month which shows there is a great need for this course to continue to be delivered in our community. (2382, Social Worker, PTS Facilitator; Survey)

Forty-two professionals specifically stated that the PTS programme held great value in that it **encouraged parents to place their children at the centre of the process**. These participants also emphasised that PTS aimed to educate parents/caregivers as to the impact parental separation has on the children involved.

It works well in that it gets parents out of their own heads and into their children's headspace and what it might be like for the kids. (2166, Private Practice Mediator, Counsellor; Survey)

It provides an opportunity for parents in conflict to think about the impact their behaviour is having/will have on their children on an ongoing basis. (2183, Lawyer for the Child; Survey)

It does focus the parents on making decisions with the children at the centre. (2219, PTS Provider; Survey)

It is effective in reminding people to be child focused through the family dispute process. (2564, Lawyer, Lawyer for the Child; Survey)

PTS was also commended by 29 professionals for helping parents to understand the issues and gain insight in **how to deal with separation amicably**.

Many parents attend with the attitude of “just ticking a box.” When they gain some understanding that parental conflict harms children, gain some knowledge about how to help their children or themselves, or decide to keep it out of Court for now, access services or decide to attend a course, I feel very satisfied that their children and themselves will be better off. (2593, PTS Facilitator; Survey)

Helping people see other perspectives and that their situation is not unique from early in their process. (2365: Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, FDR Mediator, Mediator (Private Practice), PTS Facilitator; Survey)

I see it giving parents a very clear understanding of what happens. They are not alone in having the concerns they express. All find something to take away, even the most bitter. (2196, Lawyer, FLAS Provider; Survey)

It works well in that it gets parents out of their own heads and into their children’s headspace and what it might be like for the kids. (2166, Mediator (Private Practice), Counsellor; Survey)

It does focus the parents on making decisions with the children at the centre and is very good at explaining the out-of-Court process. (2219, PTS Facilitator; Survey)

Parenting through Separation not only provides information, but helps shift attitudes about parental ‘rights.’ People who have attended often approach mediation with more realistic expectations of their children’s best interests and their responsibilities as guardians. (2368, FDR Mediator, Counsellor; Survey)

Twenty-three professionals thought PTS was helpful in **preparing parents for the mediation process**.

It helps participants to reframe the way they think about the separation, allowing them to focus on putting the needs of their children first. Mediators have reported that they know who has already done PTS, because they come to the mediation with a different mindset. The information in the programme is informative and based on sound advice, both parenting-related and in relation to the law. It can give participants greater clarity about how the family justice system works and increased confidence in their ability to navigate that system (whether that is by creating their own parenting agreements or going further into the process). (2339, Community Law Centre Staff/Volunteer, PTS Facilitator; Survey)

I find this programme broadens perspective, opens eyes on the child’s views and feelings, and induces a more ‘readiness’ space for parents to undertake mediation. (2250, FDR Mediator, Mediator (Private Practice), Counsellor, Therapist, Social Worker, Child Consultant; Survey)

In general, I find that parties attending mediation who have completed PTS have a better understanding of the issues and are more child-focused. They are therefore more likely to settle. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

Parties who have completed PTS appear on the whole to better understand what is required in a child-focused FDR than parties who have not completed PTS. (2277, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

Parents who I see coming to mediation who have attended PTS are in a better position to mediate, understanding how conflict impacts on children etc. (2383, FDR Mediator; Survey)

The collaborative format of PTS was found by 13 professionals to provide separated parents with a forum to **share their experiences and attend to any feelings of isolation**.

I think people really get a lot out of it, by finding out they're not alone, and by getting the information from really empathetic people. People find when they go along that they can ask questions and get an idea about the bigger picture. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

It provides a safe space for people experiencing similar situations to connect. When courses go well this can lead to ongoing support for some participants. (2379, Community Law Centre Staff Member/Volunteer, PTS Facilitator; Survey)

In giving a forum for separated parents to share their experiences with others in similar situations it can be invaluable. (2465, FDR Mediator; Survey)

The fact that PTS was **free to attend** was identified as an important feature of its success and widened its accessibility to separated parents ($n=13$).

It is great that it is free. I have received good feedback from parents about there being a large number of providers so that parents can slot into a day and time and at a venue near them without any issues. For this, the government and all its PTS providers need to be thanked. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

This is an important resource to maintain as a free delivery. I have seen it be useful for a number of my clients - particularly men. (2496, Lawyer, FLAS Provider; Survey)

Keep it going and keep improving it and keep it free to attend. (2498, FDR Mediator, Counsellor; Survey)

Concerns about PTS and Suggested Improvements

Accessibility to PTS

Concerns were expressed about the **delays** experienced by parents/caregivers in accessing PTS in a timely way and the **need for more programmes to meet current demand** ($n=45$). Suggestions as to how to achieve this included increased funding and offering PTS, or components of it, online. Professionals also stated that in some areas of the country it is

difficult for parents to attend separate courses in a timely manner due to the **limited number of PTS programmes provided** each month.

More opportunities for delivery of programmes. People drive long distances to attend to 'get it out of the way' and courses book up quickly. (2162, Lawyer, Community Law Centre Staff Member/Volunteer; Survey)

It is not always easy to attend a programme in a timely manner as too few are offered. (2174, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Be online. Lots of people we work with don't always live close by to where the courses run so having it online would be really helpful. (2429, FDR Supplier Staff Member; Survey)

We could deliver this service/contract to double (easily) the contract numbers we are allowed to provide for currently. We are always turning people away from our courses (in [city] and [region] particularly), due to being full, and recommending they contact our co-providers to see if they have availability. It would be great if we could supply in [region] as and when a course is required, as in many areas we can only schedule one course per quarter (due to contract constraints). So if someone misses that one date, they must either wait for the next quarter, or travel much further than 50km to attend in [city]. (2191, PTS Provider; Survey)

In smaller locations there needs to be more options available so that the parties can attend at different times. (2226, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

PTS Content and Delivery

Eighteen professionals expressed frustration with the **generic 'one size fits all' nature of PTS**. They commented that the programme was aimed at "parents" and should be altered to reflect the diverse nature of parenting/caregiving arrangements present in contemporary New Zealand.

The fact that it exists helps promote the fact that there are challenges to this phase of transition/family adjustment for everyone. But I believe that it is too generic to be able to provide much assistance for people with complex issues and family violence issues. PTS is too generic. A range of specialised programmes available over the internet could work better. (2187, Lawyer, Community Law Centre Staff Member/Volunteer, FDR Mediator; Survey)

The usefulness of this course is case specific - very useful for those new to separation/the system. (2216, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I think Parenting Through Separation is a general educational programme. The Parenting Through Separation programme is sadly the only program offered by the Ministry of Justice. It does not meet the special needs of many high conflict clients in the Family Court who do not have the pre-requisite skills to engage in mediation. The Ministry needs to triage parties and offer specialist programmes to high-complex parents to address high conflict issues/families. (2360, Psychologist; Survey)

The programme meets the classic case scenario of two parties separating where children are involved. Often the client base has changed and lawyers 'advise' a client to attend purely as a pre-empt to possible Court proceedings or just to receive the attendance certificate as an example of 'parenting'. Often the clients are not classic case scenario and may be grandparents having guardianship placed upon them, or are wanting guardianship and the 'legal' part of the course does not meet their needs. (2298, Social Worker; PTS Facilitator; Survey)

There was also concern that a number of people attending the course were not separated parents, but rather **other types of caregivers** with issues of their own.

[PTS should be] renamed so that it does not exclude non-parents involved in Court proceedings. (2418, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Private Practice Mediator; Survey)

'One size fits all' does not work! Not all applicants to Family Justice are separating parents, but have to go through the same class as if they were. (2162, Lawyer, Community Law Centre Staff Member/Volunteer; Survey)

Seven professionals suggested that a programme catering specifically for **grandparents** would be helpful.

A course specifically aimed at grandparents would be useful. A lot of grandparents already had custody of other grandchildren before the new legislation came into effect, so they don't understand why they are required to do the course for grandchildren who have come into their care after the new legislation ... as their circumstances have not changed. Also, PTS could be designed to be more appropriate to certain stages of separation. (2191, PTS Facilitator; Survey)

It has been particularly challenging facilitating PTS with people involved in CYF proceedings, with grandparents where course content generally isn't tailored for them, and seeing a significant number of family violence situations coming through. (2379, Community Law Staff Member/Volunteer, PTS Facilitator; Survey)

Concern was also expressed by some about the **quality of the PTS facilitators**.

The quality of the programme depends on the provider and presenter as there is quite a difference out there. ... More training for some of the presenters [could improve PTS]. (2564, Lawyer, Lawyer for the Child; Survey)

The competence of some of the facilitators in correctly messaging the out-of-Court journey concerns me greatly. (2293, FDR Mediator; Survey)

Cultural Competency

Six family justice professionals expressed concern about the PTS programme primarily reflecting Western culture and its general lack of cultural competency regarding Māori, Pasifika and other ethnicities. They felt this posed a barrier to people attending PTS and compromised PTS' ability to deliver effectively to people from different cultural backgrounds.

Culturally it would be helpful to partner with an Iwi or Māori based service or work with more Māori facilitators. (2486, PTS Provider/Facilitator; Survey)

We get low numbers of cultures outside Pākehā. (2219, PTS Provider/Facilitator; Survey)

These courses do not have tikanga Māori practices nor many Māori facilitators (as far as I know). (2379, Community Law Centre Staff Member/Volunteer, PTS Provider/Facilitator; Survey)

It is wise for Samoans to facilitate programmes for Samoans as it is a lot easier and effective. (2393, Counsellor; Survey)

It should be culturally appropriate. Presently it is a Western model. One size does not fit all. Unless it is culturally appropriate, those who are not Pākehā will feel intimidated by it as they won't be able to relate to it fully. (2536, Judge; Survey)

Funding

The **inadequacy of the current funding** for PTS was commented on by 23 professionals. Ten of these were PTS providers or facilitators who suggested that **a funding increase was needed** to provide them with better remuneration and more access to training and professional development.

The remuneration is very poor - so I think that people do it for a while, become proficient and then leave, because the pay is so poor. It is a highly skilled job to deal with the complexities of people's situations, emotions and challenges, and I do not see this reflected in the pay. (2230, PTS Provider/Facilitator; Survey)

I don't know about the funding provided at an organisational level, but I think as I am a facilitator with 30 years' experience I should be paid more than I am. (2260, PTS Facilitator; Survey)

The other professionals ($n=13$) who also raised funding concerns suggested that greater resourcing would allow the PTS content to be reviewed and access to PTS to be improved.

It's good, but the lack restricts its effectiveness. (2283: Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Mandatory/Optional/Judge directed

Whether PTS should be mandatory or optional was mentioned by 37 professionals, of whom just over half ($n=19$) argued for mandatory attendance by both parties.

It is good that it is compulsory. However, it should be compulsory for respondents as well as applicants right at the start of the proceedings. In other words, if FDR has failed and an applicant has to attend PTS, the respondent should also have to attend PTS before filing a Notice of Response. (2225, Lawyer, FLAS Provider; Survey)

Having this as a gateway to the Family Court is useful because it forces clients to attend that otherwise would not. (2434, Lawyer, FLAS Provider; Survey)

However, the other half ($n=18$) argued that PTS should be optional or judge-directed on a case-by-case basis.

Should not be mandatory, but judge-directed if right for the case. (2216, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I do not believe it should be a prerequisite to filing an application. Perhaps something a judge can direct someone to attend. (2361, Lawyer, Lawyer for the Child; Survey)

Caregivers seeking 'permanency orders' should not be required to complete the course (e.g., grandparents applying for COCA orders upon the encouragement of Oranga Tamariki - for children in care or not). Currently the registry turns a blind eye and deals with this anomaly 'administratively'. However, it is clumsy and unnecessary. (2361, Lawyer, Lawyer for the Child; Survey)

Interview Findings

Forty of the 100 professionals (40%) interviewed in this study spoke about PTS. Like the survey findings discussed above, half of the professionals ($n=20$, 50%) made **positive or very positive comments** about PTS describing it as “highly effective”, “really great”, “really good”, “excellent”, “fantastic”, “amazing”, “fine”, “great”, “good”, “a great idea”, “a very worthwhile programme”, “working very well” and “evidence-based.”

The Parenting Through Separation course is great. It provides really good information for people to think about. (2347, Counsellor; Interview)

I actually think Parenting Through Separation is the best part of the whole deal. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

PTS works well, because it does give good information, it's accurate and it gets people feeling like they know the next step. (2299, PTS Facilitator; Interview)

[PTS] is good. If it's well done, you get parents coming out of it where they've been challenged to think a little bit about their attitudes. It's done quickly. It's a couple of hours twice - up here they get it out in a fortnight, so it's relatively quick. It's well put together. It's easily paced. People are getting a lot out of that. I think that it's well worth it. (2518, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Interview)

The Court can only really deal with just the band aid stuff, it can't actually make co-parenting work and so that's where the real resource needs to go. That's why the Parenting Through Separation programme has been so highly effective because it's a low tariff for people to go to for four hours, flexibly provided, and it just gives them a few key insights that can be really fundamental in helping shift their perceptions. A part of what I've been doing is being involved in the Parenting Through Separation programme as well and that's often the most effective thing in helping people get on the right track. When they're a bit bewildered and hurt, and figuring out what their world now looks like, and just wanting to get some direction. Often a few key bits of information they get in that programme can help their thinking about things become more constructive. ... Locally there's been some really good feedback about how the Parenting Through Separation programme has worked. (2365, Lawyer for the Child,

FLAS Provider, Community Law Centre Staff Member/Volunteer, FDR Mediator, Mediator (Private Practice), PTS Facilitator; Interview)

PTS is an amazing programme. ... I think that it is a really, really good programme. ... The whole four-hour programme is brilliant. It's clear, it's divided up into modules, people get things to take away. They have got videos, they have got amazing resources. People don't want to sit in a room and be lectured at for four hours. They need something cogent, they need something interactive so they can ask questions. They cannot think, "Oh, my goodness, these people are judging me." By giving them the packs and the information sheets, it's keeping it simple; they've got something to take away. It's a bit like going to the doctor and feeling a bit like if you don't walk out with the prescription, then you haven't got what you went for. I find that if you give people the information in simple language that they can understand, they will then go back and use it. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

Parenting Through Separation is a really useful thing and it's reaching a lot more people than it was previously. ... The impact of widening Parenting Through Separation and really pushing it has been good. It's a really helpful, well-researched, well thought-out programme that has really good things to say about how to help children. I definitely think that the Parenting Through Separation concept is a very good one. (2339, Community Law Centre Staff Member/Volunteer, PTS Facilitator; Interview)

Client Feedback on PTS

A quarter of the professionals ($n=10$, 25%) reported receiving **positive feedback from their clients** about PTS.

All I hear is positive things from parents. (2378, FDR Mediator; Interview)

I've heard a lot of really good feedback about it. (2361, Lawyer, Lawyer for the Child; Interview)

Everybody that I know who's been has said it was really helpful. (2319, FDR Mediator, Mediator private, Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Interview)

Clients do say it was quite instructive to them and quite helpful to them. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

They all come back and say they found it helpful. (2374, Lawyer, FLAS Provider; Interview)

Everyone who's been has said they have gained something out of it. Some people have gained a lot; some people even if they've just gained one thing that helps them, that's good. ... I have heard positive reports from all my clients who've done it, which has been good. It's probably a short enough amount of time that they consider it and prioritise it. (2329, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Interview)

Three lawyers, however, noted their receipt of **mixed client feedback**.

I get mixed reviews back as to how helpful PTS is to people. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

There's some people who are very open to it. Others - at least when they see me - are only there to get the certificate. But I also have good feedback from clients who say they enjoyed going. I couldn't tell you whether those were the same ones who were resistant to going, but generally it's positively received. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

There's a couple of bits of it that [people have said] was a waste of time, but you'll always get some people that will criticise something that most people think is excellent. (2576, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

Recommending and Referring Clients to PTS

Ten professionals (25%) said they recommended PTS to clients, encouraged them to attend the programme and, at times, made referrals to it.

I think any family lawyer who knows about family law would be saying to parties who are separating, or squabbling over their kids, get yourself along to that programme. (2361, Lawyer, Lawyer for the Child; Interview)

I certainly refer all of my clients to Parenting Through Separation. That's something I definitely tell people about. ... What I usually say to people is that, "Even if you go along and your view is 'Oh, I knew that all along, it's common sense', well, that's good. You've been reassured that what you're doing is right." (2567, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I try to have all parents put in their agreements that they will attend PTS, because it puts them on the same page, using the same language, starting to look at it from the child's point of view and seeing how their dispute is affecting the children. (2576, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

As a mediator, if people haven't done it, I really encourage them to do it first. A lot of people don't even understand what rights they have, or the other parent has, as guardians. They'll often make decisions thinking they have the day-to-day care, therefore they can make guardianship decisions by themselves, all those sorts of things. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, PTS Facilitator; Interview)

Two lawyers even recommended the PTS programme to clients who were on the **without notice track** and did not therefore need to attend.

The facilitators are really good and I highly recommended it to any and all of my clients, even the ones who didn't have to have it as a without notice. I said, "You're going to go do this and I will chase up on that." (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

With a lot of my clients I suggest that [PTS] might be something that they want to do anyway, even if we do apply without notice. That has been helpful because they're

often saying to me, "Oh, at my course we learnt dah-dah", and when we get to the round table meeting process they're saying, "Oh, I need that, I need to work like this", or whatever. (2272, Lawyer; Interview)

One PTS facilitator, however, questioned whether separated parents on the without notice track due to **family violence** issues should be attending PTS.

Occasionally, we will get people on the course who shouldn't be on the course. They will disclose family violence or something else - and you don't say this - but in your head you're thinking, "Well, you could have skipped these bits and gone straight to Court." ... A fair chunk of people who go to Parenting Through Separation have been referred by their lawyers. Sometimes it's not clear if the lawyers think that this would just be a really useful tool for them, or the lawyers have not really grasped that there is family violence in the background. ... If there's family violence then they don't have to attend PTS. It might still be useful for them but they don't have to - they can go to the without notice track. The PTS is still quite useful, but the problem is that the next step from PTS is Family Dispute Resolution. If there's family violence then FDR may be hugely inappropriate, but they're kind of being funnelled towards that because no-one's saying, "Hey, maybe this isn't the track you should be on." (2339, Community Law Centre Staff Member/Volunteer, PTS Facilitator; Interview)

Another PTS facilitator suggested that **doctors could be making referrals** to the programme.

I always look at how people are referred. A lot are referred through lawyers or Citizens Advice Bureau or family and friends, but maybe doctors could be referring. (2299, PTS Facilitator; Interview)

Lawyer Attended PTS Themselves

Three **lawyers attended PTS** so they would better understand the programme and what the clients they referred would be gaining from it. Two specifically said they found the experience enjoyable or beneficial. One also found the continuity in messaging between PTS and other professionals particularly validating.

I actually went and did the Parenting Through Separation with my [work] ... because I was going to be required to send some of my clients to it. I went to see what it is and what they did and I quite enjoyed it. One of the things I liked was that there was a lot of continuity in the messaging between what they would hear from me, what they would hear from the Parenting Through Separation provider, what they would hear from a judge, and Lawyer for Child for that matter, around focusing on your children and the children's needs. I thought it was quite validating for that reason, knowing that different sectors are all on the same song sheet. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I actually went on one just so that I knew what my clients were going to. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

When I first started as a family lawyer, I did PTS because a senior lawyer who was heavily involved [said] "You should go do it because it's only four hours of your life and you're sending clients on it." I went, "Absolutely, I agree" and I found it really

beneficial. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

A PTS facilitator agreed that there was value in professionals – particularly mediators and lawyers – attending a PTS session to learn more about it and to better understand what their clients are gaining from the programme.

It would be helpful sometimes for those other providers - the mediators and the lawyers - to come along to a [PTS] session and actually see what is being delivered and what people are getting out of the sessions. That would also help their understanding of what people are getting from the course. (2260, PTS Facilitator; Interview)

Diverse Range of PTS Clients

Four PTS facilitators described the **diverse range of separated parents** who attend PTS, including those who are very recently separated (some of whom for which PTS can be too soon), or already involved in FDR, or with considerable experience in Family Court proceedings (where the cynicism and entrenched views of some clients can create challenges for PTS facilitators).

We get a whole range; people who have only just recently separated, some who have been going for years and years through that process of going to Court all the time. (2260, PTS Facilitator; Interview)

We occasionally have people who have very, very recently separated, like weeks, and they are not in the right head space to do PTS. It's way too soon - they are still trying to work through the grief of that relationship break-up. It's very raw and it's very difficult for them to focus on that bigger picture because understandably they're just not in that position. ... We get some people who come to us who talked to a friend or they've gone to a lawyer and they've been referred to come to PTS and they come along because they want to learn some better skills. They are aware that this is a problem because of the separation. Things are going wrong and they want to do their best for their kids. But there's another group of people who come to PTS because they've already gotten part way through the Court process and then been referred back to us. For them Parenting Through Separation is not that helpful because their view of FDR and the Family Court is much, much more cynical. ... Not always, but often those that are coming back after having already been embroiled in the family justice system and are being required to come back and do PTS, or have got partway through the process and then are doing PTS, are often much more entrenched in their views. It's much, much harder to connect with them. (2339, Community Law Centre Staff Member/Volunteer, PTS Facilitator; Interview)

There's always a few who are already involved in FDR or who have a pending application to the Court. But the majority of them are just delighted to learn about it all and really wanting to know what's going on and what they might be facing. (2385, PTS Facilitator; Interview)

Ex-partners usually attend separate PTS programmes, but one PTS facilitator had sometimes experienced **both parents participating in the same programme.**

A number of times over the years, I have had the other parent arriving. I've actually had one course where they didn't identify themselves until the end - they had attended the whole course! I'm like, "You guys are a couple? Good heavens, I can't believe it." They behaved really well. I always say, "Look, I'd be happy to work with you if there was just you two, but in a group the chances of you being triggered by your differences are so high that it just wouldn't be fair on everybody else." (2385, PTS Facilitator; Interview)

One lawyer questioned whether sending **grandparents** to PTS was desirable.

It seems completely redundant to be sending a grandparent or a caregiver who's been approved under Oranga Tamariki to Parenting Through Separation because it's the only approved parenting information programme under the Regulations. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Another lawyer felt that "**really chronic people**" would not benefit from PTS, while a counsellor felt similarly about people with "**pre-formed ideas.**"

The key thing from my point of view, particularly as Lawyer for the Child, is getting an appreciation of the situation from their child's point of view, and having an understanding of the impact on their children of their behaviour. The really chronic people, it's not going to make any difference, because they can't see regardless that they are part of the problem. (2329, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Interview)

I've experienced and observed that some parents come with pre-formed ideas and they go away not having taken on board the excellent material that is perhaps quite often new to them, that will help them to put their children first, or to at least think carefully around their children's needs. (2575, Counsellor, Professional Association Staff Member; Interview)

The Impact of PTS on Clients

The opportunity for clients to engage in a group education programme where they were exposed to the views and experiences of other separated parents, and might therefore gain some **insight into how their own ex-partner was feeling**, was the greatest impact of PTS reported by the professionals who were interviewed ($n=9$, 22%).

It's a really good opportunity for people to sometimes hear what possibly the ex-partner has been saying, but because they hear it said by another parent on the course then it actually makes sense and the penny drops on it. So I think it's got value. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

It's about other men and women being able to hear the effects of how the other parent feels. (2412, PTS Facilitator; Interview)

Because it's a mix of Mums and Dads, and they're each talking about their own situation, it enables people to develop some empathy for the other position. Say for the Mum, they get to sit there and hear a Dad explain his situation – "I tried this and I tried that and now she's accusing me of stalking her and I just want to see my child." Then Dad gets to sit and hear a Mum saying, "The kids were waiting out by the

letterbox for half an hour and they're crying." So they develop, not a total understanding, but a bit of an understanding of how it feels to be on the other side. (2483, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

There is some value in having people sitting on opposite sides in the same room because they can hear the thought processes that have led other people to make the decisions that they did. (2339, Community Law Centre Staff Member/Volunteer, PTS Facilitator; Interview)

The people who do come back and report to me often they say, "Oh woah, there was somebody there and they had it so much worse than me and I actually realised it's maybe not quite so bad." (2567, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

The first part of the course is a wee bit therapeutic. I give all the participants an opportunity to kind of talk about what's going on, but keep it very brief. Like we don't try to go too deep unless there's the time allowed for that. Usually, in the second part, when we are talking about the Court processes and parenting plans, all the frustration comes out at that stage because people don't really know how they're going to get their ex to agree to anything. When I'm speaking to people about that, I think just a lot of empathy, a lot of understanding. People tend to get a lot of support from the rest of the group. They understand that there's other people going through the same issues. (2412, PTS Facilitator; Interview)

It certainly does work better when you've got both men and women there, because sometimes it's helpful for them to hear the other side in a way. It's kind of a neutral way of doing this. Even though everybody's situation is very unique, there's always quite a few common themes, and when they can hear somebody else talking about something that might be very similar to their situation, they can then hear actually what it is like for that person and be able to apply that to their own situation. It just gives them a different perspective on what they thought was going on. Sometimes we kind of imagine what's going on for the other person. To just be able to sit back a little bit and imagine maybe there's some other things going on for them. Sometimes it's really helpful for people to hear each other's side of the story. ... For a lot of people, particularly guys, they don't necessarily always share very much of what's going on with other people and coming to the course is quite non-threatening. Being able to talk to strangers sometimes means people feel a little bit freer in just sharing what's going on for them. They often comment that they get as much out of everybody else's stories and sharing that information with each other, than perhaps what I've got to share with them. That's really valuable and just an opportunity to give them some time to pause and reflect on their situation and their role in it in a non-threatening way. ... I have a bit more of a hands-on approach as I get people to brainstorm every part of the session. So it's really much more about them inputting and them coming up with the answers. I think that sets up an environment where they feel comfortable to talk and share what's going on for them. Definitely some groups gel more than others. The ones that really do, there's almost a sense of camaraderie I suppose – we're all in a similar boat! It helps to open people up a bit, especially if there's a bit of joking and laughing. People then start to be able to see other people's situations, and sometimes it certainly makes people think, "Oh gosh, perhaps mine isn't so bad!" There's always somebody who's in a worse position than you. (2260, PTS Facilitator; Interview)

Conversely two lawyers felt that the group sessions provided a forum for clients, particularly separated fathers, to **bolster their sense of unfairness** or to come away with generalised views about **shared care**.

I think there could be much more focus given on co-parenting. One of the problems I constantly hear back from people is that they go to PTS and they find people who are similar to themselves and they have a big bitching session about how unfair everything is - that takes away from the focus of the Parenting Through Separation course. Typically, it's hard-done-by fathers and they will have a little group discussion there and they'll find people who are in similar situations to them and they all flock together and have a big bitch and moan about it. I don't think that that's really conducive. (2183, Lawyer, Lawyer for the Child; Interview)

In many ways it's good to send people along to PTS, but I've had some men come away with some odd and interesting ideas after doing PTS and funnily getting the idea that they can have shared care of their children. (2201, Lawyer, FLAS Provider; Interview)

Five professionals talked about PTS making a **noticeable difference in their clients'** readiness to mediate, ability to focus on their children and likelihood of ending up in the Family Court.

I notice a huge difference in the parents who've done Parenting Through Separation and the parents who haven't. Markedly, markedly. There are some parents that go and do Parenting Through Separation, and it's like the biggest revelation, it's really significant. (2250, FDR Mediator, Mediator (Private Practice), Counsellor, Therapist, Social Worker, Child Consultant; Interview)

I'm noticing it really puts them one step ahead ready to mediate. PTS is the first taxi off the rank; do that, then mediate. (2378, FDR Mediator; Interview)

Most people who come to mediation have done it and they've found it useful. Because they're so involved in their feelings, it just helps them to sort of look outside themselves at how kids experience things. (2509, Lawyer, Lawyer for the Child, FLAS, FDR Mediator, Mediator (Private Practice); Interview)

The parties going through Parenting Through Separation were significantly less likely to end up in the Court system. So, that's a positive effect. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

Accessibility to PTS

Just two professionals commented on the fact that PTS is **free** to attend and they felt that this was "useful" and should be continued. While PTS has been more widely available since the 2014 reforms took effect, four professionals were concerned about **clients' accessibility** to the programme, particularly in provincial areas but also in cities where there were inadequate spaces and lengthy waiting times.

We need more coverage; there was a delay in [region] and we were struggling to get people through in a timely fashion, meaning they weren't learning the skills which might reduce conflict. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

There's not as many providers as there should be and so you're looking at a two-month lag before you can get onto a PTS programme. ... We have only got two providers in [city] and we could keep them going full-time just from our practice. ... They need either more providers, or the providers need to have additional spaces, because everybody who enters the Court system in family law needs to complete that [PTS] programme, but not necessarily prior to filing proceedings. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

In [city] it's run on a regular basis, but when you start looking provincially it's not run on a very regular basis. Given that this is something that's compulsory to access Court, it's a difficulty when it's only run once a month and you have a time delay of being able to complete it before providing your Court documents. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Awareness and Understanding of PTS

The need for **greater awareness and understanding** of the PTS programme was raised by four PTS facilitators. They felt that the programme needed “to be promoted a lot” - for example, through “advertising” to parents or having lawyers recommend PTS whenever clients consulted them as their first port of call. The general view was that PTS should be seen “as the first step” or a very early step in the process. Clients also needed a better understanding of what the programme involved.

It would definitely be good for people to be told to come along, at whatever first contact they have with anybody, whether it's the lawyer or the mediator or whomever. Sometimes people might have done mediation first, or they might be quite a way down the track with their lawyer before they then end up coming to a course. Just have that a bit more reinforced that this is really the first step. ... Until you find yourself in that separation situation, you're not really aware of what's out there. I don't know whether there are other places that PTS could be advertised. A lot of the time people's first port of call is the lawyer ... and that should be the first place that people should get that message – “Hey, here's a booklet, work through this, go to this course and then come back and see me” or whatever. I don't know how much support for that idea the lawyers would have, but that seems to be where people have their first contact with the process. Apart from that, I guess it's just advertising wherever parents are, I suppose. (2260, PTS Facilitator; Interview)

People who come to Parenting Through Separation are often confused about how it works and what it is. They've been told various things. ... I don't think there's enough information out there and in part that's because when people first go to see a lawyer, that lawyer doesn't have the time to thoroughly explain the process because they've only got that limited amount of time and money. (2339, Community Law Centre Staff Member/Volunteer, PTS Facilitator; Interview)

A lot of them don't realise a lot of the time about the mediation and what their options are. They go to the lawyer as the first port of call and with the mindset that it's heading off to Court and they don't really always appreciate that there's a whole lot of other supports available for them. So it's really helpful for them to often just pause and go, “Oh, maybe there's some more we could do to help us stay out of Court.” I think that that's really valuable. (2260, PTS Facilitator; Interview)

PTS as a Mandatory Requirement

The **mandatory** nature of the PTS programme was commented on by 12 professionals (30%). One lawyer was **uncertain** whether it should be compulsory, but felt it was “an intervention that is useful to people.” Two other lawyers questioned “whether people find it valuable when it’s mandatory.”

The whole Parenting Through Separation comes across as a tick box that parties have to do before they can go into Court. I don't know how engaged they are in that making a difference for them, the way it's probably presented. (2422, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Interview)

Only a small percentage of separated parents, in one PTS facilitator’s experience, attended because they had to.

I'd say a very small percentage, 10 to 20 per cent of people, don't really want to be there. They're just doing it because they have to. (2412, PTS Facilitator; Interview)

Other professionals were strongly committed to PTS as a **mandatory programme**, particularly prior to participation in FDR or a final Parenting Order being made by the Family Court.

Parenting Through Separation needs to be absolutely [compulsory]. I don't think it should be a, “Oh well, maybe you can, maybe you can't.” (2250, FDR Mediator, Mediator (Private Practice), Counsellor, Therapist, Social Worker, Child Consultant; Interview)

I really like the fact that people are obliged to attend if they go through FDR. I also know that that's putting some people off going to FDR because they are not prepared to go to that course. They know how to parent and will not be told, thank you very much! (2347, Counsellor; Interview)

I would like to see Parenting Through Separation absolutely mandatory for everyone who goes through FDR, because I have seen some remarkable about-turns when parties have agreed finally to go to Parenting Through Separation. I've had a couple of mediations that I've adjourned so that can happen. (2266, FDR Mediator, Mediator (Private Practice); Interview)

It should be mandatory for all persons in the Family Court system to have completed PTS before a final order is made. ... It needs to be part of the final process for a final order that both parties have attended PTS and take it out of the pre-Court process. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

I don't think it's too much of a hardship asking people to do it before they make an application to the Court, that's absolutely fine. (2183, Lawyer, Lawyer for the Child; Interview)

Working with **resistant clients** mandated to attend PTS was a worthwhile challenge for two PTS facilitators who enjoyed turning clients’ attitudes around and helping them to see their situation in a new light.

The 2014 reforms impacted PTS slightly in that I'm getting a lot more parents who say they've been told to come. That wasn't really happening before the changes; now it is happening quite widely. I don't regard that as a problem though. I love people who are sent even if they're a bit grumpy about it. It happens to be the very dynamic that I love. I love the resistant clients and I love turning it around. (2385, PTS Provider/Facilitator; Interview)

I definitely think that PTS should be mandatory for both parties to come along. They're always going to hear different things, but at least they're both getting that information and they're both forced to be in that position of taking some time out, taking some time to take stock of where they're at and start imagining maybe there's another way around this and maybe that other person isn't doing what they're doing just to piss me off or annoy me. Maybe there's some other things going on for them that are making it hard for them to deal with. Just trying to get some of that empathy back and being able to see things in a different light, is really helpful for people. (2260, PTS Facilitator; Interview)

Time-span for the PTS Certificate

The two-year time-span for the PTS certificate raised mixed reviews. One mediator agreed with the “two-year lifespan”, while a lawyer questioned it.

I'm not sure there should be a requirement that you then have to do it every two years. I think that's getting a bit silly. (2201, Lawyer, FLAS Provider; Interview)

Some clients could be frustrated by the time-span, but a PTS facilitator with experience of clients returning to complete PTS a second time reported that they found this beneficial.

There are a few [who are] a little bit frustrated by the fact it's no longer valid after two years. I've had three recently who've come back for a second go. But then they said, "Oh well, I got heaps out of it and learned a lot more than I did the first time, so what?" (2385, PTS Facilitator; Interview)

Professionals' Suggestions to Improve PTS

A range of specific suggestions to improve the content and delivery of PTS were made by five professionals. These included: strengthening the emphasis on co-parenting; informing parents about the impact of alienation on children; adding a new layer of PTS at a higher level to cater for separated parents in more complex and high-conflict cases, extending the PTS exemption grounds, for example, when it is impossible for parents to attend because they, or their child, is in hospital; and allowing separated parents to undertake PTS as often as they want.

Education around co-parenting and alienation issues:

There could be much more focus given on co-parenting. (2183, Lawyer, Lawyer for the Child; Interview)

There isn't enough education at the early stages around those alienation issues, particularly for those naïve alienators. The Parenting Through Separation course can be helpful, but we need better education systems in terms of the importance of both

parents having a significant role in the child's life, the impact of that on the child long-term, because there are significant detrimental impacts on a child who doesn't have that opportunity, particularly if it's as a result of alienating behaviour. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

Adding another layer for more complex cases:

I'd like to see it really ramped up and I'd like to see another layer of Parenting Through Separation for really complex cases. I know some of my colleagues would be really keen to do some of that work. ... If we're going to spend money I'd rather ... put in another layer of Parenting Through Separation at a higher level to deal with alienated, complex, conflicted families and also to deal with families where there has been domestic violence. (2362, Counsellor, Psychologist, Specialist Report Writer; Interview)

Extending the PTS exemption grounds:

It's a minor issue, but there's not many grounds for an exemption to be granted for the Parenting Through Separation course. At the moment everyone has to do it. I think the only exemption is if they cannot fully participate, but that's really limited grounds. I haven't actually had anyone successfully use that ground. The main situation I'm seeing is when there's newborns, when we've got parents in hospital or children in hospital and it's just not actually possible in any way for them to attend. So I think those grounds need to be considered. (2173, Lawyer, FLAS Provider; Interview)

Allowing clients to undertake PTS as often as they want:

There should be the ability to do it as often as you need to because parents need reminders on a quite regular basis around what their obligations are. (2508, Lawyer, Lawyer for the Child; Interview)

The Perspectives of PTS Facilitators

Eight PTS facilitators with considerable experience of delivering the programme commented on issues that no other professionals raised during the interviews. These included their job satisfaction, professional development needs, PTS duration and content, as well as specific suggestions regarding services for children and the introduction of regular informal sessions of around an hour a week where previous attendees could drop in for support, advice, encouragement and guidance to continue applying their PTS learning.

Job Satisfaction

Three PTS facilitators discussed their satisfaction with their role. One enjoyed delivering the programme and found the work "very rewarding." Another who enjoyed the work nevertheless found the role "stressful" due to PTS' short duration and high emotions. The third facilitator, with four years' experience, did not enjoy delivering PTS because she finds it "quite emotionally hard going", particularly because of the constant presence of family violence issues.

It is a really good system. I really enjoy delivering the courses. Even though people are only coming for four hours you really do see some big shifts in people's thinking and it's very rewarding. (2260, PTS Facilitator; Interview)

I really enjoy the work, but the way the course is structured and with it being so short and the emotions so high, it can be quite a stressful job for myself and for a lot of other [PTS] facilitators. ... I would imagine that a lot of facilitators wouldn't do it for too long. ... After three years I'm starting to feel a little bit cynical of the system and I just feel so sorry for these people and there's no solutions for them. ... Even if it was something longer. (2412, PTS Facilitator; Interview)

It's a very worthwhile program and it has a lot of really good stuff for parents. I don't enjoy it personally because it's quite emotionally hard going. I've been facilitating Parenting Through Separation for maybe four years and in that time I've had maybe one or two courses where there was no family violence disclosure. ... You're almost always waiting for it or looking for it and that's both as victims and perpetrators. It's a sort of constant presence in that process. (2339, Community Law Centre Staff Member/Volunteer, PTS Facilitator; Interview)

Professional Development Needs

One PTS facilitator highlighted the importance of providing facilitators with opportunities to interact with other professionals and to observe a mediation session and Family Court proceedings to enhance their understanding of other aspects of the family justice system.

It would be great for [PTS] facilitators to be able to either see a mediation or sit in on a Court session, and just kind of get a really good picture about the whole system, rather than just doing your own little piece. Apart from that, maybe some sort of professional development, or some sort of opportunity for all the different providers to get together, that would be quite good. I did the one-day training session when I first started, and that's it - there hasn't really been any ongoing professional development. So that would be something that would be quite useful to do. Sometimes questions come up and, of course, people have different experiences of the Court process and you're never quite sure whether that sounds right. I've never seen the Court process so I don't really know what's involved there. Having those opportunities to extend my learning about the whole situation and being able to have that contact with other providers would be really good. (2260, PTS Facilitator; Interview)

PTS Duration

The four-hour duration of the current PTS programme, usually split into two 2-hour sessions, was **not considered long enough** by two facilitators who felt they had to move through the material too quickly and there was insufficient time for discussion and interaction. One of these facilitators suggested adding 30 minutes to each session (i.e., a total of five hours), while the other suggested adding a couple more sessions, particularly because separated parents could no longer access counselling.

Parenting Through Separation is a four-hour course, it's not enough time. ... I have to move through that material really fast and people just can't take it in. It doesn't need to be significantly longer, but it does need more time. ... You can have it as one four-hour session, but the preferred option is to have two hours one week and then two hours the next week. I like that format because it gives people that chance to go away and reflect and then come back. I predominantly facilitate that second two hours, which is all about options for care, legal arrangements, communicating well with the other parent, but I do have to move through that at a very fast pace in order to get it

done in that two hours. ... You've got to get that balance. Too long and then people either don't like it or you get bogged down as a therapeutic kind of thing and then that's also problematic. I would say at least another half hour on each session, so maybe a total of five hours rather than the four. ... It's just that there's so much content. ... I could do it if I was just going to sit there and read from the materials. If I did that then I'd be able to do it within that time frame, but that's not actually going to help the participants because they're not going to remember that. I like people to write down a lot of stuff themselves, work in groups so that they can talk to other people, to get a bit of experience from other parents, talk about what works, what doesn't work, drill into some of the issues that they've got, all of those kinds of things. (2339, Community Law Centre Staff Member/Volunteer, PTS Facilitator; Interview)

Parenting Through Separation is great, but it's so short as well. Even something that was maybe an extra couple of sessions, so it could go into those deeper issues and actually have some sort of long-lasting effect. ... PTS could definitely benefit from being longer, as there's not a huge amount of resources attached with counselling or anything like that as part of the process. I think if PTS was just about providing the information that would be fine. But a lot of these people don't see any counsellors, they don't have any idea of how the system works, unless they have been there, done that, or they're at the end of the process and they're actually just doing it to tick the box off and they're waiting for their next Court appointment. (2412, PTS Facilitator; Interview)

Another facilitator held **mixed views** on the duration of PTS, finding the four hours usually sufficient unless the attendees engaged in a lot of discussion.

Four hours is well and truly enough. Oh, I say that ... sometimes it is, sometimes you get quite a lot of discussion and four hours isn't enough. There's other times where it's pretty fast. It just depends on who's there and how much discussion they wish to have. So the length of time is very good. (2431, Social Worker, PTS Facilitator; Interview)

The fourth facilitator, while noting the lack of time for in-depth discussion, was nevertheless **happy with the current programme duration** and recommended that clients needing further advice seek this from other professionals like lawyers.

The length of the course is probably about right. ... We're pretty confined in terms of the time that we've got to cover [the PTS content], so we don't have a lot of time for in-depth discussions. If somebody does want to go into detail around their particular situation, we aren't really able to do that very much. ... Usually I'll just say that every situation is unique and that that's something they need to pursue with their lawyer or to get a second opinion or something. ... Most of the time people are pretty good. I haven't ever had anybody who's lost their cool or been very difficult or anything like that. Everybody who comes is very well behaved and, most of the time, pretty open to what the course is about. (2260, PTS Facilitator; Interview)

PTS Content

Having the ability to deliver the PTS content in a way that works best for the local community was considered “helpful” by one facilitator, while another suggested boosting the content around **communication with the other parent and with the children**.

The Ministry of Justice prescribed the [PTS] content, but they don't prescribe the way that we present that. I think that's very helpful. ... You want to have that freedom to respond to your community, or to the specific group, in the way that works best for them. (2339, Community Law Centre Staff Member/Volunteer, PTS Facilitator; Interview)

It's very light on how to communicate. The actual communication side of it with children and with the other parent can be a little bit light at times. It might be nice if there was a bit more around that. The second half is very much on the legal system, which is actually what everybody wants to know. They want to know about the legal side of it. What happens if we go to Court and how does it all work? (2431, Social Worker, PTS Facilitator; Interview)

Learning how to elicit their **children's views** is an issue that parents often raise at PTS and while this is addressed in the programme one facilitator was concerned about the challenges of parents doing this effectively in practice.

When we do Parenting Through Separation one of the issues that often comes up for parents is how to elicit their children's views - like how to do that in a way that's actually okay, because you don't want children to feel like they're being pressured into having to choose between their parents. ... Parents are often really scared that they'll say the wrong thing or that they'll create more stress and harm for their children if they don't ask them the right way. ... So we do talk about how you should let your child comment, and that you need to take that into account, but that ultimately you are the decision maker. It's important that they feel that they have been heard, but not that they are being required to choose. That's great, but talking about it at a two-hour session with a bunch of parents is vastly different from actually trying to do that with a seven-year-old, you know. (2339, Community Law Centre Staff Member/Volunteer, PTS Facilitator; Interview)

Another facilitator was very keen for **services** to extend beyond parents and be made directly available for children, for example, *Seasons for Growth*.

*From a programme perspective, I would like to see something for the children involved. It's all well and good to talk to the parents, but the children need good coping strategies as well. They need somewhere that's not the home to talk about their worries and their fears and all the things that they wish to talk about. I do know there's some fantastic programmes already out there that would easily meet those needs. For example, *Seasons for Growth* is a good one because it goes through grief cycles and it talks about that. That's a huge thing that's missing in the system, especially when it's aimed at kids as well. (2431, Social Worker, PTS Facilitator; Interview)*

Providing Regular Informal PTS Sessions

One facilitator proposed an **extension to PTS** through the introduction of regular informal sessions, of around an hour per week, so that previous attendees could receive additional support, advice, encouragement and guidance to capitalise on what they had learnt through the programme and apply it more effectively at home.

I do wonder whether there is some opportunity for some sort of ongoing more informal sessions - because often I find when people come along to the session, it's sometimes the first time that they have ever been exposed to any kind of self-awareness or thinking about the situation in a different way. I often feel they just have that little spark or that light bulb moment while they're on the course, and then that's it - they go away and there's no real opportunity for them to actually pursue that a little bit further. I wonder whether it would be great to just have maybe an hour a week where people can just turn up informally, where we'd do a 20- or 30-minute kind of session and then they'd just have a cuppa and chat. Then it's just open to anyone who has come along to the course to just keep coming back whenever they want. Sometimes that opportunity just to chat with people who aren't your family, aren't your friends - people don't want to burden them again. People do really seem to value that opportunity just to chat and to share stories and get some more information that might delve a little bit deeper because we do just really touch the surface of stuff and it's just like giving people a little hit of different things. For some people, it would be really great to just be able to go into specific points a little bit deeper. Like we touch on communication and what the things are that help communication, but you don't really have the opportunity to maybe do some role modelling or some brainstorming, different phrases and things like that. It would be quite helpful for people to just be able to keep continuing the learning that they've started around this whole process and to get that support from each other as well. ... People will hear whatever's on top for them right at this moment but, of course, through the whole journey they change and there's different things that are relevant at different times. Just being able to come back to some things that maybe weren't so key for them three months ago, might be something that they want to work on a bit more down the track. Just having that opportunity to keep exploring what they need to learn about would be really valuable. It would be quite cheap too - it wouldn't cost a lot to just run an extra hour a week or something for people to pop along to - to just keep supporting them to keep trying to work on things. It's easy to give up if you have an argument or whatever, and then you just kind of throw your hands up and say, Oh, it's too hard." But if they were to have a little bit more ongoing support, it would keep encouraging them to keep working at it, keep on that path that you want to achieve that ultimate outcome of us being able to do this together. Just to get a little bit more ongoing support might be helpful for a lot of people too. (2260, PTS Facilitator; Interview)

Summary

Sixty-eight percent of the family justice professionals ($n=246$) shared their views about PTS in the survey, either by answering specific questions ($n=186$) or commenting more generally ($n=60$). Of those who elected to answer specific questions, almost all (96%) had directed/referred parents and caregivers to PTS, and 23% ($n=43$) had experience of delivering or providing PTS. The majority (86%) of these 43 participants were satisfied or very satisfied with delivering or providing PTS - less than 10% reported being dissatisfied or very dissatisfied.

Of the 186 professionals who answered specific questions about PTS, the vast majority (89%) said they would recommend PTS to separated parents/caregivers making parenting arrangements. Less than 3% indicated they would not recommend PTS. The majority (84%) also rated PTS as helpful or very helpful for separated parents, with only 10% rating it as unhelpful or very unhelpful.

The content analysis of the 242 participants' responses to at least one of seven open-ended survey questions about PTS found that the majority (207 professionals, 86%) provided positive statements about this service, 45 (19%) provided a negative statement, and 118 (49%) made specific suggestions about how PTS could be improved. Forty family justice professionals also commented on PTS in their interview with a member of the research team. It is clear, from the open-text survey and interview data, that PTS is a highly regarded programme, with mixed views or concerns expressed by only a minority of these respondents. Most professionals described PTS in positive or very positive terms, received positive feedback from their clients on it, and recommended or referred clients to it. Some lawyers attended PTS themselves to better understand what the programme was about. The professionals particularly liked PTS' emphasis on placing children at the centre of the process and assisting parents to better understand the impact of their separation on their children.

The professionals described a diverse range of separated parents participating in PTS from those recently separated, to those attending FDR, or engaged in Family Court proceedings. Exposing clients to the views and experiences of other separated parents in the group sessions prompted clients to develop greater insight into, and empathy for, their ex-partner's attitudes and behaviours. PTS was also thought to make a noticeable difference in clients' readiness to mediate, focus on their children, and avoid ending up in the Family Court. However, there were concerns expressed about the Western model underpinning PTS, the lack of cultural competency, and the suitability of PTS for grandparents and other caregivers who were not separated parents, for the very recently separated, and for those with entrenched views as a result of lengthy engagement in Family Court proceedings.

While PTS was now more widely available as a result of the 2014 reforms, professionals were concerned about its accessibility in provincial areas and in some cities where there was insufficient capacity to meet demand leading to time delays for parents in attending the programme. Greater promotion was also thought desirable to increase awareness and understanding of PTS as the first or early step in the process for clients. There were mixed views on whether PTS should be mandatory – some professionals questioned whether requiring parents to attend diminished its impact on them, while others were strongly committed to PTS as a mandatory programme, particularly prior to participation in FDR or the issuing of a final Parenting Order by the Family Court. There were also mixed views on the two-year time-span for the PTS certificate.

Several professionals made specific suggestions to improve the content of PTS regarding, for example, co-parenting, the impact of alienation on children, communication skills and eliciting children's views. One professional recommended extending PTS through the addition of a new layer to cater for separated parents in complex or high-conflict cases, while a PTS facilitator suggested adding regular informal sessions for previous attendees to drop into as needed. Other suggestions related to cultural competency; increased funding; the provision of online sessions; greater diversity to avoid a 'one-size-fits-all' approach; and programmes for grandparents and for children.

PTS facilitators emphasised the rewarding nature of their role, but also the emotional toll it exacted on them. They wanted more professional development opportunities and greater interaction with other professionals in the family justice sector. Some were happy with the current four-hour duration of PTS, but others felt it was too pressured to get through the material in an interactive and engaging way that was meaningful and effective for the clients. Several commented on the insufficient time for in-depth discussion. Nevertheless, the widely held view of most of the professionals of PTS as a worthwhile and effective

programme with the ability to shift parents' attitudes is nicely summarised in this final quote:

Some people do a huge shift in that time, even though it's only four hours. We do cover a lot. People often comment that when they came into the course they were very much, "This is my position and I'm going to go to Court to get what I want." Then they do shift to starting to think about, "Oh, maybe there are some other possibilities, and maybe there are some other ways that we can work through this, and maybe I need to be able to give a little bit as well and to be willing to negotiate." It is amazing for a lot of people how far they do shift in that short time - just being able to open up and imagine some other possibilities, rather than just the one solution that they think is the right one. (2260, PTS Facilitator; Interview)

Family Legal Advice Service (FLAS)

Survey Findings

Just over half (51%, $n=185$) of the professionals completing the survey had views they wished to share about FLAS, either by answering specific questions ($n=143$) or commenting more generally ($n=42$). Most (82%) of those who answered specific questions had referred or directed separated parents/caregivers to FLAS.

FLAS Provision

Of those who chose to answer specific questions, 82% ($n=117$) had experience of providing FLAS, however, 16% ($n=19$) of those with experience were not doing so at the time they completed the survey. The **provision of FLAS was not particularly frequent**; 37% ($n=43$) indicated they provided FLAS infrequently or irregularly, and an equal number reported seeing between one and four clients a month. Only one in ten saw five or more new clients per month.

The most common reasons given for **no longer providing FLAS or doing so irregularly** included: the administrative burden involved; low remuneration and funding; lack of confidence in the effectiveness and quality of the service; low demand or lack of referrals; and workload. Ten participants commented that they found it easier to just do the work pro bono.

The invoicing was so complicated and the value so low that it is not worthwhile. I now simply give free preliminary legal advice over the phone if I have the time (rarely).
(2212, Lawyer, Community Law Centre Staff Member/Volunteer; Survey)

No real demand for it anymore - we do not have any confidence in the system - easier to provide free five minute telephone advice only. (2464, Lawyer, Lawyer for the Child, PTS Facilitator; Survey)

Generally, the FLAS providers were **satisfied with the number of FLAS clients** they received. Over half (55%) said the number they received was about right; 37% thought they received too few clients, particularly those who indicated they provided FLAS infrequently/irregularly or had between one and four new clients per month; and 8% thought they had too many FLAS clients, particularly if they provided FLAS infrequently/irregularly.

Table 22 details FLAS Providers' **satisfaction with their role**. Nearly 60% rated themselves as dissatisfied or very dissatisfied, and less than a fifth (19%) were satisfied or very satisfied.

Table 22: How satisfied are you with providing FLAS?

	<i>n</i>	Percent
Very dissatisfied	36	31.0%
Dissatisfied	33	28.4%
Neither satisfied nor dissatisfied	25	21.6%
Satisfied	16	13.8%
Very satisfied	6	5.2%
Total	116	100%

Mode of FLAS Delivery

Of those that did provide FLAS, nearly all (98%) did so face-to-face with clients, with some also delivering FLAS by teleconference/phone (15%), videoconference (6%) or online (4%). Twelve participants (not all FLAS providers) raised the issue of the mode of delivery for FLAS in their responses to open-ended questions. The **flexibility** to deliver FLAS in a manner that was easiest and most comfortable for clients was regarded by some as important.

Delivery is appropriately flexible. (2493, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

I try to accommodate the client as much as possible. Sometimes I see them at a café or quiet place near where they work to make it easier for the party as the whole process is stressful for them. (2294, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

We have found clients happy to receive FLAS advice by phone or by video-link. Generally they are more interested in receiving accurate and timely advice rather than having to come into the office. As an example, I had a client cancel her office appointment to receive FLAS by skype because she could have her toddler asleep for his afternoon nap, her new baby warm at home on her lap and not have to take them all by bus to an office. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

[I] like the way that FLAS can occur however it suits parties and practitioner (e.g., phone, face-to-face, skype etc.). (2454, Lawyer, FLAS Provider; Survey)

Some considered it advantageous being able to deliver FLAS **online**, via video link or over the phone.

Some providers appear able to provide this advice to clients via video link - that may assist parties in remote locations. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

Need better systems to enable remote advice which don't impose a huge burden on the provider to get the ID, signed consent, income details etc. (2204, Lawyer, FLAS Provider; Survey)

However, others thought that FLAS **should be delivered in person**.

FLAS advice should be in person and in writing. (2180, Lawyer, Lawyer for the Child; Survey)

I believe it needs to be done face-to-face to be most effective. (2294, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

FLAS 1 can almost be done over the phone given we refer the client to mediation and the Parenting Through Separation course. However, it's easier in person as we need to get their photo ID to invoice etc., and often the client just likes to share their side of the story. (2586, Lawyer, FLAS Provider; Survey)

Perspectives on the Helpfulness of FLAS

Tables 23 and 24 provide information about whether the professionals would recommend FLAS to separated parents/caregivers and how helpful they thought the service was.

Table 23: Would you recommend FLAS to separated parents/caregivers making parenting arrangements?

	<i>n</i>	Percent
Yes	101	71.1%
Maybe	29	20.4%
No	12	8.5%
Total	142	100%

Over 90% said they would, or might, recommend FLAS to separating parents/caregivers. However, there were comments from numerous participants that they only referred people to FLAS because there was no other alternative for parents to obtain advice or because they did not have a choice.

I only refer them to FLAS because they must do FDR as a compulsory requirement before entry into the Court system. (2215, Lawyer, FLAS Provider; Survey)

Would only recommend them to FLAS because what other choice do we have if they can't pay someone privately? (2204, Lawyer, FLAS Provider; Survey)

I recommend FLAS to separated parents because it is the only option for most of them, not because I think it creates good outcomes. (2395, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

You have no choice but to recommend FLAS - they cannot afford any other option! (2439, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I ticked yes to recommending FLAS because it is a requirement. (2258, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

I only recommend FLAS because I have to do so. (2343, Lawyer, Lawyer for the Child; Survey)

Thus, while less than 10% said they would *not* recommend FLAS to parents/caregivers making parenting arrangements this does not necessarily mean the professionals who did, or might, recommend it fully endorsed the service.

Table 24 shows how helpful the professionals thought FLAS was for separated parents/caregivers making parenting arrangements. As shown, less than half (49%) thought it was helpful or very helpful for clients, and just over a quarter (27%) rated it as unhelpful or very unhelpful.

Table 24: In general, how helpful do you think FLAS is for separated parents/caregivers making parenting arrangements?

	<i>n</i>	Percent
Very unhelpful	15	10.6%
Unhelpful	24	16.9%
Neither helpful nor unhelpful	34	23.9%
Helpful	58	40.8%
Very helpful	11	7.7%
Total	142	100%

One hundred and eighty-two professionals provided a codable statement in response to at least one of nine open-ended survey questions about FLAS. The content analysis of these statements that follows details participants' views on FLAS, providing perspectives on its efficacy and helpfulness and illustrating the reasons for their dissatisfaction with providing the service. The statements fell into three categories: positive aspects of FLAS; negative aspects of FLAS; and suggested amendments or improvements to the service.

Positive Aspects of FLAS

Nearly 50% ($n=90$) of the participants commenting on FLAS provided one or more **positive** statements about the service. These fell into three categories: provision of information and advice; preparation for, or referral to, family justice services; and generic or miscellaneous responses.

Provision of Information and Advice

The most commonly stated positive aspect of FLAS related to the provision of information and advice. Half of the participants ($n=45$) who made a positive comment about FLAS detailed how the service was helpful in providing people with some **legal advice or information and advice about the family justice system processes and services**. The provision of **free legal advice** was seen as particularly beneficial for those on a low income.

It gives parents an understanding of their legal rights and obligations and a forum where they can have questions answered which the FDR provider is unable to. (2507, FDR Mediator; Survey)

FLAS can sometimes give an opportunity for clients who otherwise would not be able to access initial advice to receive funding for such advice. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It is a useful tool for parents just wanting to know what the law is but not necessarily wanting to take any further action. ... I think it is working well. (2444, Lawyer, FLAS Provider; Survey)

It gives an opportunity for legal advice for low/no cost. (2520, FDR Mediator; Survey)

It provides necessary legal answers to questions for unfunded parties. (2409, FDR Mediator, Mediator (Private Practice), Counsellor; Survey)

There are some FLAS providers doing an excellent, timely job. ... FLAS is very important as people need to be able to receive legal advice prior to mediation to know their rights and responsibilities under COCA. (2295, FDR Mediator, FDR Supplier Staff Member; Survey)

Clients [are] made aware of guardianship rights and COCA. (2348, FLAS Provider, Community Law Centre Staff Member/Volunteer, FDR Mediator; Survey)

Being able to **inform parents about family justice services and processes** was seen as a key aspect of FLAS mentioned by nearly a third of the participants who gave a positive comment ($n=28$). FLAS was considered an important service to provide people with initial advice and information.

It gives people access to (supposedly) good quality, general advice about the law and the process. (2169; Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

People get comprehensive advice about their options at the start before issuing proceedings. (2180, Lawyer, Lawyer for the Child; Survey)

Gives clients a good clear understanding of what they have to do to resolve their matter by mediation and how to get to Court. (2264, Lawyer, FLAS Provider; Survey)

It gives parents basic information, lets them know their rights, helps them understand the process. (2274, Lawyer; Survey)

FLAS is very helpful and necessary now that lawyers are unable to act on 'on notice' applications. We are able to give clients advice on the entire Court process and give them a 'step-by-step' map to assist as they go through the Court process. (2272, Lawyer; Survey)

It is a useful process for triaging and assessing a client's situation so the client can then progress on appropriately. ... It provides a valuable 'triaging' system and way of giving clients information about options. (2493, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

It is quite useful in terms of sharing initial information. ... FLAS seems to be effective as providing a first-step advice service for clients not sure of what steps they could or should take. (2554, Lawyer, FLAS Provider; Survey)

It is a tool that is better than nothing, and does give clients some explanation of the family justice system and does give them a point of contact should the matter become urgent. (2468, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Definitely think it is helpful for confused public to get an overview of the PTS/FDR/Family Court process. They frequently turn up with incorrect information and views that have been passed on by lay people. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Important service to offer. The most important aspect is that often clients who come to see a lawyer simply don't know how to best progress their dispute, and delivering

FLAS also allows us to assess whether the client has other urgent needs. I am concerned that if FLAS is not available, vulnerable clients will be given the message by 'the system' that legal help is only available after they have undertaken various processes, which might be unsafe or unrealistic for them to do. ... Allows lawyers to maintain their role as point of contact for people with legal problems. (2338, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

FLAS works well for clients to come in, get initial advice about the different tracks in the system and to talk about their issues, to go away, reflect, attend mediation and then come back. (2586, Lawyer, FLAS Provider; Survey)

I think FLAS A can be really helpful for people in de-mystifying the Family Court and the FDR process and helping them to understand what their rights etc., are, and preparing them for mediation, or discussing mediated agreements. ... I think FLAS A gives people some advice that helps them understand the process, their situation, and can be really helpful for people. (2454, Lawyer, FLAS Provider; Survey)

Preparation for, and Referral to, Family Justice Services

FLAS was also regarded as helpful in **referring clients** to services, particularly FDR, and **preparing people for FDR** (n=15). Participants thought that receiving FLAS prior to FDR **better informed and prepared clients for mediation**. This then helped parents to set realistic expectations prior to mediation.

It allows people to enter into mediation who may not have otherwise. The lawyers that refer to us from FLAS are generally keen for mediation as a first step, as opposed to some other lawyers who file applications without notice to "avoid" FDR. People generally have started thinking about what is realistic or what they would like as a part of FLAS. (2167, FDR Mediator; Survey)

Parents who have accessed FLAS are much more informed about the process by the time they see me as mediator. (2284, FDR Mediator, Counsellor; Survey)

Parents who have received legal advice on the whole appear better prepared for FDR than those who have not. This leads often to better agreements. (2277, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

Parties come to mediation better prepared and more likely to reach agreement. ... Advice is crucial. Parties who've had advice are more realistic at mediation. (2573, FDR Mediator; Survey)

I think it is helpful for people to receive FLAS 1 prior to FDR. It sets expectations. People often don't understand the difference between guardianship and care/contact and often clients still come in asking how they can get "full custody/sole custody". People are often unaware of what various types of shared care might look like and how likely it is that the Court will implement some kind of shared care or how hard it is to have relocation approved or how long it will take to get to a hearing. I think FLAS 1 gives a reality check prior to FDR. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Overall it is a good service which enables clients to go into mediations well informed. Also assists in ensuring that cases that are inappropriate for mediation do not go down

that route. ... Good source of initial information for parties. Speeds up mediation process as parties know what their rights are, which then goes to the strength of any agreement reached. An agreement reached which both parties are happy with is more likely to last long-term. Many clients come to me and say that they just agreed at mediation because they did not know their rights. They are then seeing me because the agreement had fallen over. (2582, Lawyer, FLAS Provider; Survey)

It is good for people to have had some legal advice prior to FDR, so they know more about their options, and both parents' rights and responsibilities. (2550, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

FLAS was also regarded by one professional as a good step prior to making an application to the Family Court.

I enjoy providing this assistance to clients. It seems to really empower them for the next step. Parties are very grateful for the assistance. ... I see this as a valuable part of the process in enabling parties to access the Court on their own. ... It prepares parties to enter Court to represent themselves at the first hurdle. ... All entering Court should see a FLAS lawyer first. (2294, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Another six participants outlined how FLAS could **encourage parents to resolve their disputes themselves** and focus on their children's needs.

It makes parents try and work out issues themselves which can also be positive. (2226, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Steers parents to FDR and PTS. Alerts them to the interests of children. Gives parents confidence to think through possible arrangements that would work for the children. (2184, Lawyer, FLAS Provider; Survey)

The FLAS service has a key role to play in a family justice system that facilitates dispute resolution -- it can deliver avoidance, containment, and resolution advice, information, support. It is a critical service and even more important than PTS, in my view. ... The ability to get FLAS advice might be a key device in changing the woeful ratio of FDR exemptions we have established to date into something that will actually assist the Family Court to manage COCA applications and proceedings. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

It seems to provide a good start. It does provide a way for those trying to get a way forward for their children. (2196, Lawyer, FLAS Provider; Survey)

In most ways it works well. ... Overall it is a good system that encourages parents to work together - particularly mediation. (2458, Lawyer; Survey)

Generic Positive or Miscellaneous Responses

Forty per cent of the professionals ($n=36$) gave a **generic positive response** or outlined some **miscellaneous aspect** about FLAS.

It is a useful service. ... Clients are very positive. (2161, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

It's there as an available service. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

It is working well as it is. (2225, Lawyer, FLAS Provider; Survey)

It's good. ... Easy to explain FDR to clients. ... Quick to deliver to clients. (2232, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I think it is a great service and I encourage all my clients to use it. (2266, FDR Mediator, Mediator (Private Practice); Survey)

It is accessible. (2496, Lawyer, FLAS Provider; Survey)

From what parents tell me, it is working well. (2270, FDR Mediator, Mediator (Private Practice); Survey)

Delivery is appropriately flexible. (2493, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

This is a great service. (2533, FDR Mediator; Survey)

Generally time-efficient. (2210, Ex-Lawyer and FLAS Provider; Survey)

People experiencing a separation are experiencing trauma and the more support they have the more likely the time spent going through the separation process does not add to the trauma. The effect of separation does not have to be annihilation of the person, family and work place environment, but can be transformative and improve the outcome if people are properly supported. FLAS, PTS and FDR are a part of this support. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

It fills a need for parents. It provides a need that the legislation failed to realise. (2283, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

This group included three participants who commended FLAS because it **ensured they would be paid** for the advice they gave.

FLAS is a good 'back up' if a client comes to see you saying, "I need a Legal Aid lawyer for the Family Court" and then you realise that they won't be eligible to make an application to the Court (and are therefore not eligible for Legal Aid). Knowing that you will still get paid for the advice, via a FLAS application, is reassuring. This can stop lawyers from inappropriately inventing a without notice application in order to guarantee a Legal Aid fee (which, I am sad to say, I am very sure some lawyers do). Perhaps those lawyers need to be reminded that FLAS is available, and reminded how

it works. ... It allows parents to obtain quick and focused and free legal advice about the FDR process. It means lawyers can still give advice to low income parents, knowing that they will be paid. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Sometimes it means we get paid for work we might previously have done pro bono. (2317, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Get funds for advising when in the past I saw [people] and referred them to counselling. (2327, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Some participants ($n=8$) **qualified their general positive statements**, indicating they believed that FLAS did meet some clients' needs, but not all. FLAS was regarded as working well for less vulnerable clients and/or those with less complicated situations. Others stated that the quality of the service was dependent on the skill and competence of the FLAS provider.

It is meeting some clients' needs for advice and direction. It is not assisting families with very complicated situations. (2360; Psychologist; Survey)

It works if the parties are amicable and arrangements are usually agreed. It works if there are no safety issues disclosed during the appointment. (2534, Lawyer, FLAS Provider; Survey)

I believe that it works if the lawyers providing it have sufficient skill and judgement to lead the applicant through the process. (2196, Lawyer, FLAS Provider; Survey)

If providers are spending the time and advising clients properly (with experience) I think it is working at FLAS 1 stage. If providers are simply having inexperienced new lawyers doing FLAS and "clicking the ticket" then I don't believe it works. ... As long as it is delivered as a service and not simply a quick meeting to fill forms and get funded it is effective for parties. (2422, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Good way of giving "competent" people tools to move through the process, but for those with any challenges (literacy, mental health issues etc.,) it is inadequate. (2423, Lawyer, FLAS Provider; Survey)

I consider FLAS is adequate, assuming the lawyer providing the advice is competent and knowledgeable. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

[Okay] for intelligent, emotionally mature parents. (2490, Lawyer, FLAS Provider; Survey)

Similarly, several commented that while FLAS was, **in principle, a good service**, in practice there were problematic aspects and challenges.

In principle a good idea. (2361, Lawyer, Lawyer for the Child; Survey)

The concept in my view is fine – the Ministry of Justice then sabotaged their concept with bureaucratic processes and forms. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

System is fine as a whole, but the limitations on what can be done under this mean that you are often stuck on how much help you can provide. (2208, Lawyer, FLAS Provider, Citizens Advice Bureau Staff Member/Volunteer; Survey)

A good service for clients, but the limitation of it causes difficulties. (2502, Ministry of Justice/Court staff member; Survey)

As aptly summed up in the following quote, in the open-ended survey responses there was a sense that FLAS was perceived as helpful for providing *some* people with *initial* advice and information, but that there were problems with the service and aspects that needed to be improved.

It is a good initial advice service and will work for some families. ... Although FLAS is a great concept, it has a number of issues. (2217, Lawyer, FLAS Provider; Survey)

Concerns or Negative Aspects about FLAS

The vast majority of the 182 participants who provided at least one codable statement about FLAS raised an issue, concern or suggested improvement. These concerns and issues included: the value and utility of FLAS; access to justice; the funding of and remuneration for FLAS; the administration involved in delivering the service; and publicity and uptake.

Value and Utility of FLAS

Participants varied in their views on the value and utility of FLAS. Comments about this issue included: general negative comments; the limited nature of FLAS; the standard of the service; and access to FLAS.

General Negative Comments

While, as noted earlier, FLAS was regarded as a helpful service for the provision of information/advice and preparation for FDR, 22 participants explicitly stated that they believed **FLAS was not working** or that there were no aspects of FLAS that worked well.

It isn't working - plain and simple. (2215, Lawyer, FLAS Provider; Survey)

I don't think it works at all. (2343, Lawyer, Lawyer for the Child; Survey)

I don't see the benefits sorry. (2308, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I think it is useless. (2220; Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Mediator (Private Practice); Survey)

General negative comments were made by 21 participants who questioned the value and effectiveness of FLAS, describing it in such terms as “a waste of time”, “flawed”, “hopeless”, “useless”, “confusing and difficult”, “painful” and “inadequate”. Two people thought that

the information provided in FLAS 1 could be provided by Parenting Through Separation or Family Dispute Resolution services.

It doesn't give parties enough skills or information. Child's interest[s] not a focus. (2327, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

I tend to think that FLAS is not the best use of time - either mine or the parties'. (2485, Lawyer, FLAS Provider; Survey)

I think FLAS is a waste of time really – probably could cover off in PTS course. (2482, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It is an ill-considered system which doesn't seem to address real needs. (2342, Lawyer, Lawyer for the Child; Survey)

Not cost-effective and doesn't deliver the promised results. ... Structured as it is it provides very little benefit to those in need. (2292, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

I very rarely feel like I am actually providing people with much value when I do FLAS. (2206, Lawyer, FLAS Provider; Survey)

It's a terrible system which wastes time and gives the provider little benefit. (2216, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It is hopeless. Clients don't understand it. You can't give them the best service. I think both parties get frustrated with it. ... I think it is useless. (2220; Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Mediator (Private practice); Survey)

I do not now do it. I was approved, but gave up. I remain quite uncertain about its utility. (2501, Lawyer, Lawyer for the Child, Mediator (Private Practice); Survey)

We do not have any confidence in the system. (2464, Lawyer, Lawyer for the Child, PTS Facilitator; Survey)

It's a silly idea - that was well meaning, but is too complicated for the value it provides the public. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It is not effective at all FLAS isn't really the problem, it is the legislation that prevents lawyers from assisting on a wider scale. (2179, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Some thought that while FLAS was '**better than nothing**' it was still inadequate.

FLAS is better than nothing, but in my opinion it is a woeful band-aid attempt to help parents and caregivers going through a difficult emotional and legal process. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It is better than nothing, but still inadequate. (2372, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

The **cultural appropriateness** of FLAS was questioned by three participants.

Totally unsatisfactory in all respects; being scope of, duration, payment, cultural appropriateness. (2231, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Duration (connects to funding) is wholly inadequate. This then links to cultural insensitivities due to lack of time available for clients with different cultural needs or higher needs generally. FLAS also adds a layer of delay for parties who do not have direct access to Court, which is extremely bad for children. (2221, Lawyer, FLAS Provider; Survey)

FLAS is culturally and generally inappropriate. (2215, Lawyer, FLAS Provider; Survey)

Limited Nature of FLAS

Nearly half ($n=85$) of the participants outlined their concerns that FLAS was **limited in its scope and ability to adequately assist parents**, particularly at a time when they were vulnerable, stressed and emotional. FLAS was regarded as a constrained and superficial “once over lightly” service that could not adequately deal with complex, changing situations due to its limited nature, both in terms of the time available and the advice and assistance FLAS providers could offer. Lawyers found it a dissatisfactory way to practice.

Once over very lightly. ... These matters can be complex, but FLAS assumes they are simple and that advice can be given quickly and efficiently in the time provided. (2231, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

It often feels more like filling a CAB role as opposed to actually helping clients. The time is very limited so discussions have to be on-point and sometimes information isn't also shared because of the time constraint. (2554, Lawyer, FLAS Provider; Survey)

Difficult to become involved superficially in people's lives without giving the wrong advice. ... Flawed system. (2200, Lawyer; Survey)

It is disappointing to have to provide clients with such limited help/advice, particularly whether their matter has some safety concerns but does not justify a without notice application. (2264, Lawyer, FLAS Provider; Survey)

It's too constrained. Clients want a lot more info initially than we are paid to give. (2542, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

I give the initial meeting, but often this isn't enough. This means that clients are not given enough time to understand their rights and the next steps. It's like you asking them to diagnose their own issues medically, but if they are in a life threatening situation then they can have a doctor. They are scared and unsure and they aren't allowed a lawyer and we get limited positions we can take for FLAS. (2308, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It works well for simple cases where the parties have recently separated. Sometimes I find out that the parties have had a history of disputes and the background is complex,

so cannot get to grips with all that in the time available. ... [Funding] means that you can only spend a small amount of time on it. It is too rigid for a complex case. (2374, Lawyer, FLAS Provider; Survey)

FLAS works well for the narrow circumstances it is created for – e.g. newly separated parents. There are many who fall into its ambit for need of advice, but the way the system is designed does not really assist their situation. ... It is limited - leaves a lot of people in a no-man's land. Can't afford to engage a lawyer privately, don't necessarily need Court proceedings but need some further advice, OR leaves people entering the Court system unsupported as they can't get Legal Aid in 'on notice' applications until a direction is made that lawyers can act. (2454, Lawyer, FLAS Provider; Survey)

My FLAS clients keep coming back. They need more help than initial advice. They often need to sit back and reflect on the information you have given them before deciding what action they want to take. The true course of family life never did run smooth. I can have a FLAS client come in for initial advice and one week later it is a Police emergency situation and a callout, safety order or MVCOT case. People want to come back for help/advice. It may be a 5-minute phone call or a series of 5-minute phone calls. They can't access it as they have used their FLAS quota. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

I do the bare minimum - to do FLAS it requires a factory like service model - in and out, not financially viable to do more. ... Only able to give the bare minimum advice, but people want and demand more. Clients are emotional and don't understand why FLAS is so restrictive; they get upset and frustrated. ... FLAS is not helpful. (2238, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Most self-litigants need much more assistance than FLAS can provide. (2590, Lawyer, Lawyer for the Child; Survey)

You are constrained in what you can usefully do for the client. (2528, Lawyer; Survey)

There was particular **dissatisfaction regarding FLAS 2** because of its limited nature in terms of time and the level of assistance on offer. This was largely due to the inadequacy of funding for FLAS 2 and the amount of time that FLAS providers could therefore be available to assist clients to complete forms. Concern was expressed that clients found this difficult and confusing and needed more help than FLAS 2 was funded to provide.

FLAS 1 is fine, but FLAS 2 is time-consuming and confusing for people as they get advice and assistance and then they are left to fend for themselves and that freaks most people out. (2169, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

System is painful. Time-consuming to do properly and it is very hard for most people to get initial forms satisfactorily completed and manage the first phase of Court before lawyers can act. (2213, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I am happy enough with the service, though the funding for Part 2 needs to increase. If people need help with forms, then they have usually tried/failed themselves and it takes more than 1-2 hours to help with that. (2173, Lawyer, FLAS Provider; Survey)

There's no point saying that Part 2 is only to revise their documents because the vast majority simply cannot write a Court document and essentially we have to throw out their drafts and start again. This could take several hours plus our typist's time and office resources. (2204, Lawyer, FLAS Provider; Survey)

People don't understand what to put in their forms. They aren't lawyers and want advice - they are lost and yet we aren't meant to do it for them. We find ourselves doing it for them because they don't understand and that's not fair on them - yet it's not fair on us to be unable to charge for the work a fair rate. (2308, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Generally this stage requires time-consuming work, such as drafting, gathering evidence and advising clients. ... The funding available for FLAS 2 appointments is not sufficient. Many of the clients using the FLAS service have low levels of literacy, therefore it is better for the lawyer to draft the document. This reduces the time spent later in the process at deciphering what was meant and seeking directions to file further evidence because the initial application/notice of response was lacking in relevant detail/evidence. (2582, Lawyer, FLAS Provider; Survey)

For Part B, often the parties need more assistance with preparing their proceedings than the current Part B allows. ... This can require considerable input particularly for clients where English is a second language or there are literacy issues. Even in the absence of those issues, it can be time-consuming working with clients to ensure they are including appropriate evidence/issues. (2493, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

FLAS 2 is the only opportunity people have to provide evidence to Court. This is not a brush over, do it lightly, part of the process. FLAS 2 does not provide sufficient funding to do this appropriately and fairly for the client. (2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Part 2 is inadequate. While it may be ideal to support clients in preparing their own paperwork, this often creates even more work than just doing it yourself from instructions. Either way the Part 2 funding does not cover the time required. (2496, Lawyer, FLAS Provider; Survey)

One aspect of the limited scope of FLAS raised by ten participants was the **generic nature** of the advice provided. The professionals commented that what parents needed was personalised advice and information, specific to their case, rather than generalised information.

It does not allow for clients to receive comprehensive advice and assistance in dealing with child care issues post-separation. It is meant to be about processes, but clearly people need substantive advice and representation as they work through the process tailored to their own circumstances, not the generic advice available. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Some of the feedback I have had is that it is not always specific enough to be helpful. (2266, FDR Mediator, Mediator (Private Practice); Survey)

It is unfair to expect every situation to be the same. There is no 'one size fits all' solution for Family Court issues. (2268, Lawyer, FLAS Provider; Survey)

Irrelevant advice for clients in need. ... People aren't ready to receive the information that you have to go through in the appointment. They think they are coming in for a chat and, in reality, they have to listen to generic legal advice where we can't really help them in a practical way. (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, Citizens Advice Bureau Staff Member/Volunteer; Survey)

The information we are required to provide is very 'tick box' - for the individual client specialist advice tailored to their situation is much more valuable. ... I would like to see less emphasis on ticking off the various matters to be covered, and more on the lawyer exercising professional judgement about the information which will best assist the client. (2338, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Most of the parents I mediate for have said they did not gain much information at all from FLAS. They said the lawyers told them they could only give them general information about the Ministry of Justice family justice service and could not look into their own case and advise them on that at all. I personally think FLAS should be able to go further and give the clients some sort of advice about their own case. (2378, FDR Mediator; Survey)

[FLAS] is not really useful and worse than the pre-reforms system Under the old system lawyers could exercise their professional judgement and give appropriate advice to clients for their specific situation - whether that was a referral to counselling, filing on notice or without notice applications. Generally, by the time people are sitting in a lawyer's office they want action and change because they have exhausted other alternatives. FLAS is a poor substitute for the previous system which was infinitely superior and less bureaucratic. (2304, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

In addition to parents needing advice and information relevant to their particular situation, comments were also made that parents needed "proper" and **full legal advice**. Several professionals regarded FLAS as an attempt to remove lawyers from the process, which they disagreed with.

FLAS does not work well in my opinion. In my view, either you need legal advice, or not. It is almost a cross between having no legal advice and having none. ... FLAS is a product of the prohibition on lawyers being able to make on notice applications for people, and of the requirement for people to have tried FDR first before applying to the Court. It is a constrained, limited service that, to me, is a poor substitute for full legal advice, and being able to have a lawyer represent you fully. (2325, Lawyer; Survey)

FLAS seems to be about limiting the lawyer's role in representing the client. Yes, it provides for advice to the client about how they can do things themselves, but even the advice given is very standardised. Some of the advice is not needed for their situation and ultimately it is the lack of representation that leaves me very dissatisfied. ... Many parents or caregivers needs a more complete advocacy service. They need representation throughout, not just at the initial stage. (2451, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

I would like FLAS to be extended. It is insufficient to replace family Legal Aid lawyers providing ongoing advice through the early stages of the Family Court. (2379, Community Law Centre Staff Member/Volunteer, PTS Facilitator; Survey)

Some lawyers found that having to operate within the limited constraints of FLAS was **frustrating and professionally compromising**.

You send the client off into the wilderness with advice and a letter hoping that the rest of the system will help them. Pretty unsatisfactory way to operate and incredibly inefficient. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It is frustrating not being able to simply do the work for the client and support them in the process. They struggle with the various agencies they need to deal with and the forms, Court process etc. (2422, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Some clients require far more work and support than FLAS allows and it is difficult not being able to assist them further, especially if they are a vulnerable person. (2519, Lawyer, FLAS Provider; Survey)

I have found it too cumbersome a system to bother with - very personally unrewarding in terms of not using my professional skills. It does not really help people very much unless I spend far more than the allotted time with the client – I can end up providing ongoing support in an ad hoc fashion as clients flounder along afterwards. ... It does not meet client's needs unless I go over and above what is supposed to happen. People expect more from a lawyer and I feel that it undermines my professional reputation to be seeing people to just refer them off. ... I do not like it as it is too prescribed and formulaic - not how professionals should work with clients. (2562, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I find it unethical (and sometimes unsafe) not to be able to provide proper legal advice. (2278, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Several participants noted how limited the FLAS model was for dealing with family law matters when **clients were distressed and emotional**.

To deal with clients often in tears and overwhelmed by a recent separation who need to get advice on their options is very daunting for most. To then try to curtail a meeting into 1 hour max, then follow-up with a letter confirming what was discussed so the client can consider at leisure when less upset, means it is uneconomic for firms to provide FLAS, as well as disheartening for the practitioner to know that some clients will not have the confidence to do anything. (2445, Lawyer, FLAS Provider; Survey)

Family law issues cannot be resolved by a single meeting where standard information is supplied. There is no funding for initial correspondence, which may help in resolving urgent or simple issues. There is no ability to form a trusting relationship with the client. It is unrealistic to expect a lawyer to assist a client to draft applications in a single appointment. This simply results in evidence being filed which is incomplete or unhelpful. (2315, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Don't consider the system works, insufficient time to assist parties in significant distress in relation to their legal obligations, the care of children law generally and the process. Time available is the most significant issue. In addition, those that have received FLAS advice and who attend mediation or Court, often appear to be no more enlightened about the law or process than those that don't. Too little time and resources for what is often the single most stressful and emotionally challenging time in their lives affecting the most important people in their lives. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

Not satisfied by only having the ability to have one appointment with a client; often they have questions and don't take everything in at one time. All new usually to the clients and big ask for them in often an emotional state to only see lawyers once and get everything they need out of that one appointment. (2311, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Clients who need to access the Family Court, particularly those with previous proceedings and other vulnerabilities, require a proper service. This is too piecemeal. (2411, Lawyer, FLAS Provider; Survey)

I do not participate in FLAS. It seems to me to be totally inadequate preparation for parents going through the trauma of family breakdown. (2475, Lawyer; Survey)

In addition to clients being emotional, participants outlined how clients found the FLAS processes and the information and advice provided **difficult to grasp and understand**, particularly in the short time frame available to deliver it.

Increase the number of hours. People's separation and child care arrangements don't fit into a neat box. People are stressed, they need advice in chunks so they can process, and time. (2481, Lawyer, Lawyer for the Child; Survey)

There is so much information for the client to digest in a very short time. They can't take it all in, and we're not funded for (although inevitably end up doing) the extra work, follow-up phone calls, etc. (2411, Lawyer, FLAS Provider; Survey)

It's difficult to explain the system and provide advice in a relatively short period. Some of them struggle to take it all in. We give them heaps of handouts to refer to later. (2566, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I find it a complete waste of time generally - it is so hard for our vulnerable members of society to understand the advice and then have to go and act for themselves. (2439, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Always hard [for] client to take it all in. ... Is okay for intelligent parents, who can take the advice and read the papers later... The scared, low intelligent struggle. (2490, Lawyer, FLAS Provider; Survey)

FLAS is often just a stop gap/band aid for people. Often people do not understand the process even after having FLAS and they contact me many times after the FLAS advice has been provided to check on what they are supposed to do. (2215, Lawyer, FLAS Provider; Survey)

This lack of understanding could result in **confusion about the role of the FLAS provider**. Clients sometimes did not understand the FLAS provider's limited role and kept returning for advice and guidance, not understanding that they were not their lawyers and/or the amount of time available for advice was limited. This could lead to frustration and resentment.

At the point where clients are expected to represent themselves after forms are completed, this is a joke. We often have clients come back at each step of the Court process after documents are filed asking us to explain a letter back from the Court, then asking us what to do at the Registrar's Review, asking us what to do at the Directions Conference, asking us to fill out the Memorandum for Directions Conference, asking us what to do with the lawyer for child's report, then asking us what a social worker's report is - ridiculous really. It's a failed concept that the lawyer will just fill out forms and never see a client again until the matter goes to hearing. We hear from clients long after the documents are filed. That is because they need representation. (2448, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

When you provide FLAS many people still think you are their lawyer to ring anytime. They find it hard understanding you can only provide advice in a very limited way. It is very frustrating for them and you as a lawyer. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, PTS Facilitator; Survey)

This service provision (as a lawyer) is woefully inadequate and very often misunderstood by clients in terms of the limited role lawyers can play/assist with. The assistance you give to draft/file documents often then just creates more problems as people think that they can still contact you afterwards to continue to assist them - despite you explaining the limitations of the role. Then they get resentful if you won't assist. (2461, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Clients will not often understand that you are not "their lawyer" and why we won't write letters etc. It can be an awkward relationship. (2496, Lawyer, FLAS Provider; Survey)

My sense is that it can be confusing for a client if it is a situation where the lawyer can't then "act for them" and that then representing themselves in any standard track proceedings can be daunting and frustrating for them. (2493, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

They think I'm their lawyer and they will ring back for more advice or direct other parties to me who believe I am acting (such as support workers, family members, lawyers acting for the other side who are being engaged privately, social workers etc). (2204, Lawyer, FLAS Provider; Survey)

It also creates confusion for clients. They feel abandoned by the fact we are unable to offer continuous assistance with the prohibition on lawyers actually acting. (2395, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Standard of Service

Another aspect of the quality and utility of FLAS that was raised was the variation in the **standard of the service** offered by FLAS providers. Ten participants were concerned that

some providers were not delivering FLAS adequately, particularly junior lawyers or those who delivered FLAS infrequently.

It seems to be that the standard of service varies hugely between providers. (2169, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

It should be done by lawyers who genuinely want to do it and make themselves available as soon as possible, There needs to be the opportunity for moderation of how lawyers approach this work. (2360, Psychologist; Survey)

I know some practitioners are perfunctory in time and advice given, and do not spend much time making sure the FLAS client understands the process and how to get from A to B to C. ... Quality of advice given will vary hugely on a firm by firm basis. ... Funding is useless with respect - calculated to have some practitioners treat these clients with a degree of contempt, with maybe 30 minute appointments and a brief follow-up letter. (2445, Lawyer, FLAS Provider; Survey)

I am concerned to look through the FLAS list (on the Ministry of Justice site) and see lawyers who I just know would rarely, if ever, provide FLAS or any other family law service to be honest. There should be a minimum requirement of say 12 FLAS clients a year to retain the "ticket" to offer the service. This would mean competent and dedicated lawyers could have more FLAS clients. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I do a lot of Lawyer for the Child work and see appalling mediation agreements (mediated by other Lawyers for the Child incidentally!) that would not have been agreed to if the parties had had lawyers. Most lawyers work constructively and help fix the parties' problems, whereas FLAS has resulted in crap agreements that then fall over. They should have sorted out the few bad, litigious lawyers in each region that were responsible for the blow-out of Legal Aid and silly Court applications, and left the rest to help clients solve their problems. The irony is that less and less experienced lawyers are now doing Legal Aid, leaving the useless to clog up the system. (2223, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

My sense is that experienced or senior counsel don't deliver the service and it is largely left to more junior members, which has implications for quality of service. (2493, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

I think there are some practitioners who don't even provide the proper service yet claim at the sniff of engagement by the client. As a FDR Provider I have been surprised at the lack of knowledge or advice parties have received and the brief time they have had with a lawyer providing FLAS. (2422, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

We see dreadful affidavits coming in thrown together by some FLAS providers that indicate inattention to accuracy and comprehensive interviewing. ... Funding and therefore time expectations are insufficient to meet professional standards. (2372, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

We often get clients who have been to a FLAS provider saying, "We did not get enough information", but the lawyer says, "Time's up!" (2497, Community Law Centre Staff Member/Volunteer, Mediator (Private Practice); Survey)

Access to FLAS

Linked to the quality of the FLAS service was the issue of difficulties clients faced **accessing the service**. This was because of either a shortage, or lack, of providers (often due to low remuneration as detailed later) or lawyers not taking on the work.

No providers in [region]. We just end up giving initial advice for free. (2366, Lawyer, Lawyer for the Child; Survey)

Clients comment they have tried lots of people on the list and no-one will take them on. (2411, Lawyer, FLAS Provider; Survey)

In my experience, people who have either a mental illness or are recovering from trauma, need help to access the service which is currently not there. (2480, Mediator (Private Practice), PTS Facilitator; Survey)

Lawyers who say they are delivering should be required to deliver. (2471, Lawyer, Lawyer for the Child, FDR Mediator; Mediator (Private Practice); Survey)

It is very hard for people to access lawyers who are providing it. ... It is disjointed and part of the new system where lawyers cannot act on 'on notice' parenting applications. So although there are Legal Aid lawyers, many do not seem to provide FLAS. (2576, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

FLAS is better than nothing - but is dependent on finding a lawyer who is prepared to provide the service. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Some clients report getting really good service, but there aren't very many choices of lawyers. (2300, FDR Mediator; Survey)

Hardly anyone in this area is listed to provide FLAS advice. This is because it is seen as onerous, disjointed, badly remunerated and therefore not worth the trouble. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

There are too many providers listed who do not provide the service. Parties contact them, but they are not available to provide the service. (2294, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Access to Justice

Access to justice issues in relation to FLAS were raised by 21 participants (12%).

I think FLAS was the government's attempt to take lawyers out of the process. I think it is fundamentally wrong, because it means parents have a very limited and restricted amount of time with a professional when parents and caregivers attempt to fill out what might be the most important documents in their children's lives. How can we call

that justice? How can we say that we are meeting our children's welfare and best interests with this system? ... It is totally inappropriate to expect a child's welfare and best interests to be covered off in this FLAS system. I personally believe it is probably in breach of the United Nations Convention on the Rights of a Child. ... I feel like the government threw some money at the FLAS system as a last minute attempt to address concerns about access to justice. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It makes it very difficult to ensure clients get proper access to justice. (2179, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The model is inadequate. There needs to be equality of arms between parents. (2528; Lawyer, Survey)

Concern was also expressed about **inequity between those on a lower income who had to rely on FLAS for legal advice and those who could afford to pay for legal representation**. Some thought that people who were eligible for FLAS could be vulnerable and especially disadvantaged having to navigate the family justice system without legal representation.

FLAS is culturally and generally inappropriate. I often end up filling out the forms for people as they are simply unable to do so themselves for multiple reasons. For instance, giving FLAS to people who do not have access to computers, are computer illiterate, have English as a second language, have mental health issues, is often impossible for them to continue. This is a major access to justice issue. These people simply do not have access to justice. (2215, Lawyer, FLAS Provider; Survey)

I think it is terrible that "poor" people have to get such a second-rate service. (2439, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

FLAS B is inadequate - a lot of people who are eligible for FLAS are totally daunted by having to enter the Court system unsupported and with only limited advice and assistance with Court documents. Many choose not to go further as it seems too hard. This is a form of injustice. (2454, Lawyer, FLAS Provider; Survey)

It is the only advice many people can receive before undertaking mediation and starting the Court process. It puts a lot of people at a disadvantage, as if they have money then they can have a full legal advice service; if they don't then they get limited advice and limited time for a very important part of the process. 2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Funding does not cover all work on more complex 'on notice' applications which disadvantages people who cannot pay. Under Legal Aid there would be more funding available for 'on notice' applications so more people would do it. (2433, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Some lawyers were uneasy that within their own practice, FLAS requirements and funding meant that **the service they provided to their FLAS clients differed from that given to their privately paying clients**. Those on a low income who could not afford a lawyer were seen as receiving a lower quality service.

I try to deliver the same service to FLAS clients that I do to private clients who want advice about making care arrangements. The FLAS requirements can make that more burdensome. (2338, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It makes me feel sick that private paying clients can have their hand held right throughout the process and Legal Aid clients get only a fraction of the advice they need. The advice we are “supposed” to provide is so confusing and not in line with what they need (e.g., telling them about tracks for cases and that they might be liable for s133 report costs etc). You give them the advice and then technically they are supposed to be out the door, and not to come back until they’ve done mediation. This is not fair or practical - why should these people receive such a poor standard of service? (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, Citizens Advice Bureau Staff Member/Volunteer; Survey)

The funding for FLAS is woefully inadequate. That creates a pressure in practice as to the balance between delivering the same high quality advice that a privately paying client would receive, against the business realities of practice. This means we have created efficiencies in terms of documentation and parameters, but the client is not getting the same support they really should have in order to resolve disputes efficiently. (2395, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

They are scared and unsure and they aren’t allowed a lawyer and we get limited positions we can take for FLAS. Yet if they are rich they can come and see us and spend as much time as they like with a lawyer - they can even pay us to draft their documents and memos and we can sit outside Court with them and tell them what to say. You have provided access to lawyers for the rich and limited it for the poor; and it’s generally the poor who need us the most. (2308, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

In addition to concerns about those receiving FLAS experiencing a limited service compared to those who could afford a lawyer, another issue raised was **inequity between those who were eligible for FLAS and those who were not.**

[FLAS could be improved by] better funding for legal advice - better funding for parties who would not qualify for Legal Aid, but are “working” poor. (2221, Lawyer, FLAS Provider; Survey)

Eligibility criteria makes it only useful for a few. Pretty much everyone going into separation is financially fearful. (2498, FDR Mediator, Counsellor; Survey)

I don’t like it. It allows (poor) parents some limited legal advice, but if a parent does not qualify for the tax-payer funded service, that parent has to pay for that advice, and then pay for a mediator to help him or her to try to sort it out, which is, at the very least, a deterrent to resolving the problem that persuaded that parent to seek advice in the first place. (2373, Lawyer, FLAS Provider; Survey)

Some professionals also thought that **FLAS should be available to everyone.**

I think for FLAS it should be free to all, it is a part that informs people. (2497, Community Law Centre Staff Member/Volunteer, Mediator (Private Practice); Survey)

All entering Court should see a FLAS lawyer first. (2294, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

It would be great if everyone could access FLAS. (2295, FDR Mediator, FDR Supplier Staff Member; Survey)

It would be good if the funding was provided for everyone, because a lot of people are just over the cut-off and struggle to pay. (2433, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Funding and Remuneration

Almost half ($n=90$) of the participants who responded to questions about FLAS made at least one comment about FLAS funding. With the exception of three people who made positive statements about the adequacy of funding/remuneration, the majority of comments were negative. Complaints about FLAS funding were either in relation to the **inadequacy of funding**, and or (funded) time to deliver the service, and/or **poor remuneration**.

Comments about the inadequacy of funding included general comments about the service being under-resourced or under-funded, insufficient or inadequate. Twenty-three people made specific mention of the inadequacy of funding (or funded time) to deliver FLAS 2.

Underfunded, unrealistic expectations upon counsel of the system and clients. ... It is underpaid for the expectations clients have. Clients cannot be properly legally supported with the funding available - just explaining the FLAS system and the lack of direct access to the Family Court can almost take up most of the time, before then going on to advise the client on their specific issues. ... [Funding is] entirely inadequate - due to the funding levels versus the expectations of delivery of legal advice and assisting in drafting legal documents. (2221, Lawyer, FLAS Provider; Survey)

FLAS is too little time to discuss issues properly. ... Funding is inadequate and therefore people are not getting a good service. (2285, Lawyer, Lawyer for the Child; Survey)

Funding adequacy is fine for Part 1, but is completely inadequate for Part 2. (2204, Lawyer, FLAS Provider; Survey)

The funds provided for Part 2 are insufficient and we are working for no real money. (2308, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

FLAS 2 is a real pain and not profitable. ... It is difficult to complete FLAS 2 in the funding available and be profitable. We are going to reduce our service to make it fit the fee for FLAS 2 (compared with FLAS 1 which is more manageable. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Part 2 is grossly underfunded. (2418, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice), Survey)

The funding for FLAS 2 appointments is not sufficient. Generally this stage requires time-consuming work, such as drafting, gathering evidence and advising clients. The current fee makes taking on these appointments less likely for busy firms. (2582, Lawyer, FLAS Provider; Survey)

[Need] more funding to allow more in-depth discussion. At times there is a lot of information to be covered in a short time frame. (2274, Lawyer; Survey)

The funding does limit the ability to spend sufficient time with some clients. (2554, Lawyer, FLAS Provider; Survey)

Not always adequate funding at each step. ... With a number of my clients (low socioeconomic area) the time allowed is insufficient to properly advise them. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The funding is a joke. I often have to see people multiple times to assist them. I might as well be acting pro bono. (2215, Lawyer, FLAS Provider; Survey)

In addition to complaints about the funding not being sufficient to cover the time required to deliver FLAS, nearly 60% (n=52) of the participants who commented on funding made specific mention of the **inadequacy of the remuneration or fees paid** to FLAS providers. These were described as “uneconomic”, “pathetic”, “insufficient”, “unrealistic”, and “poor.” For some providers this meant that delivering FLAS was **not financially viable**.

It has made me maybe \$500 in a year. ... The fees from FLAS haven't paid for the training and compliance costs. (2165, Lawyer, FLAS Provider, FDR Mediator; Survey)

This is a lot of work for the limited funds. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It is unreasonable for the Ministry of Justice to continue to expect providers to work at such a low cost. ... The funding is completely inadequate. (2193, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The pay rate is so poor that you would have to be quite ruthless to make it profitable. (2200, Lawyer; Survey)

Way too much work for little pay. Can't afford to do too many. (2238, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

If you won't change the system, pay us more so that we can do more to help our clients. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The fees paid are too low. ... It is not financially viable for me to do so. I only provide it to existing clients/their families or as a favour to other lawyers who refer clients to me. ... The funding means that I don't regularly provide this service as it is not economical to do so. (2278, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Our office has not found it worthwhile or economic to provide this service, however, I am aware that other practices do. (2325, Lawyer; Survey)

Some lawyers noted that the inadequacy of funding to cover the work required of FLAS required lawyers to work **pro bono**.

I elected not to participate in the FLAS system because it appeared to be woefully underfunded such that I would be required to essentially work for free, which I am not able or willing to do. (2342, Lawyer, Lawyer for the Child; Survey)

Because the money was so poor, I was left to either give additional time for free, or know that the client was being abandoned into a complex system without any support. ... We, as a firm, already do pro bono work, and we could not afford to continue to do FLAS as well. (2223, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

The reality seems to be that Government is relying on practitioners to go beyond the ambit of FLAS and provide a proper service with proper advice at the practitioners' cost. (2292, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

I will frequently give FLAS advice without it being recorded in the system. The money paid is not worth the time and energy to train staff to input it into FLAS. (2229, Lawyer, FLAS Provider; Survey)

Counsel cannot provide any additional help because they are not entitled to be paid for anything over and above the two stages of advice they provide. Hundreds of hours of work is being done on a pro bono basis to help people and it is simply not fair. (2309 Lawyer, FLAS Provider; Survey)

The funds provided for Part 2 are insufficient and we are working for no real money. (2308, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

We do a lot of extra work under it because people need help with the Court forms especially. (2380, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

I don't even know any lawyers still providing FLAS as paid providers. ... Not worth it to do so. I, in fact, end up just giving free advice to prospective Court users at least once a week. (2537, Lawyer; Survey)

Sometimes the two hours is not enough funding as well, so we write off quite a bit of time or have to charge the client the balance. (2433, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Another consequence of FLAS being poorly remunerated/funded, was that it resulted in a **cursory service** or a **shortage of lawyers** offering this service.

Hopelessly inadequate funding. That has resulted in the level of service diminishing dramatically, senior practitioners leaving the field. (2292, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

Many lawyers have opted out of FLAS because of the low fees. (2168, FDR Mediator; Survey)

Hours for FLAS are insufficient. Hourly rates are poor. I therefore turn my nose up at doing a lot of this work. (2234, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It seems to me that a lot is required of the lawyer for the remuneration they get. My concern is that the consumer may be short changed as a result of this. (2375 Lawyer, Lawyer for the Child; Survey)

I think fees are low across the board in terms of Legal Aid and FLAS, the lawyer for child hourly rate. We work very, very, very hard for low pay. I feel completely burned out and completely over it. (2439, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Not worth signing up for provider status as a FLAS provider due to limited funding and large administrative burden for such a small amount of potential remuneration. (2537, Lawyer; Survey)

I know some people provide a very cursory FLAS service. The fees do not justify doing any more than that. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Not feasible financially if I wish to continue to provide a good service to my clients. ... Funding and therefore time expectations are insufficient to meet professional standards. It is not enough in the private sector. (2372, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

The funding requirements are reasonable, but the amount offered dissuades more experienced lawyers from providing it. (2449, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

Pay more for FLAS and Legal Aid lawyers as it is inadequate and many are unwilling now to do it. This affects families and children as support through the legal process (in- and out-of-Court) is restricted by the hours currently allowed and the underpayment leading to lack of available professionals willing to do the work. A perfect storm! (2558, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It's a dreadful system, clunky to use and a waste of my time with limited pay/benefit - more hassle than it's worth. ... Again, dreadful! Not worth the time or effort. (2216, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Administration

Nearly a quarter (24%, $n=44$) of the professionals commented on the **administration involved in delivering FLAS**, in relation to either the administrative tasks required to assess clients' eligibility for FLAS and to complete the necessary forms, and/or using the Ministry of Justice's Resolution Management System (RMS). While a small number ($n=9$) spoke favourably about these administrative processes, describing them as "great", "easy", "reasonably quick" and "efficient", the majority found them challenging, time-consuming and complicated.

I may get 30+ calls a month from new clients wanting FLAS information, but the admin tasks required in order for me to make a proper claim mean only a few ever actually get recorded officially as a FLAS client e.g., someone rings from [provincial town], they can't come in, they don't have any email or fax or scanning ability to send in ID or income details. I email MSD if they are a beneficiary, but their income may have

changed so I can't certify the funding. ... I end up giving the advice for free most times. (2204, Lawyer, FLAS Provider; Survey)

We do not offer it as the administration required is too much for the funding you get. By the time you enter a client in our system, complete a conflict check, obtain their details, and allow time to issue an invoice there is not much time left for the actual talking to the client part. (2303, Lawyer, Lawyer for the Child; Survey)

It's administratively top heavy and so you spend a lot of your time with the client just filling in the forms for the funding to pay for the time spent applying for funding. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

This is a lot of work for the limited funds - the process is complicated and time-consuming. In many instances frustration levels with this process have been very high. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The admin for FLAS is not insignificant as it is rare for the party to have been pre-approved by the FDR provider. It tends to be that we pick up all the RMS/funding aspect and refer on. This cuts into the FLAS time. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Using the **RMS system was considered particularly onerous**. Professionals mentioned technical problems with the RMS website and reported that using the RMS system was complicated, difficult and time-consuming.

The RMS system is terrible. It is complicated, time-consuming and ridiculous. (2173, Lawyer, FLAS Provider; Survey)

Using the RMS is fiddly and awkward. ... RMS is useless. (2483, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

The administrative side of FLAS is cumbersome. The payments are sporadic. The RMS phone line is useless and unhelpful. (2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

RMS - I have to ring for help every time I use this to remember which buttons to push. FLAS is not user-friendly unless you are doing it all the time. FLAS is like doing pro bono work. (2280, Lawyer, FLAS Provider; Survey)

RMS needs to be improved. The system needs to be simplified as it is currently quite time-consuming and confusing. Instead of having the ability to create a new party, new event and event in one action, you have to click through various menus etc. It takes probably about 20-25 mins to enter a new party, create a new dispute, create an event and invoice. There should be the ability to claim at another stage when client's return within the two years, and for an issue involving the same parents and child, to give them follow-up advice or more specific advice. (2217, Lawyer, FLAS Provider; Survey)

The website is often down for maintenance and difficult to navigate. I don't have time to spend on this. (2203, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The RMS website is overly complicated in terms of data entry. ... It is time-consuming (forms, data entry into RMS). (2534, Lawyer, FLAS Provider; Survey)

In some instances, lawyers said they either provided the service **pro bono** or **stopped providing FLAS** altogether, sometimes as a result of its associated administrative burden.

The RMS system is too difficult to manage and maintain and it is easier to give advice on a general basis without charging a fee. ... It's clumsy and the billing system is painful. ... RMS was too difficult to even begin using and as a result, I have never done it. Instead I have provided advice without charging people. (2505, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

It is too difficult to get funding and RMS is too difficult to use. I will frequently give FLAS advice without it being recorded in the system. The money paid is not worth the time and energy to train staff to input it into FLAS. (2229, Lawyer, FLAS Provider; Survey)

More cost-effective to provide pro bono initial advice than all the admin that goes into FLAS set up and management. (2213, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The forms are too time-consuming to bother filling out to get paid, so I no longer do the work. (2329, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

The website is not user-friendly and I am aware that many have pulled out because of this. (2175, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Mediator (Private Practice); Survey)

RMS is impossible to navigate, so I just give the advice for free. (2243, Lawyer, FLAS Provider; Survey)

RMS is a nightmare and has caused me to consider giving up this work. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Publicity and Uptake

There was some concern amongst some professionals that the uptake of FLAS was low and that people, both parents and other professionals, were unaware of FLAS. They suggested more could be done to publicise and promote the service.

No one knows about it. ... No public awareness is the problem and no professional awareness. [Because] we are a small town, lawyers just say to call me when the industry should at least know about the service. (2165, Lawyer, FLAS Provider, FDR Mediator; Survey)

The service is under-utilised, and virtually unknown, especially by the key people responsible for recommending it. I went down to talk with the family violence team at [town] Police station. The officers expressed astonishment that the FLAS system existed and had been in operation for three years and they had never heard of it. They wanted business cards and pamphlets to hand out to families they had to attend on FV

callouts. Probation Services want access to FLAS providers to help them to sort supervised contact for parolees who are the recipients of protection orders. Corrections want access to get their prisoners' legal advice when the guys can't access family lawyers over the phone because no-one does Legal Aid anymore, and those who do are too busy to answer calls or respond to them. FLAS providers have the capacity to improve the quality of life for prisoners by ensuring their access to their children. Corrections want that so why aren't FLAS providers available via local lists at every Police station, every Corrections centre, and every Parole office? (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

Not enough parents know about and use the FLAS service. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Survey)

Low intake and awareness of FLAS. ... Not a lot of mediation clients have heard about it and therefore are not informed of their legal rights. ... Need greater uptake and awareness. (2348, FLAS Provider, Community Law Centre Staff Member/Volunteer, FDR Mediator; Survey)

I don't believe the uptake for FLAS is as high as it could be and there seems to be a disconnect between information getting to consumers about this service. (2493, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

It could be improved if more people accessed it. It is concerning that there are probably families with children where there are problems who are not accessing advice either through FLAS or counselling now that there is no counselling offered by the Family Court. (2225, Lawyer, FLAS Provider; Survey)

Suggested Amendments or Improvements to FLAS

In addition to numerous comments about increasing the funding for FLAS as detailed above, the professionals suggested a variety of ways they believed FLAS could be improved. The most common suggestion, made by just over a fifth of the participants ($n=37$), was that **FLAS should be abolished** altogether, and/or that there should be **a return to Legal Aid or lawyers being able to represent clients** from the start or once the matter reached the Court.

Get rid of it, go back to Legal Aid - expect it would work out to be around the same cost, but a much more cohesive and effective service. (2314, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, FDR Mediator; Survey)

Parties should be allowed lawyers to act for them right from the outset. (2220; Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Mediator (Private Practice); Survey)

It is difficult to provide the relevant information without actually "acting" for the parties, especially when advising them on the filling out of the forms etc. It is too disjointed and the process too difficult. ... People should be able to engage a lawyer from the outset that allows them to act for them in their best interests including the filling out and filing of forms and applications in Court. (2505, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

Allow Legal Aid right at the outset. Allow representation at FDR. (2558, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I have very few clients wanting basic FLAS. Most clients need immediate assistance. ... I feel like the job is only partially done with respect to FLAS. This is why I want to change the whole system to eliminate FLAS and return to Legal Aid being available from the start. (2174, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Well, fundamentally, I do not agree with the whole system of FLAS. People need legal representation - not FLAS. ... Do away with it and allow people to be represented from the start. (2215, Lawyer, FLAS Provider; Survey)

FLAS should be discarded and lawyers should be able to provide comprehensive advice and draft applications as they were able to prior to the reforms. (2315, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Scrap it – allow for lawyers to be involved from the beginning so that people have the right to legal representation from the very beginning. This is vital for things like power/control dynamics, particularly in domestically violent relationships. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It should be abolished and lawyers ought to be able to be accessible to all people without the need to justify their involvement. Lawyers ought to be able to do the job of supporting their client through the entire separation process and not be asked to provide a tick box service because someone is unable to afford to pay for a lawyer's services. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

In contrast to those who wished to abolish FLAS and/or return to the pre-reform situation regarding legal representation, others suggested **extending or broadening FLAS** in various ways, such as: increasing the tasks that lawyers could undertake, for example, **entering into correspondence or negotiating with the other party** on behalf of clients; **liaising with other counsel**; **providing legal advice prior to, during or after FDR or during Court proceedings**; **drafting documents** for clients; and increasing the funded time to allow follow-up return appointments.

Seeing a client after FDR to talk through the consent order process. (2161, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

I am finding some FLAS clients wanting to come back immediately prior to a mediation in FDR to touch base and discuss strategy and options for the mediation session. So FLAS clients are wanting to use the FLAS provider as a coach or counsellor. I guess that says that they value the advice that I have given and they want to come back for more from me. People should be supported to access that if we want to support them to resolve their own disputes. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

Being able to enter correspondence with the other party or their counsel. (2210, Ex Lawyer and FLAS Provider; Survey)

Being able to liaise with other counsel. (2226, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Ability to follow-up with FLAS clients as to whether they have been able to progress or resolve matters, rather than finding out when they end up in a situation that may require urgent Court action. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Clients given the ability to come back to clarify matters (without doing a FLAS 2), especially if circumstances have changed. (2311, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Some basic negotiation, writing to the other parent with proposals. (2404, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

FLAS is good, but what you are authorised to do under it is too narrow. ... The service you can give is so limited. ... Expand the scope of what lawyers can do e.g., draft applications for clients. (2423, Lawyer, FLAS Provider; Survey)

More funding - widen the scope of what FLAS covers. ... Additional advice and support around FDR (clients often have questions once they are in the process and there is not enough funding for that). (2519, Lawyer, FLAS Provider; Survey)

I think the funding should increase and perhaps could be extended to cover advice after the matter goes to Court (but before lawyers can act). I often get contacted by FLAS clients who have filed Court documents and do not understand what happens next. Normally this ends up with me giving them advice for free as they are finding it too hard without legal advice. If they are able to later have a lawyer represent them they usually come back to me, but they are then a Legal Aid client so the cost is usually not recovered further down the track. (2344, Lawyer, FLAS Provider; Survey)

Counsel should be able to provide proper and full legal advice and to draft any Court documents. (2278, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Content not covered by FLAS that was thought useful to cover included matters such as domestic violence, relationship property, child support, and supervised contact.

Setting up supervised contact for prisoners and people on parole. Conflict management coaching. Preparation for dispute resolution using out-of-Court processes. Assisting clients to understand risk to a child of ongoing parental conflict. Heaps of stuff! (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

Advising in respect of domestic violence would be of assistance. Many families want information about protection orders, however their circumstances do not meet the standard for filing an application. A service directed at providing initial information, and perhaps initially correspondence to the other party, such as 'cease and desist' letters, may lower the risk of future, higher level, violence. (2582, Lawyer, FLAS Provider; Survey)

Domestic violence considerations, guardianship options, grandparent applications (seeking leave to apply). (2534, Lawyer, FLAS Provider; Survey)

Property and child support questions. (2205, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Giving initial advice on Domestic Violence issues would be useful. Sometimes the person doesn't want to go as far as applying for Legal Aid, but can't afford to pay you - but they still need some advice. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Relationship property. Many clients also want basic PRA advice. We decline to provide this because it is not within the scope of FLAS 1 (plus it is enough to cover COCA matters in that appointment and PRA really needs an appointment in its own right to adequately cover an initial appointment). (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Consent orders. ... Most do not understand FDR agreements are not enforceable like Parenting Orders and need consent orders. ... I think there should be a separate part for getting advice on a FDR agreement. This is often where things fall apart and this could help save those agreements. It could also cover consent orders. (2173, Lawyer, FLAS Provider; Survey)

Suggestions were also made about expanding FLAS to discuss a range of **dispute resolution avenues** with clients, such as collaborative practice or alternative dispute resolution (ADR), and to better promote FDR.

FLAS could also be improved to be a more comprehensive/resolution focused option if lawyers are highly trained and skilled in helping clients identify their interests (as opposed to advising as to 'legal rights') and assessing with the client all the available options for resolution out-of-Court e.g., mediation/FDR, collaborative process, evaluation etc., etc. (2493, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Include info about collaborative practice as a non-Court option (though not affordable for most parents who are under the funding threshold). (2184, Lawyer, FLAS Provider; Survey)

An ADR focus for the systemic role FLAS could play in the FJS does not seem to have been considered in NZ. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

Ideally, I would like some lawyers to be more supportive and proactive about FDR. Parents go to them for advice - for whatever reason - and the lawyers advise them against FDR - for whatever reason. Some lawyers do not consult with us even when they know there is a mediation in progress. I always communicate with the lawyers (with the clients' consent) as I think it is unprofessional not to. (2167, FDR Mediator; Survey)

Expanding FLAS to be delivered in other venues, such as within the Court process or family centres, or expanding the range of people to receive FLAS was also suggested.

This advice could be offered in family centres and be part of a range of services offered to families experiencing separation. (2360, Psychologist; Survey)

If FLAS was offered within the Court process, i.e., an application is made and then the parties head off for FLAS or FDR, the process would be more focused and more capable of producing meaningful results. (2554, Lawyer, FLAS Provider; Survey)

It would be hugely beneficial to the Court, given the increase in self-represented clients, if this could be similar to the criminal based Duty-Lawyer, thus allowing Court staff to refer clients for advice on the spot. (2502, Ministry of Justice/Court staff member; Survey)

24/7 online and on-call chat service, extension to all areas (prisoners, parolees, Police-issued safety order holders, etc), all family members who are able to access FDR, all self-representing litigants in the Family Court. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

Some participants considered that FLAS could also be **delivered by other professionals**, or through Parenting Through Separation or FDR.

Should be possible for FLAS to be provided by suitably qualified non-lawyers, especially FLAS 1. ... The main 'legal advice' is about the child's best interests - that should be able to be provided by psychologists and other child experts and para-legals in conjunction with advice about legal processes. (2184, Lawyer, FLAS Provider; Survey)

Probably could cover off in PTS course. (2482, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Several participants thought that having **more resources and guidelines** would be helpful.

It would be helpful to have a list of resources we could give our clients and be able to tick each one that we wanted printed to hand to our clients. (2483, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

I think more guidelines would be helpful. (2374, Lawyer, FLAS Provider; Survey)

Clear brochure on the process of the Family Court so that when we send them off they know what they are doing e.g., file and then service etc., is explained to them. (2308, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Consent Orders - it would be useful to have fact sheets to give our clients about these. (2173, Lawyer, FLAS Provider; Survey)

Better videos would be good, use experienced practitioners. We could have clients watch the video for basic advice, then we can fill in gaps. Would be good to have a video of success stories from FDR if they are out there to encourage parties into believing in the system. (2566, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Interview Findings

Thirty-eight of the 100 professionals (38%) who were interviewed in this study spoke about FLAS. Just over half, ($n=21$, 55%), were lawyers who were current FLAS providers and a further six (16%) were, or had been, registered FLAS providers but had either given up this role or chose not to provide the service when asked by separated parents because of such issues as low remuneration and time-consuming administration. The other 11 interviewees (29%) were lawyers/mediators ($n=5$), lawyers ($n=4$), a mediator and a counsellor.

The comments and issues raised by the professionals included general positive, mixed and negative perspectives on FLAS; the lack of awareness of FLAS; accessibility; uptake; the role of FLAS and its limitations; clients' lack of understanding about FLAS; funding, remuneration and administrative issues; the 2014 reforms, FLAS and New Zealand's family justice system; reinstating legal representation from the outset; and other suggested improvements.

General Positive, Mixed and Negative Perspectives on FLAS

Four FLAS providers spoke in **very positive** terms about the service they provided or the client feedback they received about FLAS.

I think people do like the Family Legal Advice Service. I really like it; I think it's a really great piece of funding for FLAS 1. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

The people that we do get through are pretty happy with it and say it's going to be really helpful. (2161, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

FLAS is helpful for a number of cases and helping people understand. Sometimes it's quite good because someone who's recently separated - this is where FLAS is really good - they have no idea what's happening with the children and the property or anything. So if they happen to be in the office doing FLAS, then I also get an opportunity just to talk to them about ... some of those preliminary things, because if they didn't have advice they can find themselves really disadvantaged later. (2483, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

I spent a bit of time at the beginning getting ready for FLAS and I can now deliver that service efficiently. When a person rings up, I have a telephone consult there and then basically. That's no cost to anybody; I don't charge for that obviously. But I'm able to triage those parents who ring reasonably quickly and tell whether they're going to be a FLAS client, whether they're going to be a without notice urgent application client, or whether it's something else. That's something I've had to do and it's a frustrating part in that somebody calls and I really do stop whatever I'm doing if I'm answering that call. To be 10 or 15 minutes probably on the phone with them then and there, to get enough of their information from them to know what service I'm going to be able to give them. Some clients are a bit taken aback because they literally do ring up and say, "Can I have an appointment?" But I won't give them an appointment until I know what sort of appointment I'm giving them. ... So I have to triage that in that phone call to work out what it is that's going to be provided. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Five lawyers, four of whom were also FLAS providers, held **mixed views**. They considered FLAS to be "fine" particularly for "low conflict parents" who "just need a bit of guidance", but also said it was not executed/delivered well, did not go far enough for the clients, or was only adequate in principle because at least it provided some advice to parents "barred from getting advice any other way."

I think FLAS is a fine idea, but I just don't think it's executed well. ... FLAS is a waste of time! (2527, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

From a lawyer's perspective, FLAS is fine. From a client's perspective, I don't think it goes far enough. You're there helping them and FLAS Stage 1 is saying, "This is the system, here are the numbers, go to it", whereas a lot of them want their hands held. Stage 2, I think that's just downright mean to be quite honest - helping them draft proceedings and saying, "Well, there's the Court, go and file them. You're on your own." (2334, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I didn't mind FLAS when it was pointing people in the right direction, "Yeah, I think we'll be able to sort it out, you just need a bit of guidance." The people who had low conflict really and that's the group it was purposely set up for - low conflict, point in the right direction service, that's what I called it. When people were coming in high conflict, but the without notice grounds weren't met, I didn't enjoy them because they were going to fall into a big hole that we might never see them from again and issues weren't going to get resolved and children were going to get lost. Those ones normally would eventually come back because the conflict had got to such a point that we were doing without notice's. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

FLAS - look, I guess in principle, if people are barred from bringing applications to Court and are barred from getting advice any other way, can't afford legal advice, then it's good to have that available to people. (2361, Lawyer, Lawyer for the Child; Interview)

Six professionals expressed **generally negative views about FLAS**, describing it as "a joke" or "nuts" and lamenting the way the Lawyer/FLAS provider's role had turned into "a sort of a secretary for the government" or just able to operate "on the surface."

What's happened is that as a lawyer for the FLAS system you've become a sort of a secretary for the government; all you do is fill in the form. There's very little meaningful advice you can give to them. (2373, Lawyer, FLAS Provider; Interview)

It's just a joke that whole FLAS thing. In my opinion, it's just not worth it. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I've not heard a lot of people say that FLAS was a good resource. (2319, FDR Mediator, Mediator (Private), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Interview)

FLAS is not as helpful as being able to refer them to counselling, or to something like that. ... Parenting Through Separation is almost more helpful, really, than the FLAS service that's being provided. (2508, Lawyer, Lawyer for the Child; Interview)

The thing's nuts - it just runs contrary to everything to do with someone who is vulnerable; it just runs contrary to all those natural justice things. (2528, Lawyer; Interview)

It's pretty frustrating for the clients. They just think we're not much help at all because we're just on the surface. (2549, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Lack of Awareness of FLAS

Five FLAS providers and a lawyer/FDR mediator expressed concern that FLAS was “not known about” or “not well advertised.” This lack of promotion meant separated parents were unaware of FLAS and were often just wanting “to see a lawyer.”

I speak quite a lot with community organisations who are doing training and stuff like that and they don't think there is a lot of awareness around the Family Legal Advice Service funding. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I don't think anybody's ever rung me and asked for the Family Legal Advice Service. I've never seen anything advertised about it, so obviously people aren't seeing that. In their minds they just want to see a lawyer. Parents come to me in two ways; one is word of mouth and the other is through my website. I've got all the information about FLAS and everything on my website, but it is a bit complicated isn't it? Parents just want to speak to a lawyer. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

The FLAS service as currently structured is basically a service that nobody knows exists. It takes quite some work for people to learn of its existence and to access it. To give you an example, I recently gave a presentation to a couple of officers in the Family Violence team at [an Auckland] Police Station. The FLAS service has been available since 2014 and these officers had never heard of it. They are the front line of the New Zealand Police Family Violence team that turn up at people's properties whenever a family violence incident report to Police has gone down. Those officers are able to tell parties that they can access a free initial Family Legal Advice Service and hand out cards for FLAS providers or information flyers and leaflets, which is what the Police want to do. I've spoken with three local stations and the Police tell me they need this information to be able to give to clients that they're attending because Police are the front line. They go out and say, "Well, this is no good, you can't conduct yourselves this way." But Police want backup from a lawyer to go in and give the same message again. Also, legal advice about what people's options are. The FLAS service can do that, but it's not currently being used to do that. Legal Aid and the Ministry of Justice are responsible for making sure FLAS is known about. There's no doubt that the delegated statutory functions of the Secretary for Justice and the Legal Services Commissioner are to ensure access to justice. That's their job. It's a Legal Aid service, it's their job to make sure it's accessible; no one else's. ... They need to expand their minds about the potential of delivery of the service to clients in particular circumstances and how we could close the bridge between the service and the people. (2187, Lawyer, FLAS Provider, FDR Mediator; Interview)

Accessibility to FLAS

FLAS providers ($n=5$) reported the **difficulties clients faced accessing FLAS** in both urban and provincial areas alike. In **cities**, a large number of phone calls may need to be made before clients find a FLAS provider who is available and willing to meet with them. Some FLAS providers are “turning people away” because they cannot manage the “deluge of people who are needing help.” In **provincial** areas, there may just be one FLAS provider who is very busy responding to clients' need for information about the family justice system.

What I hear from people who approach me is that they can't find a family lawyer able to talk to them, they can't find a Legal Aid lawyer and they can't find a FLAS lawyer. So

by the time they get to me they may have made 20 to 50 phone calls. ... They're either too busy or they're temporarily unavailable. Recently I tried to find a FLAS provider for a party in a set of proceedings. It took me six telephone calls of people listed on the Ministry of Justice website as FLAS providers on the North Shore and none of them were either available to come to the phone or currently doing FLAS work. So that's what people are up against. (2187, Lawyer, FLAS Provider, FDR Mediator; Interview)

It's just managing the deluge of people who are needing help. We are constantly turning people away because I can't even provide FLAS appointments. There's a shortage of Legal Aid providers in Tauranga. I hear that there's desperate shortages elsewhere in the country. That, for me, seems to be a fall-out for people. (2468, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I'm the only FLAS person in [town]. (2165, Lawyer, FLAS Provider, FDR Mediator; Interview)

I'm situated in a small local community in [region], but because I'm known to community services and to Police they know I'm the only Legal Aid lawyer available. When they are coming across family violence incidents or people potentially in need of legal advice they want people to access that. So my name gets put out, my telephone number gets put out, and I'm routinely finding that I'm in the position of having to give substantial information to people about how to navigate the system and to also connect them with other referral services. In Australia, as a Legal Aid lawyer, you don't have to worry about that because you're employed by the state Legal Aid services; but here, you're not. Your employment is on the basis of the FLAS initial legal advice if you can get the forms filled in and the clients to produce the evidence needed to access the service. (2187, Lawyer, FLAS Provider, FDR Mediator; Interview)

Uptake of FLAS

FLAS was reported as **not being “used as much as they expected it to be”** and only available to “a very small number of people who are eligible.” Three FLAS providers reported having done “about six FLAS cases”, “probably a dozen” or receiving a “FLAS request about once every three months.” Only two lawyers said they “did a lot of FLAS” or had “a lot of people coming in for FLAS.” Others ($n=3$) found FLAS referrals “quite intermittent” or said there was “certainly not a sufficient uptake of FLAS.” Lawyers were also concerned that **clients participating in FDR were not receiving any initial legal advice.**

I don't think we're seeing nearly as many clients as we need to. Most people who go to mediation are going without using FLAS – I'm not entirely sure why. I know there's not a big uptake of mediation anyway, but there's certainly not a sufficient uptake of FLAS. (2161, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

We have certainly found that our incidence of FLAS is nowhere near as high as we expected it to be. (2411, Lawyer, FLAS Provider; Interview)

Most of the calls I get would be first point of contact. But I do get a few who have already done FDR and are then ringing to say it hasn't worked. Now they're ringing the lawyer. So it worries me a wee bit because when I say to those people, “Did you get

any legal advice before you went through FDR?” and they say they didn’t. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

The Citizens Advice Bureau, PTS providers/facilitators and FDR providers were said to be regularly making client referrals to **online FLAS services** due to their easy availability and reliability for clients. One FLAS provider, whilst acknowledging these firms were “able to provide FLAS in a useful way”, was nevertheless concerned about the longer-term impact on clients “to have accessed FLAS through someone who isn’t local.”

We referred people from CAB to Ebborn Law because they were reliable, they do it all the time, and they were available in centres outside of [city]. I think they’ve picked up quite a lot of the FLAS work. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Interview)

It is our experience in [city] and in [city] that the FLAS we do get is quite intermittent, and that a lot of the PTS providers or FDR providers refer people who require FLAS to law firms who provide online services ... as opposed to referring them to local services. There was actually a Family Court Association’s event last night, where one of the providers confirmed they routinely do that for people who wish to be able to access FLAS on an online basis. I think both of those firms have done an awful lot of marketing and networking as to being able to provide FLAS in a useful way. That’s not meant as a criticism of them. It’s just difficult for the client in the longer-term to have accessed FLAS through someone who isn’t local. If they do then have to go to Court there’s that lack of knowledge about their file. If they’d been able to come through someone who is available, then we would be able to assist the client the whole way through. (2411, Lawyer, FLAS Provider; Interview)

Three FLAS providers commented on the **lower uptake of FLAS 2** compared with FLAS 1.

FLAS 1 would be 80 per cent of the work. FLAS 2, minimal. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

We don’t seem to use FLAS 2 a lot. To be honest, we’re looking at reviewing how we deliver FLAS 2 because the fee that attaches to it is just ridiculously small for assisting with Court entry documents. ... The vast majority of FLAS fees that we claim are FLAS 1 and it’s very unusual for someone to come back and want FLAS 2 to have their mediation agreement made into a Court order. Sometimes they’ll come back because they’ve got their exemption certificate, or they resolve some things but not everything, to do Court entry forms. But usually the number one reason why we’re doing FLAS is actually more for respondents, where someone’s applied on notice and they need assistance with doing the Notice of Response. But it’s not a high number. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Role of FLAS and Its Limitations

The FLAS role was described as primarily providing information about the family justice process, not about the Care of Children Act 2004, and as preparing people for their referral to FDR mediation. If an exemption was subsequently granted because one party failed to attend FDR, or the parents failed to reach agreement at FDR, or their agreement broke down soon afterwards, then clients would reappear with the lawyer for FLAS 2.

I considered the FLAS role really information about process. I considered it very little to be actually about Care of Children Act advice. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

We have a lot of people coming in for FLAS and generally they get referred off to FDR mediation. (2549, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Mostly it's to help them go through the FDR process. (2509, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Interview)

People go and do the FDR and sometimes it fails, sometimes it succeeds. When it succeeds they've got a parenting agreement. A lot of times it breaks down after a period of three to six months I've found. Consequently they come back and then they have to apply, and because I'm a touch typist, like many other lawyers I suspect, I type up the documents for them. Of course, I get the amount that's allocated for FLAS 2, which is fine, but I'm self-employed and I own the building I work from. I do it because I love the job. (2225, Lawyer, FLAS Provider; Interview)

Quite a few people who are told that they must attend mediation are resentful that they've got to go anyway and then are probably somewhat more resentful of the fact they need to now spend extra time doing another thing [FLAS] in preparation for something [FDR] that they don't think is going to work. ... The only people we see again are the people who we see for FLAS 2, that's the post-mediation FLAS where mediation didn't work. The main people we see at that side are because the other person just didn't attend mediation, so they've got an exemption. (2161, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

Fifteen professionals, 11 of whom were FLAS providers and three were lawyers, said FLAS was “**limited**” in terms of its **scope** and/or **the time available** to deliver it effectively. The role did not allow FLAS providers to act for a client, negotiate on their behalf, give “sensible advice about the substance of the issues” the client was facing, nor file or serve documents. Parents were said to struggle with, for example, the electronic filing of without notice applications with the resulting wave of information fired back at them described as “like a tsunami wave coming down on the average person.”

It's not ideal because they come to a lawyer wanting help, and we can only give very limited help. (2468, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I am limited in the work I can do. We are not allowed to negotiate on behalf of the client, we're specifically prohibited from doing that. (2411, Lawyer, FLAS Provider; Interview)

FLAS limits entirely the advice we can give to clients and I believe that, as a consequence of that limitation, we can't provide our clients with the overall best service. ... With respect to FLAS, particularly FLAS 1, some practitioners give people the once-over-lightly and just quite literally give them the rote advice, while some practitioners give the wider gambit of advice. People get caught by that. (2563, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

There's very little meaningful advice you can give to them. (2373, Lawyer, FLAS Provider; Interview)

Poor Legal Aid people who can't read and are struggling are given this crazy overview of what we are supposed to talk about - things like the track that cases go on when they get to Court. And these people are saying, "What the hell are you talking about?" It doesn't fit the people who are coming through the door. (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, Citizens Advice Bureau Staff Member/Volunteer; Interview)

There's no scope for giving people substantive advice at the start unless they can pay. I'm FLAS registered so strictly speaking I'm supposed to be giving them advice about the process, but actually what they really need is some sensible advice about the substance of the issues that are facing them. You can't send them off to counselling anymore. ... Instead you are having to tell them all about the labyrinth of processes that are available and shunt them off towards FDR. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Normally speaking, if you're going to do a proper on notice application for a children's matter, you've got the first appointment for one hour, second appointment probably draft the affidavit - it's a three, maybe four or five hour job by the time you do it properly. The FLAS system doesn't allow you to do that properly. It's frustrating because you want to help the person, but you're limited and then, to put the cherry on the top, you can't even act for them. (2528, Lawyer; Interview)

The FLAS service does not extend to a lawyer filing or serving documents. Yet for many people their understanding of how to electronically file a without notice application on the Court's electronic platform is impossible. ... Then managing the communication with the Court is difficult for the average client. ... It fires back a bundle of information that's like a tsunami wave coming down on the average person, inclusive of Court minutes with judges with a whole lot of language that people just don't understand; they can't make head nor tail of it! And at that point the client has no ability to come back to the FLAS lawyer and say, "Hey, what does this mean?" (2187, Lawyer, FLAS Provider, FDR Mediator; Interview)

With FLAS you get a lot of clients coming back and saying, "Oh, it hasn't been served and now I need to do substituted service and I don't know what to do." They really need some help, but they've got no more hours left. There is a gap there. (2272, Lawyer; Interview)

The rules say that when you make an application to Court on notice, you've really got to put all the evidence in right at the start. Relocation cases where parents want to move from one part of New Zealand to another, or overseas, are such an evidence heavy thing, but there's no capacity to do it. You get this [FLAS] system where you get the first meeting with the client, and then a second meeting with the client where you sort of help them do the forms. I say to them, "Look, you can't do a half-arsed application, you really have to do a heavy one." But the system doesn't provide for that. (2528, Lawyer; Interview)

FLAS was also said to be "limited" because **the time** to deliver it was **too brief**.

I just found the advice is really limited with what you're giving. It's really short. (2188, Lawyer, FLAS Provider; Interview)

You cannot do FLAS in the time, other than give them the letter of advice, which covers exactly the same things. (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, Citizens Advice Bureau Staff Member/Volunteer; Interview)

I get that there is FLAS, but if that's an hour or two of time, there's just insufficient ability for a lawyer to convey the information necessary to a self-litigant to complete the forms and understand the process and understand what the law is that applies to their particular parenting circumstances. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

It's difficult for the lawyers - you're being asked to be doing a proper job in a very short time frame for a very small fee. (2528, Lawyer; Interview)

Clients' Lack of Understanding about FLAS

Two professionals commented in general terms that they were "not sure that the FLAS system is well-understood" by clients or that "they just don't get the legal concepts" despite the "expectation they should know how the law process works." Six FLAS providers said that **clients were often unaware or confused about FLAS being "a one-off piece of advice"** that was "not never-ending" and that **their FLAS provider was not now their lawyer**.

I don't think the clients really understand FLAS at all. They feel that from the minute they come in the door that you're their lawyer and you should be able to write letters for them and appear for them in Court and that sort of thing. (2220, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Interview)

People come in and they'll go, "Oh, I thought there was a Court order in the past" and we're like, "Well, did you bring it with you?" "No." "Well, how are we supposed to advise you if you don't bring us in what the previous Court order says!" So we have to send them away again to go and get it. It's not a clean cut - you see, people don't really understand that it is a one-off piece of advice. They tend to get a bit frustrated when they then ring you back and you're like, "Look, my advice, that's a one-off consult. It's not an ongoing relationship; we're not going to continue to give you advice for ever and ever and ever." They don't particularly understand that because they don't understand the difference between FLAS and Legal Aid. All they know is it's paid for by the government and so we get people going, "But why? You've been paid to do this." I say, "No, we're not being paid to advise you forever. It's not never-ending." (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

People are not clear at all. You try to explain it to them, but you do wonder whether people take it in because people still have a view of lawyers of being almost like going to the dentist. ... You can give them all the paperwork under the sun, like brochures, but people come to you for reassurance and guidance. If the government wants to alter their expectations, they've really got to do it before they get here. People are arriving here with the expectation that they'll have somebody to help guide them through the process and you have to say, "Well, no, sorry, we can't do that!" (2334, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I was usually pretty clear at the start that this was a one-off unless something urgent happened. It's only \$180 flat rate per hour. "If something drastic happens, give me a

call, I'll point you in the right direction." But I was pretty good at following the [script], "I need to tell you this, this and this." My last firm had a full check sheet of the requirements that you had to hit on your FLAS, including explaining that, "I am not ongoing as your lawyer." I would be quite clearly saying, "If you come back, and if it is without notice, yes I can act" or "If you end up going to Court and the judge says you can have a lawyer, then you can come back and see me. But until then, not really." In [another city] I did have a few and they would ring up quite regularly and I'd be like, "No, I've told you what you have to do." But depending on how nice I was feeling on the day, it's quite often a phone call, "Oh yeah, I've got a bit of time, I'll have a chat to you", or "Your issue's actually pretty minimal, so yeah." It just depended on the complexity of the issue. "If you're coming to me about a contact issue, that is not something I can help you with." (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

FLAS Funding, Remuneration and Administrative Issues

The professionals raised a variety of issues relating to FLAS funding, remuneration and administrative issues. These included FLAS providers' satisfaction or dissatisfaction with the funding for FLAS (particularly FLAS 2), the pro bono legal advice they provided, the challenges many experienced accessing the Ministry's RMS system, the imbalance between FLAS clients and lawyers' private clients, and the interface between FLAS and Legal Aid.

One FLAS provider, who worked in a Community Law Centre, was **satisfied with the funding** provided for delivering FLAS because "any money's good money from our perspective", but acknowledged it was inadequate for commercial law firms.

[The funding] is okay for us because we're a community law centre - so any money's good money from our perspective. From a commercial firm perspective, no it's not a viable amount. It's not enough by a country mile. Considering it's a one-off exchange, it's not a client that you're going to, sort of, profit from for necessarily any amount of time. But from a community law perspective, it's fine. We think it's a reasonable amount of money. (2161, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

Eleven other lawyers, eight of whom were or had been FLAS providers, made **negative** remarks about the remuneration on offer for FLAS work describing it as "very small", "not very good", "ridiculous", "not cost effective" and "not financially viable" for the amount of work involved. One described taking on FLAS services as "a very short route to starvation" and another spoke of having to absorb the extra time spent trying to assist struggling clients.

Your employment is on the basis of the FLAS initial legal advice, if you can get the forms filled in and the clients to produce the evidence needed. To take on FLAS services is a very short route to starvation because the Ministry of Justice will pay you something like \$225 to deliver the initial legal advice service and \$245 to deliver the Court entry form service. So, for example, last week I spent five hours in preparing the applications for the TPO and IPO and I got paid \$245 – it's just ridiculous. (2187, Lawyer, FLAS Provider, FDR Mediator; Interview)

I used to be a FLAS provider; I'm not anymore. In fact, I don't provide Legal Aid services at all now and the reason for that is because I've been practising for just over 20 years now and the time and energy involved in Legal Aid work and the complexity of it and

the remuneration just doesn't make it feasible - which is a place I never ever thought that I would find myself because I've always been very committed to that. But it's just not financially viable - we're a small, two-director office. (2508, Lawyer, Lawyer for the Child; Interview)

They give us funding to set out the whole process to people in three quarters of an hour, which is really all that the funding will cover. Because you've got the funding, then you've got to log in all the material into RMS. You can't spend three hours on it. It's not cost effective. ... We used to be able to regulate and manage our clients when they first walked through the door. Now we can only meet with them, really to be cost effective, three quarters of an hour, and we have to just basically give them the outline of the judicial process. They often go away bewildered and they would struggle with that. They can't come back to me because I don't have any funding for it. I can't apply for Legal Aid to give them more information. I deal with a lot of clients who struggle. They have addictions. They have limited knowledge and so they require a lot of time. For my business I've had to absorb the extra time. That has been the impact on us. It's a negative impact because we're not getting covered funding-wise for the amount of work that really is required to assist these people. (2468, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

The **funding for FLAS 1** was considered satisfactory by two FLAS providers, but three were concerned that what was paid for **FLAS 2** was “ridiculously small” or “not financially worthwhile.”

At the FLAS 1 level the remuneration and the advice were about on par. But going into the next level, my firm view was that the remuneration didn't match the work that's required in preparing the forms for people. (2261, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

Two other professionals spoke of the low fees **placing lawyers in a difficult position** and simply not enabling **small legal practices** of “one-or two-man bands” to afford to provide FLAS.

The problem with FLAS is that the level of compensation is really low and the reality is that in New Zealand we're an army of one-or-two-man bands. If you've got a full practice, and you've got some juniors who are working for you, then you can manage that. For somebody like me - and whether people like it or not, the profession is made up of people like me - I just can't resource all of the requirements that you have to fulfil for FLAS for the amount of money that it pays, the administration, all of that stuff. If you are a bigger firm, you can rig yourself up for it. I know there are firms in New Zealand who have gone, “Hey, we can customise this and we can make this work”, but for most of us, we just can't do it. (2361, Lawyer, Lawyer for the Child; Interview)

Pro bono contributions were raised by nine lawyers, eight of whom were FLAS providers, and one who was not because he could not be bothered with “the routine and rigmarole”, so just provided free advice to clients who would have been eligible for FLAS.

I am not a FLAS provider because I just can't be bothered with the routine and the rigmarole around that and so, pretty much, what I do when people come in who would be eligible for FLAS is that I just tell them what to do and I don't bother to bill anybody. It's just ridiculous. (2186, Lawyer, Lawyer for the Child; Interview)

Two of the lawyers who were authorised to deliver FLAS said they never provided it and just **spoke with clients “for free” or “informally.”**

To be honest I don't provide FLAS. What I do is whenever people ring us, we just have a chat with them for free. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I'm an authorised FLAS provider, but I've never provided it – well, we provide it informally. We just can't be bothered doing the bureaucracy that's involved with it, so we don't get paid for it. We've got two or three family lawyers here – we've always been prepared to have one interview with people and not even engage them as a client. Just talk to them about, “What's your problem? What are you going to do? How do you do it, where do you go next?” sort of thing. We don't engage them and send a bill in the place of Legal Aid to do that. (2474: Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Five other FLAS providers who made **pro bono contributions** did so by giving wider advice than FLAS provided for and answering client phone calls on an unpaid basis. Some delivered FLAS, but did not then claim their fee from the Ministry of Justice because the process was considered too onerous or time-consuming.

I'm hopeless at it. I don't charge. What happens is that people will ring up and say, “We're in this pre-Court process and can we come along and get some advice about the process?” I will see them for an hour and I've got to do certain procedural things like get a copy of the photo ID and stuff like that. I've probably done a dozen. A few I've charged for, but others I don't. (2509, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Interview)

I will spend more than an hour with the client, but I am limited in the work I can do. We are not allowed to negotiate on behalf of the client, we're specifically prohibited from doing that. So what that means, realistically, is that I will spend a lot of unpaid time answering phone calls. (2411, Lawyer, FLAS Provider; Interview)

If they're in here with FLAS, then I won't charge them any extra, but I'll always give them wider advice than what they're getting for FLAS. (2483, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

I provide the FLAS service, FLAS 1 and 2, although I don't claim for it on the RMS system, so it's essentially a free service. It's just too hard to manage the Ministry system. It's just ridiculous. So even though I see clients and I do the work, I don't claim for it. ... So I just see the clients and I look at it as pro bono work. (2239, Community Law Centre Staff Member/Volunteer, FLAS Provider, PTS Facilitator; Interview)

Very often I would just provide the advice and I wouldn't log the funding. For some of that general preparatory stuff, the pre-mediation, you could do that in like half an hour. Then it would take you another 20 minutes, or sometimes more or less, to log the funding. So I would just go ahead and give them the advice. (2261, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

Another FLAS provider, who found the **RMS system “really super-intuitive”** was nevertheless aware that many of his colleagues struggled with the administrative

requirements and therefore simply delivered FLAS on a **pro bono** basis “because it’s not worth my time.”

I do wonder sometimes how many people are being given their advice pro bono because, anecdotally, I’ve certainly heard this from colleagues, they would probably be eligible for FLAS. It’s just that the lawyers involved generally can’t be bothered doing all the admin and working out how to get RealMe, how to log in, how to get themselves up on RMS, how to set things up in RMS, even though it’s really super-intuitive. There’s a couple of lawyers I’ve spoken to who just go, “Oh, I just do it pro bono because it’s not worth my time.” ... Even if they’re a FLAS provider, sometimes they just think, “For the sake of what might end up being a 40-minute, one hour, conversation, I may as well just give the advice pro bono”. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Only one other FLAS provider was **positive about the FLAS payment system**.

The way that you’re paid for it, is really, really good. It’s very slick and you tend to get it into your account within two days, so that’s really good. (2161, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

The more frequently expressed view by lawyers ($n=12$) was that the **FLAS administration was too complex and/or time-consuming** - FLAS was “cumbersome”, “ridiculously frustrating”, involved “way too much admin”, too many forms and paperwork, and detailed procedural requirements (concerning clients’ photo identification and eligibility) and was “not financially viable”. Four lawyers had “flagged doing that sort of work”, while others said that the infrequency of FLAS referrals had meant they never achieved fluency in logging into and operating RMS efficiently. They therefore “couldn’t be bothered with the bureaucracy involved” and instead provided advice to the clients for free.

In [region] there’s a lot of low-income families. A lot of us aren’t doing the FLAS work, even though we were registered and set up for it because, particularly for sole practitioners with no support staff, there’s just way too much admin to do. We’re all really busy and we don’t take on new clients that often, so it’s not something you’re doing all the time. There’s quite a few of us who’ve flagged doing that sort of work for that reason; it’s just too time-consuming from an administrative viewpoint. Which also means, of course, that families are operating without legal advice at that early stage because they can’t access it. (2329, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Interview)

I can’t be bothered with all the forms that FLAS involves. It’s a joke. Most lawyers I talk to are the same. We’re happy to help people, steer them in the right direction. It’s not worth the paperwork to find out the identity, their income. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I just found the system cumbersome. You’ve got to get online. Because I wasn’t doing it very often I’d forget my password. I had all those kind of technical issues. So I’d have to ring them and say, “What’s my password?” ... A lot of us wouldn’t go back on that system. For the time it takes, and what you’re doing, it’s just not worth my while. ... I’m not going to do any more FLAS stuff because I just don’t see it being useful and most of the FDR stuff ends up back in the Court anyway on a without notice clogging

up that system because essentially they have agreed to something that they probably shouldn't of. (2188, Lawyer, FLAS Provider; Interview)

The amount of rigmarole trying to hook yourself into it means that, by and large, on a day where I've got 17 other things going on if somebody comes in and says, "Can you give FLAS advice?" I go, "Look, I'm sorry, I can't." ... FLAS is so unwieldy that I just don't bother. I have to go into the system and sort of click everything and do everything. Without sounding like a complete money-based solicitor, my responsibility to my partners now is that I'm meant to be billing out at \$360 an hour. If I have to spend an hour giving general legal advice and then going through this process just to sort of get \$280, or even less, there is, bluntly put, better use of my time. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

That two hours needed to include admin time as well and there is a lot of faffing around with having to get ID checks and funding verified and proof of work income and stuff like that. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

It's just too hard to manage the Ministry system. It's just ridiculous. So even though I see clients and I do the work, I don't claim for it, because it takes me longer to get onto the RMS system and try and load it. That's just a nightmare. It's certainly not user-friendly. It takes me usually about 45 minutes to try and claim \$200 from the Ministry and it's just not worth the time. (2239, Community Law Centre Staff Member/Volunteer, FLAS Provider, PTS Facilitator; Interview)

Four professionals were particularly concerned about the **imbalance that resulted between FLAS clients and lawyers' private clients**. They described this as "not equality of arms" or "not being on a level playing field." Private clients "get the red carpet rolled out" and "all the bells and whistles", while FLAS clients are "at the mercy" of the FLAS lawyer, probably "right at the start" of the process, and may be "stressed", struggling with literacy issues and having difficulty understanding how the family justice system works.

Feedback that I have had from some women and something I've noticed is that FLAS doesn't probably go anywhere near putting people on an equal footing. Some parents, of course, can have legal representation and some people can't afford to do that. That's a real imbalance. (2575, Counsellor, Professional Association Staff Member; Interview)

It's not equality of arms. If you are privately paying, you get all the bells and whistles of a privately paid lawyer who'll help you with the application and do the statement nice and pretty, all the rest of it. If you're not in that category, then you're at the mercy of the lawyer who is prepared to do the FLAS work and help you do it. (2528, Lawyer; Interview)

The FLAS clients are probably right at the start. This might also be to do with the dynamic of literacy and skillsets and all of that. The private paying clients are probably further through that and have tried to negotiate directly. ... What really gets to me is that the private paying clients get the red carpet rolled out. We can spend as much time as we want and go into all the detail, yet poor Legal Aid people who can't read and are struggling are given this crazy overview of what we are supposed to talk about - things like the track that cases go on when they get to Court. And these people are saying, "What the hell are you talking about?" It doesn't fit the people who are coming

through the door. (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, Citizens Advice Bureau Staff Member/Volunteer; Interview)

It is particularly hard for parents who are only eligible for FLAS, but their ex-partner can afford to instruct someone privately. ... It's not fair to the FLAS clients who just do not understand the system. There's only so much information I can throw at someone in an hour-and-a-half or two hours. I can give them brochures and pamphlets, but they're not going to absorb all of it – it's just not how people's brains work when they're stressed. Whereas a client who is paying me privately can call me and have as many meetings with me as they like. I can write letters on their behalf, which their ex-partner may well not be able to instruct someone to respond to because they're not eligible. All their ex-partner can do, or all my client can do in the same circumstances, really is go to FDR and then make their own application and then wait for lawyers to be appointed to act. We do try and get around this by filing other applications concurrently or filing a memo and asking that a direction be made that we can act immediately, but we can't do that in every circumstance because not every circumstance qualifies. For people who are not on a level playing field, I doubt they want to have to go off to Court to settle their dispute. (2411, Lawyer, FLAS Provider; Interview)

The final issue raised by two professionals about FLAS funding and remuneration concerned the **interface between FLAS and Legal Aid**. Prior to the 2014 reforms there was no ability for clients to receive legal advice via Legal Aid, so two lawyers thought **FLAS was “really good”** because it enabled these separated parents to now receive “pre-action advice.”

Before the reforms, people would have no ability to get Legal Aid to simply have legal advice. ... People could only get Legal Aid if they were going to apply to the Court. Having provision within Legal Aid for people to be able to go and see a FLAS lawyer and get some, if you like pre-action advice, is a really good thing. (2361, Lawyer, Lawyer for the Child; Interview)

In terms of there being funding available for this advice, I think it's really good because, prior to that, if you wanted Legal Aid, you needed to be anticipating Court proceedings and it wasn't available just for your general advice – “I've separated and what are my rights?” kind of thing, or “I think I might have an issue, but I don't know, what should I do about it?” kind of advice. So it's very valuable to be able to have that available to people and it's useful pre-mediation as well for people to be able to have a reality check on how long the Court system might take, what a Court might do with their request, and what guardianship is. ... FLAS eligibility is different than Legal Aid because, of course, FLAS doesn't have a capital assessment and is only assessed on that individual's personal income, not a partner's income. I would expect that there are actually more people eligible for FLAS than there are for Legal Aid and probably people who could be getting FLAS, but don't know about it, or don't know they're eligible. ... Once you've excluded capital assessment and once you've excluded new partner income there's certainly people who get FLAS, but would not get Legal Aid. ... Where it gets complicated is s7A. We have to triage our incoming clients really carefully because we have to work out which box to put them in. Are they non-urgent and therefore FLAS and all the funding requirements that go with that? Or are they urgent and therefore Legal Aid? Or are they non-urgent and not eligible for any funding and there's no s7A direction? It's really hard to be operating between these

three different spheres of private work where people can afford it, FLAS but then there's no 7A so you can't go any further than that, and then Legal Aid when you have got your 7A direction. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Parents could sometimes be **confused about whether they were FLAS or Legal Aid clients**, which then created challenges for the lawyer they were consulting.

They also often think they're on Legal Aid. I had a very cyclical conversation with somebody not long ago because she rang me up and said, "I need to change my lawyer because I don't like my current lawyer; I'm on Legal Aid." It was a very long conversation before I realised that what she'd actually had was FLAS 1 and 2 with her lawyer and she wasn't on Legal Aid at all because that's different. But in their minds, it's all the same. They don't necessarily need to know the difference either, except in that conversation because, of course, that's important to me. I need to know whether to tell them to bring their \$50 Legal Aid application fee or to bring their social ID for FLAS. The things they have to bring depend on what funding model they're going to be using. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

The 2014 Reforms, FLAS and New Zealand's Family Justice System

The 2014 reforms were **criticised** by five professionals for not having "the necessary thought put into them", with FLAS boxing lawyers into fulfilling "their obligations to the system, rather than to the family." FLAS was also described as "throwing [people] to the wolves" and being "indicative of there being this two-tier justice system for those who've got money and those who don't." It was no longer possible for lawyers "to provide the same sort of services that clients had come to expect and, in a lot of cases, require."

With FLAS and the Legal Aid changes, what's happened is that lawyers have been boxed into a way of operating where they have to fulfil their obligations to the system, rather than to the family. They haven't been able to just be solution focused. They've been forced into being box ticking focused. ... I end up with parents in front of me as a mediator that have had a bit of patchy legal advice, because the focus isn't about finding a solution or finding a resolution for these families. The focus is about ticking the boxes, telling them about their options and telling them about their rights and telling them about this, that and the next thing - but not really listening to them and finding out what this family needs. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Interview)

Generally it's just throwing them to the wolves. Most of them do not reappear for the second stage FLAS. Of those that you can contact later, some have sorted out a workable and satisfactory resolution during mediation that they are happy enough not to get made into a Parenting Order, but the majority of them haven't and, unfortunately, a lot - I can't give you a percentage - it's certainly not half - but a lot of people don't even get as far as ringing the mediator. Or, if they do contact the mediator and the mediator then has difficulty contacting the other party, they seem to lose heart and there's a bit of muttering about the whole thing being a waste of time, so the problem isn't solved, which is why I am offended by the changes. (2373, Lawyer, FLAS Provider; Interview)

Since the 2014 reforms you just can't provide the same sort of services that clients had come to expect and, in a lot of cases, require. The changes have been particularly hard

on people who had been previous litigants, who had really relied on their lawyer to manage their Family Court issues, and who have then come across another issue which has required a further application and have had to go off to FDR and PTS. Which is fine, but have then had to make an application themselves and try and navigate the Court process themselves, which is the really difficult part for most people. So it has been particularly difficult to try and provide FLAS and an explanation of the Court process to clients who, in theory, are familiar with the Court process, but actually are not because they've always expected you are able to be there to do it. In some ways, clients who have never had an expectation that their lawyer can do everything for them have probably found it a bit easier to manage. (2411, Lawyer, FLAS Provider; Interview)

The **impact of FLAS on lawyers** was raised by three professionals. One mediator/counsellor said that “for lawyers, giving advice, knowing that you can’t represent the people, is a **real headache**, because that’s not what you usually do as a lawyer.” Two FLAS providers criticised the “one size fits all” approach, the way **lawyering had been “dumbed down” to a “tick-in-the-box” exercise**, and the **conflict created with their personal philosophy** of wanting “to do a good job” and providing “a standard of service that you think people are entitled to.”

The FLAS advice is really tick-in-a-box kind of lawyering. It’s kind of dumbed it down and actually once you’ve determined whether it’s without notice or not, the feeling I get from the system is like, “We don’t really care what your issue is, go off to FDR to talk about it.” That’s not a good level of client service especially when people are coming in super distressed. They don’t want to be told actually one size fits all, off you go, do that. (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, Citizens Advice Bureau Staff Member/Volunteer; Interview)

We limit the number of [FLAS] advice that we give or we limit the amount of time that we can give people. It’s not ideal because they come to a lawyer wanting help, and we can only give very limited help. For me it’s not ideal; it doesn’t sit well with my philosophy. ... You’ve got to give the extra time if you want to do a good job and you want to provide a standard of service that you think people are entitled to. (2468, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Three lawyers expressed concern about the position lawyers were placed in following the 2014 reforms, now having to **consider how best they would be paid** for their work with a client.

With people who are granted Legal Aid or have qualified for FLAS, lawyers have been put in the position of always having to look at the justification. Are they going to get paid for this? Does that fit the model? Does it fit FLAS or does it fit Legal Aid? That’s been really terrible. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Interview)

One of the things that lawyers have been doing is without notice because you get Legal Aid, but it’s not about the money, you’ve got to put the client first, and you’ve got to put your duties first really. Just economically looking at it, it does make sense. If someone is legally aided and they’re making a without notice application to the Court for COCA, I think it’s like \$620 plus GST. If you have two FLAS meetings it’s getting up

to \$600 plus GST anyhow. So people are compromising their professional integrity by doing without notice applications, and really, they just need to be helping the client under this crazy system get the application to Court themselves. (2528, Lawyer; Interview)

Three FLAS providers wanted **legal representation to be reinstated from the outset** to ensure clients had the opportunity to be properly advised and supported, and to help avoid post-separation parenting situations deteriorating to the point where without notice applications were so often required.

I would like lawyers to be involved right from the outset. Sometimes people just need time and they need to be able to work it through with somebody. That first meeting with a lawyer means that they can be given all their options and they can, I guess, strategize as to the best way forward for them. Then that provider remains in charge of the process rather than letting the poor client try to manage that. They just don't get legal concepts and they don't understand. (2468, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

If there were proper funding available for clients to receive legal advice and attempt to settle, and to have Round Table Meetings or counsel-led mediation, as we used to do pre-2014, in my experience that resolved things a lot more quickly. I have plenty of scenarios where things have deteriorated and deteriorated and we've had to make without notice applications. If there were an ability to step in earlier in many of those situations I doubt it would have been necessary. (2411, Lawyer, FLAS Provider; Interview)

We are not providing the service that we used to – 'we' collectively - because now things are left to become bigger. FLAS is sometimes too hard or things suddenly explode and we've got all of these without notice applications, that we shouldn't have because, actually, if we were able to do an on notice application there'd be some guidance for these people and the problems wouldn't get out of hand. (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, Citizens Advice Bureau Staff Member/Volunteer; Interview)

Other Suggestions for Improvement

One lawyer suggested that FLAS should remain available for those people wanting to then “go off on their own”, but that clients should be entitled to legal advice throughout the process if they wanted it.

I don't see the reason for restricting legal advice. I think FLAS should still be offered if the people want it and to go off on their own, but if they want their own legal advice throughout I think they should be entitled to that throughout the process. (2272, Lawyer; Interview)

Conversely, another FLAS provider suggested “**skipping out FLAS altogether** as that doesn't work at all”, while a lawyer wanted “**a very simple way of providing initial legal advice**” introduced to give “people a heads up about what the system is and how it works.”

Summary

Fifty-one per cent ($n=185$) of the survey respondents shared their views and experiences of FLAS, either by answering specific questions ($n=143$) or commenting more generally ($n=42$). Of those who answered specific questions, 82% ($n=117$) had referred or directed separated parents/caregivers to FLAS, and 82% ($n=117$) had experience of providing FLAS. However, 16% ($n=19$) of those who had provided FLAS were not doing so at the time they completed the survey. FLAS provision was not particularly frequent – 37% indicated they provided FLAS infrequently or irregularly, and an equal number reported seeing between one and four clients a month. Only one in ten saw five or more new FLAS clients per month. However, over half (55%) said the number of referrals they received was about right, while 37% thought they received too few. Nearly 60% rated themselves as dissatisfied or very dissatisfied with their FLAS role, while 19% were satisfied or very satisfied. While over 90% said they would, or might, recommend FLAS to separating parents/caregivers, this was often because there was no other alternative for parents to obtain legal advice or because they had no choice. Less than half (49%) thought FLAS was helpful or very helpful for separated parents/caregivers making parenting arrangements, and just over a quarter (27%) rated it as unhelpful or very unhelpful.

One hundred and eighty-two professionals provided a codable statement in response to at least one of nine open-ended survey questions about FLAS. Thirty-eight (38%) of the professionals who were interviewed also commented on FLAS. Combining the open-text survey and interview findings, FLAS was regarded as helpful in providing people with initial information about family justice services and processes as well as limited legal advice, and for preparing people for, or referring them to, family justice services, particularly FDR.

However, opinions were often mixed, with participants seeing FLAS as limited in the service it could provide, particularly for vulnerable people and those with complex situations. FLAS was also considered limited in scope, and regarded as too generic and superficial, when clients really needed more in-depth advice specific to their situation. There were concerns that the funding available, particularly for FLAS 2, was insufficient and therefore there was not enough time to adequately assist clients with completing Court documents and forms. Generally, the professionals were more positive about FLAS 1 than FLAS 2.

Professionals also expressed concerns about access to justice with the FLAS model and raised issues relating to awareness, understanding, uptake and accessibility of the service. FLAS' limited scope meant that some lawyers felt compromised not being able to provide the same level of service that they gave to their paying clients. The professionals also reported that FLAS clients were sometimes confused about the limited nature of the service and their inability to access ongoing legal advice, support and/or representation from their FLAS provider.

The professionals expressed dissatisfaction with the funding of FLAS, both in terms of the number of funded hours and the remuneration rate, and with the administration involved, which was considered onerous, time-consuming and confusing by most. The inadequacy of the funding and the administrative burden meant that some lawyers were doing a lot of unfunded work, providing the service pro bono, or had stopped providing FLAS altogether. The most common reasons given for no longer providing FLAS, or for doing so irregularly, included: the administrative burden involved; low remuneration and funding; lack of confidence in the effectiveness and quality of the service; low demand or lack of referrals;

and workload. There were concerns that this could lead to a shortage of lawyers offering FLAS or the quality of the service being diminished.

Some participants wished to see FLAS abolished entirely and/or a return to lawyers being able to represent clients from the outset. Others thought it was a valuable service that could be improved by broadening its scope, increasing awareness and publicity about the service, and/or making it freely available to all separated parents.

Family Dispute Resolution (FDR)

Survey Findings

Nearly three-quarters (72%, $n=261$) of the professionals completing the survey had views they wished to share about FDR, either by answering specific questions ($n=197$) or commenting more generally ($n=64$). Nearly all (95%) of those who answered specific questions had referred or directed separated parents/caregivers to FDR.

FDR Provision

Of those who chose to answer specific questions, just under half (48%) had experience of providing some aspect of FDR, most commonly as an FDR mediator (40%) (see Table 25). However, nearly a fifth (19%, $n=15$) of those with experience of providing FDR mediation were not currently doing so at the time they completed the survey.

Table 25: Experience of FDR provision

	<i>n</i>	Percent
Pre-mediation intake and assessment/Pre-mediation meetings	48	24.5%
Preparation for Mediation/Coaching/Preparatory Counselling	40	20.4%
Child consultation	33	16.8%
Family Dispute Resolution (FDR) Mediation	78	39.8%
None of the above	102	52.0%

The majority (55%, $n=43$) of those currently delivering FDR reported seeing between one and four new clients per month, 14% were seeing between 5 and 19 new cases a month, and 12% indicated they provided FDR infrequently or irregularly.

The FDR mediators were evenly split in their satisfaction with the number of FDR referrals they received; 47% indicated that the number they received was about right and 48% indicated that they received too few referrals. Only 5% ($n=4$) reported that they received too many referrals.

Table 26 presents information about how the FDR mediators delivered their joint mediation sessions. All FDR mediators who answered this question ($n=75$) delivered FDR face-to-face, with over half also doing shuttle or caucus mediation (68%) or via videoconference (53%). Mediation being conducted by teleconference/telephone was also relatively common (41%).

Table 26: Mode of FDR delivery

	<i>n</i>	Percent
Face-to-face	75	100%
Shuttle/caucus mediation (face-to-face but moving between clients in different rooms)	51	68.0%
By videoconference e.g. Skype, Facetime, Zoom	40	53.3%
By teleconference/phone	31	41.3%
Other	1	1.3%

Note: Multiple selection was possible. Hence, percentages do not sum to 100.

Participants were asked how **children's thoughts, feelings and views** were taken into account within their FDR mediation practice and the results are presented in Table 27.

Table 27: How children's thoughts, feelings and views are taken into account

	<i>n</i>	Percent
I discuss these with the parties	69	93.2%
I speak with the child(ren) myself	18	24.3%
Through a Child Consultant	25	33.8%
Through another professional	26	35.1%
The child(ren) attend part of the mediation session(s)	7	9.5%
Other	3	4.1%
None of the above	2	2.7%

Note: Multiple selection was possible. Hence, percentages do not sum to 100.

Almost all (97%) of the 74 FDR mediators who answered this question indicated that they took children's thoughts, feelings and views into account within their mediation practice in some manner. The most common way was to discuss these with the parties (93%) or through the use of some other professional or a child consultant (69%). Nearly a quarter (24%) of the mediators spoke directly with children themselves and seven mediators had children attend part of the mediation sessions.

When a third party was utilised to ascertain children's thoughts, feelings and views the most commonly mentioned professionals were Lawyer for the Child, followed by counsellors and psychologists. Social workers, other mediators and teachers were also mentioned by a few participants. Involving family members, either parents, siblings and/or extended family members, was also a practice some mediators employed.

Some professionals commented that how children's thoughts, feelings and views were ascertained depended on the situation, and whether Lawyer for the Child had been appointed. Involving parents in the decision about the best professional to talk with their children was also mentioned.

This depended on the circumstances and the parents' views and what they agreed to. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I talk to the parents and ask what they would like. Each family is different and it's designing a process that works for their family. In most cases no external person meets

with the children in cases that I mediate, but it's always a possibility. (2295, FDR Mediator, FDR Supplier staff member; Survey)

For private FDR, the parties have engaged a psychologist who worked within the process to ascertain and advise on these. For other FDR (partially funded), a child specialist is engaged. (2493, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

A Child Consultant through FamilyWorks. Where there are existing Court proceedings, Lawyer for the Child may attend the mediation. (2509, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Table 28 details FDR mediators' **satisfaction with their role**. Just over half (53%) of the FDR mediators were satisfied or very satisfied with providing FDR mediation, and nearly a third (32%) reported they were dissatisfied or very dissatisfied.

Table 28: How satisfied are you with providing FDR?

	<i>n</i>	Percent
Very dissatisfied	10	13.5%
Dissatisfied	14	18.9%
Neither satisfied nor dissatisfied	11	14.9%
Satisfied	28	37.8%
Very satisfied	11	14.9%
Total	74	100%

Perspectives on the Helpfulness of FDR

Tables 29 and 30 provide information about whether the professionals would recommend FDR to separated parents/caregivers and how helpful they thought the service was.

Table 29: Would you recommend FDR to separated parents/caregivers making parenting arrangements?

	<i>n</i>	Percent
Yes	137	69.9%
Maybe	50	25.5%
No	9	4.6%
Total	196	100%

Table 30: In general, how helpful do you think FDR is for separated parents/caregivers making parenting arrangements?

	<i>n</i>	Percent
Very unhelpful	10	5.2%
Unhelpful	14	7.3%
Neither helpful nor unhelpful	38	19.7%
Helpful	90	46.6%
Very helpful	41	21.2%
Total	193	100%

The professionals were generally positive in their ratings of FDR. Less than 5% would *not* recommend it to separated parents/caregivers, while 70% indicated they would recommend FDR, and 26% said they might. Sixty-eight percent thought that FDR was helpful or very helpful for separated parents/caregivers, with only 12% rating it as unhelpful or very unhelpful.

Two hundred and fifty-six professionals provided a codable statement in response to at least one of eight open-ended survey questions about FDR. Of these 256 professionals, 42% (*n*=107) made one or more positive statements, 78% (*n*=200) made one or more negative statements, and 58% (*n*=149) made one or more statements recommending amendments or improvements to FDR. The content analysis of these statements that follows details participants' views on FDR, illustrating the reasons for their (dis)satisfaction with providing FDR mediation; their delivery of the FDR mediation service (e.g., timing, mode of delivery, cultural appropriateness, venue etc.); how children's thoughts, feelings and views are taken into account within FDR mediation; funding to deliver FDR (e.g., adequacy, number of hours, implications for service delivery etc.); in what ways the FDR service is working well, if any; how the FDR service could be improved, if at all; and any final comments about the FDR service.

Positive Aspects of FDR

The majority of the **positive comments** made by 107 of the 256 professionals related to the fact that FDR provided an **opportunity for parents/caregivers to communicate in a non-adversarial manner** and **helped parents to reach agreement**. Specific aspects commented on positively included the **cost effectiveness** of FDR, its **high success rate**, and the **reduction in the level of conflict between the parties**.

I am a great supporter of the process and see it is as one of the best changes made. (2205, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Good outcomes with very few not reaching agreement. Many 'word of mouth' referrals being received. (2168, FDR Mediator; Survey)

Parents are the best professionals to make decisions. They should be nourished and supported to do so and the state should resource services that support parents. Only high risk cases should go to Court. (2471, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

FDR is a positive option and far better than beginning with an adversarial Court process. It can be flexible to suit the circumstances of the parties and used creatively for better outcomes for children. (2573, FDR Mediator; Survey)

Accessible, affordable and good success rates. (2452, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

With a good mediator, the dispute can often be resolved. (2411, Lawyer, FLAS Provider; Survey)

Mediation remains a valuable tool that enables parents to discuss issues and resolve them. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

FDR in some circumstances is really great and helps people reach resolution quickly and much more cost effectively. (2454, Lawyer, FLAS Provider; Survey)

I think it's a big step forward in helping parents with minor children who are separating or separated to avoid unnecessary conflict and work together more effectively as parents. (2269, Lawyer, FLAS Provider; Survey)

FDR as an option for dispute resolution is a valid and desirable option. Some parents believe they will never be able to resolve the dispute without a Judge because they will never be able to talk with the other parent because they are too stubborn or whatever to reach an agreement. Sometimes the clients come out of FDR with an agreement they never expected to occur. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It is a great service, very professional and an easy system to understand. (2412, PTS Facilitator; Survey)

The addition of an FDR service has been a huge improvement to the services provided for families. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff/Volunteer; Survey)

It is an accessible cost-effective mediation service now that it has been working for a while. (2316, Lawyer, Lawyer for the Child; Survey)

I have completed about 120 FDR mediation referrals. More than 80% achieve either full or partial agreements. About 25% of my clients return to me and ask to review their parenting agreements with me. I think this indicates that the FDR process, as I practise it, is working well. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff/Volunteer; Survey)

It has an excellent success rate, committed mediators, great feedback from families. (2295, FDR Mediator, FDR Staff Member; Survey)

[We are] seeing parties who can work through the issues, trial different care arrangements and progress faster for the children than the Court process. (2422, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Mediation has become the default position in settling disputes between countries, organisations and neighbours and has finally been embraced (sort of) by those who have an interest in family breakdown. (2346, FDR Mediator, Counsellor, PTS Provider/Facilitator; Survey)

It appears to be a very good service to help parents reach agreement. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Parties have the opportunity to have their dispute resolved in a cost-effective, timely manner that involves less stress than the Family Court process. Having one mediator for both parties reduces escalation that can be caused by individual lawyers. (2520, FDR Mediator; Survey)

I think mediation is the way we should be going. I know many lawyers and Court staff seem to be against it, but if it is done well it is very good for the parties. I work to turn my mediations around in a timely fashion - sometimes parties need a little longer and a number of shorter meetings are best. (2428, FDR Mediator, Counsellor, PTS Facilitator, Social Service Staff Member/Volunteer; Survey)

I work privately with clients - helping them come up with their parenting plan to take to FDR. Sometimes I go as a support person. It is a fabulous process. Fairway, in particular, do a great job! Excellent option - I scream it from the rooftops! SO much more collaborative than being in Court which is SOOOO combative. I am so thrilled the Ministry of Justice introduced it. Please, please, keep it and promote it more! (2299, PTS Facilitator; Survey)

FDR was also commended for **providing a service beyond the concrete goal of developing a parenting agreement**. The professionals involved in providing FDR frequently commented that they believed the service **helped parents to express emotion and develop better communication skills**. This then equipped parents to **deal with negotiations and any future conflict**.

In many cases parents are not only resolving current disputes, but also learning skills to avoid future disputes. Agreements allow consensus at a much deeper level than the issues a Court Order can address. It often gets people onto a steady parenting arrangement much more constructively and quickly than alternative processes. (2365, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, FDR Mediator, Mediator (Private Practice), PTS Facilitator; Survey)

We are able to provide a service that allows people to deal with another person that respects and values their thoughts and views, while looking out for the best interests of the child. On the occasion that we do not reach a resolution, I hope that the process has in some way had a positive impact and we have been able to get help and support in place if it is needed. I find the value in being able to work with people to find a suitable outcome that means that their children can have a relationship with both parents (if appropriate) in a way that allows them to feel secure and safe. (2167, FDR Mediator; Survey)

85% successful. It is great to be able to help parties self-resolve matters and come to agreements and keep matters out of Court. It is generally a strengthening and empowering process where parties start the journey of being the best Mum and Dad

they can be in the circumstances, including learning how to separate out adult issues from what is best for their children. (2364, FDR Mediator, Counsellor, Social Worker; Survey)

People experiencing a separation are experiencing trauma and the more support they have the more likely the time spent going through the separation process does not add to the trauma. The effect of separation does not have to be annihilation of person, family and work place environment, but can be transformative and improve the outcome if people are properly supported. FLAS, PTS and FDR are a part of this support. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

Mediation is such an amazing process for families. The teaming together of Screening and Assessment, PTS, FLAS, Preparation for Mediation and FDR Mediation provides parties with a really full service. If they have taken advantage of all the services they can access they can come really ready - legally aware, emotionally prepared, understanding the effects for their children, and in a place to want to reach an agreement rather than a fight in Court. FDR mediation sees parents really give each other an opportunity to be kind to each other again for the sake of their children. There is nothing to lose because it's without prejudice. It's an opportunity to put things right and let things go. (2295, FDR Mediator, FDR Staff Member; Survey)

In most of my cases, the parties start off having a lot of conflict between them and are sometimes hostile towards each other. As we go through the process, the parties learn to listen to each other and deal with their negative emotions towards each other (this is a personal strength of mine) - and end up making good decisions relating to the children. Many parties end up laughing together as they go out of the session. (2378, FDR Mediator; Survey)

FDR is about assisting parents to find a way to parent together. My mediation process follows the model of 'Explore, Plan, Future Proof and Agree' so it's exploring (with the parents) all the needs of each of the children - physically, emotionally etc., as well as practically such as sport and costs for attending such and how their children are coping with the changes. Looking at who the important people are in the children's lives. Most of the parents we see have many years of parenting ahead of them and the children are young so helping them find a way of communicating without relying on a third person representing their children is important. They know their children best so it's bringing that out, creating a safe space to listen to each other, and let go of the loss and grief of the relationship and hear the needs of their children. (2295, FDR Mediator, FDR Staff Member; Survey)

As is evident in the responses above, many mediators acknowledged the **rewarding nature of their work** and the **high level of job satisfaction** that resulted from providing FDR. They felt they were **making valuable contributions** to the lives of the families they worked with.

I am loving being able to help people reach agreement. It feels extremely rewarding to get certainty and outcomes that you think will work for people within a month of the issues arising. You can't achieve that with a Court process. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

I enjoy helping parents work together to avoid unnecessary conflict and be better parents. (2269, FDR Mediator; Survey)

Mediation certainly pays less than Court work, but the results are more rewarding. (2294, Lawyer, FDR Mediator, Mediator (Private Practice); Survey)

Every now and again I get to be part of real change; to be a witness to, and perhaps even a contributor to, individuals stepping out of the mire of 'negative intimacy' onto the path of collaborative parenting. That's magic, and mostly makes up for the times when the prisons parents have made for themselves remain locked tight. (2270, FDR Mediator, Mediator (Private Practice); Survey)

The work is personally and professionally satisfying and I often receive really positive feedback which encourages me. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Survey)

I love this work and I love the fact that children benefit if their parents/guardians are able to work together for their benefit. In most cases I can provide a service that meets the clients' needs (limitation based on requirements of suppliers or clients' access to other services). (2533, FDR Mediator; Survey)

The system works well and I feel that I am making a difference for families who need help in working things out. I get a great deal of satisfaction from helping them to gain skills to resolve their own conflicts in the future. (2330, FDR Mediator, Mediator (Private Practice); Survey)

Seven out of 10 mediations I am satisfied with. The other three out of 10 I am not satisfied with. The work can be emotionally draining with both parties texting and emailing updates about what the other party has, or has not, done. However, it's satisfying seeing broken families making an effort to heal. (2166, Mediator (Private Practice), Counsellor; Survey)

For me to be able to provide separating parents/caregivers with the opportunity of supported talking with each other at the earliest opportunity is hugely satisfying - much more so than drafting affidavits to mount an attack in Court. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

The remaining 24% of the professionals who made positive comments considered that **FDR reduced the number of cases going to the Family Court.**

It keeps families out of Court. Some families we can work with to get them out of the Court system and continue mediation beyond that. Knowing that they can start mediation again if needed allows people the security of knowing that they are not 'locked into' a parenting plan and that there is accountability within the process. (2167, FDR Mediator; Survey)

There seem to be good mediators assisting with resolution and keeping matters out of Court. (2229, Lawyer, FLAS Provider; Survey)

It's a great opportunity for parties to make agreements for their children in a safe environment within a reasonable time frame instead of accessing the Family Court. (2233, FDR Mediator, Counsellor; Survey)

It seems to help people to reach parenting agreements. Quicker than Court, and parties have the autonomy to decide on things that work for them. (2454, Lawyer, FLAS Provider; Survey)

Most cases resolve most or all of their conflicts without needing to proceed to Court. (2269, Lawyer, FLAS Provider; Survey)

It provides an environment where the parents are more likely to arrive at a sustainable solution for themselves. It is cheaper and less adversarial and more timely than going through the Court process. (2286, FDR Mediator, Mediator (Private Practice); Survey)

Clients have the chance to discuss matters without Court intervention, drive their own decisions. (2173, Lawyer, FLAS Provider; Survey)

For the majority of families FDR does result in workable co-parenting arrangements and therefore avoids the distress, time and cost of the Family Courts. (2465, FDR Mediator; Survey)

Useful in helping individuals try to resolve matters without immediately issuing legal proceedings. (2472, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It is assisting the resolution of disputes without the need for litigation. (2474, Lawyer, Lawyer for the Child; Survey)

It keeps people out of Court and away from lawyer's letters and affidavits. Supports families to find their own way and one that works for them. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

There are instances where families can resolve matters short of Court involvement. Saves time, money and stress. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It gives parents the ability to resolve disputes without going to Court and in a more positive way. (2354, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

It is a good opportunity to resolve matters without the Court process being utilised. (2434, Lawyer, FLAS Provider; Survey)

Resolving straightforward disputes in a cheaper way than through Court proceedings. (2543, Lawyer; Survey)

It gives parents an opportunity to reach agreement without going to Court and that is a big drawcard for many. Court is very often a last resort for parents, so some welcome an opportunity to mediate in a controlled environment. (2274, Lawyer; Survey)

Despite the many positive comments about FDR, the majority of these were qualified by criticism of some aspect of the service, or by statements suggesting that significant changes to FDR were necessary. A recurring theme in this regard was the view that **FDR was only suitable for a small number of “simple” cases** and was not therefore appropriate for many families.

Where parents are ready to talk about arrangements it can work well. (2321, Lawyer, Lawyer for the Child; Survey)

FDR sorts the ‘easy’ files out. (2268, Lawyer, FLAS Provider, Survey)

For straightforward issues, and depending on the mediator for some more complex issues, FDR can be very successful. (2306, Lawyer, Lawyer for the Child; Survey)

The matters that are capable of resolution out-of-Court seem to be resolved in FDR. (2344, Lawyer, FLAS Provider; Survey)

Concerns About FDR and Suggested Improvements

Two hundred (78%) of the 256 professionals who commented on FDR made one or more negative statements about some aspect of the FDR service. Their concerns addressed a wide range of issues including mediators’ skills and expertise, delays in accessing FDR, the way the FDR service is administered, funding inadequacies, and problems with delivery. One hundred and forty-nine of these 256 professionals (42%) also suggested improvements to the FDR service.

Mediators’ Skill and Expertise

Of the 200 professionals who made negative statements about FDR, 61% ($n=122$) of them raised issues related to **inconsistent service delivery**. Their most frequently mentioned concern (by 37% of these professionals) was the **widely varying levels of FDR mediators’ skill and expertise**. Many lacked faith in the ability of some mediators to conduct FDR mediations successfully.

There needs to be a greater degree of consistency between mediators. (2179, Lawyer for the Child, FLAS Provider; Survey)

It depends on the skills of the mediator; has worked well for some clients. (2574, Lawyer, Lawyer for the Child; Survey)

FDR providers are unhelpful and give clients incorrect advice. My experience has been that clients are pushed into attending (or made to feel they don’t have a choice) in inappropriate circumstances, such as where there has been domestic violence. (2517, Lawyer; Survey)

The mode of delivery could be improved with all mediators receiving mandatory training/supervision regularly. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

I have attended as lawyer for child and had clients attend (as per Court referral). The idea is good, but depends on the facilitator. I have been concerned about self-referral

to own organisations for other services and, on occasions, outcomes written up before the client gets there and that clients often feel pressured to agree. Some facilitators are good and some are NOT. (2482, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Not all mediators are equal and I do not think that a blind referral is helpful. Lawyers are pretty good at identifying who is best for the task at hand. (2546, Lawyer, Lawyer for the Child; Survey)

There appear to be wide varieties in the experience that each parent gets from the very different providers available. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

In theory, the idea is good, but if the mediators are inept, unskilled, and unable to guide the parties, any agreement achieved is flawed. Almost without exception, FDR fails for my clients. (2186, Lawyer for the Child; Survey)

Sometimes I have felt the FDR providers are well meaning but ill-equipped to deal with extremely tense situations. By which I mean I think they can easily deal with matters which are very low end but, in my experience, there are few very low-end matters in the Family Court these days. (2343, Lawyer, Lawyer for the Child; Survey)

The reports from families about the service are really variable, leaving me with questions about whether the quality of the service is also variable. Some providers are great, some not. Also appears there is some 'box ticking' going on versus genuine engagement in the service. (2351, Psychologist; Survey)

The quality of mediators is highly variable. Some mediators are good. Some are criminal lawyers who, faced with less work in parallel criminal justice reforms, reinvented themselves as mediators. Others are counsellors who are also trying to supplement their income. I hear comments from clients about how awful they were. I try to short circuit this process if I can as a result. (2234, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I have to refer people to FDR, it is a pre-Court requirement. The providers do not understand family violence and the impacts of power and control - this is a real danger for people participating in FDR. The mediators do not understand the Court process or what is able to be made into a Court order and what isn't. Some mediators are anti-lawyer for child and lawyer for child's recommendations. (2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Mediators' Lack of Legal Knowledge

Linked to the above issue is the perception that many mediators' lack legal knowledge. Sixteen percent (n=25) of the professionals who commented negatively about the skill of mediators mentioned **mediators' inadequate knowledge of the law** and felt this impeded the success of mediations or resulted in added stress for the clients.

I am a lawyer whose clients sometimes participate in FDR. I have also participated in one FDR as Lawyer for Child. The one I took part in was very good. This was due to a good mediator. She had been legally trained. Other clients report a very mixed bag of

results and it is clear some mediators simply do not understand what is required to make agreements last. (2288, Lawyer, Lawyer for the Child; Survey)

Some FDR providers need better training into what should be in an agreement/order. Some impart legal advice which is contrary to proper advice. (2179, Lawyer for the Child, FLAS Provider; Survey)

The mediators need some legal training, if they are not lawyers. For example, biological parents have been excluded from an invitation to attend FDR on the basis that the child is whangai. (2499, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

People who do not understand the law around care disputes and guardianship issues should not be permitted to provide FDR. It is unfair to the clients. (2411, Lawyer, FLAS Provider; Survey)

Those run by non-legally trained mediators are poor in terms of the types of things that should be in an order. (2202, Lawyer, Lawyer for the Child; Survey)

When referring my clients to FDR I will only do so to a trusted FDR provider (colleague) who I know has actual knowledge and experience of what a Court may do in the client's situation. (2342, Lawyer, Lawyer for the Child; Survey)

People offering FDR being properly trained, having some background or experience in the Family Court system. If the mediator does not know the options available for care arrangements/what is sensible for children of different ages/the different ways other families might make arrangements, then they can set families up with terrible agreements that are unenforceable/unworkable/the cause of future conflict, or just plain wrong or unfair. (2303, Lawyer, Lawyer for the Child; Survey)

For [some] reason after all this time the FDR model does not compare as favourably with the old system whereby lawyers trained as mediators would conduct mediations. Perhaps it is a perception thing in terms of accessing FDR and the length of time it takes for FDR to be actioned. It does not help when paperwork gets lost and parties blame each other for the reason why FDR has not progressed, which I have experienced. There still appears to be a reluctance for people to go to FDR once they instruct a lawyer if the lawyer is not able to attend as of right. (2572, Lawyer, Lawyer for the Child; Survey)

Poorly Constructed FDR Agreements

Nearly 16% of professionals also commented that the **agreements reached through FDR were often poorly constructed** by the mediators and did not serve their clients well.

The agreements that come out are ill-structured, do not reflect the views of the children, do not cover all relevant areas, and sometimes take all day to be achieved. (2186, Lawyer for the Child; Survey)

Agreements are written by mediators with no, or very little, Family Court experience so they do not know how arrangements might be worked. (2303, Lawyer, Lawyer for the Child; Survey)

The agreements reached are often vague and contain overall statements that people don't adhere to. As a consequence, when one party doesn't comply with one aspect (like not to say negative things about the other) the whole agreement falls apart, and then the specific arrangements for care and contact fall apart with it. The mediators need to focus on what issues the people have in dispute and record an agreement, not try to change their social behaviours. The people wouldn't be there if they could talk and be civil to each other. They are there to get the ground rules of when and where care and contact will occur. In time, once that is set up, the heat will go out of the dispute and they may regain a civil interchange. (2488, Lawyer; Survey)

The mediators should take a more stringent view of the agreements being reached as many agreements are really loose in their terms, which means that they usually fall over very quickly. Such as, leaving the child to decide when contact is to increase. Such terms are not appropriate and put the child in the position of making adult decisions. (2582, Lawyer, FLAS Provider; Survey)

Some concerns about orders/agreements coming out that have some interpretation issues (mediators who don't have experience of Family Court orders and later problems from them). (2555, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Too often parties reach agreement and then back out after receiving legal advice. This is upsetting for the other party and causes conflict. I have seen very unhelpful, impractical and inadequate agreements prepared by some FDR providers. (2485, Lawyer, FLAS Provider; Survey)

They make parenting agreements that are unenforceable and provide a false ideal of what people then expect to make as a Court order. (2417, MOJ/Court Staff Member; Survey)

I have heard very concerning feedback about process and unsafe agreements when the mediator is not adequately in tune with family dynamics/ basics of child-focused agreements. (2213, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

My experience is that even if agreements are reached they are usually poorly considered and drafted and break down in a short time. Because there are no orders the agreements are unenforceable, and where there is a gatekeeping parent nothing changes in the way contact is controlled by that parent. Some agreements drafted by non-lawyer mediators have also been clearly one-sided in favour of the mothers' interests, reflecting the mediators' views on mothers as primary carers. (2366, Lawyer, Lawyer for the Child; Survey)

Some of mediators do not understand the nuances of family law and unrealistic agreements are made which fail quite soon. (2231, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

In my experience the parenting agreements done through mediation are too wordy, cover items that cannot be enforced, and what should be able to be enforced are so poorly drafted that they are unenforceable. (2287, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I only refer people to FDR because we have to. The agreements that are reached by mediators who are not family lawyers are not great. People come to us and expect them to be turned into orders and you have to tell them that this won't happen with the agreement in its current form. It appears the mediators are unaware of what can/cannot go into an order. Sometimes the agreements are five or six pages long! (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Pressure to Reach Agreements

Concern about **the way in which mediators facilitated agreements** was expressed by 15% of the professionals. They felt the FDR model placed pressure on both mediators and clients to reach agreements that may not be in the clients' best interests.

With many parties, there is a power imbalance and one party will be intimidated into an agreement that isn't good for the party or the child. Mediators aren't necessarily lawyers and can often provide a party with incorrect legal opinions and coerce one party to settle. Mediators get paid for settling matters which provides the wrong motivation for a mediator. I have had lots of feedback from clients telling me they felt bullied by the process. (2172, Lawyer, FLAS Provider; Survey)

I have had a number of people who come in after an FDR mediation who feel like they were bullied by the ex-partner, and that their mediator either joined in or did nothing to stop it happening. (2206, Lawyer, FLAS Provider; Survey)

I have concerns about people attending FLAS and ending up at FDR with a mediator who will try to get the parties to reach agreement for five, six or more hours. If agreement is reached after such a long time, one of the parties is being bullied so that the provider can tick the box as being resolved. I send clients to lawyers who are FDR mediators as they will not let things go on for such a long time. (2225, Lawyer, FLAS Provider; Survey)

There appears to be too much pressure on clients to reach an agreement. Many clients report feeling worn down and bullied into coming to an agreement. (2254, Counsellor; Survey)

Many clients that I see have said that the mediation they received was unhelpful, rushed and that the mediator hurried them into making decisions that they did not want to make. (2390, Counsellor; Survey)

We have had feedback in PTS of parents, mainly women, who feel that they have been rushed in making decisions and signing the papers. (2276, PTS Facilitator; Survey)

Delays in Accessing the FDR Service

Nearly a quarter of the professionals who commented negatively about FDR referred to the **long delays** experienced by family members attempting to access the FDR service. Much **personal frustration** was expressed about this, together with **concern for the children**, as these professionals did not consider that FDR was providing resolution within a child-friendly time frame.

From an adult's perspective, having a parent wait 1-2-3 months to be able to see their child via [FDR] may be fine. From a child's perspective, not seeing a parent for 1-2-3 months can be devastating, yet from the Court's perspective, it may not be 'urgent'. (2223, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

The reason most frequently cited for the delays related to the professionals' **perception that the delays were created by the FDR suppliers.**

FDR seems to take a very long time from when I first put referrals through. Some clients in [city] are not hearing from Fairway for months after I've put the referral in and when I chase it up I don't hear back from Fairway either. Exemption certificates also seem to be delayed. (2204, Lawyer, FLAS Provider; Survey)

Lots of complaints about getting any response, or getting reasonable replies to queries, getting through on the phone. Time lag between initial contact and the process being put into place. Feedback is that out of frustration clients are just paying privately a Court-approved FDR mediator who they can contact directly to get things moving far more quickly than via the usual channels. (2495, Lawyer; Survey)

Takes far too long, often three months from contacting the people at Fairway to a mediation being completed. I was allocated a job this week and I had three working days to contact the parties, but they first contacted Fairway in February. The mediation is likely to be held in June. (2165, Lawyer, FDR Mediator; Survey)

Parties often wait for too long after initial contact with the supplier before the mediation is arranged. (2577, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

Family Works as the 'middle man' only make things harder for the families. Clients often said that they were frustrated because it took FDR more than a month to get started and they felt confused because so many people were involved. (2400, Ex-FDR Provider, Ex-Family Court Counsellor, Not currently working in family justice sector; Survey)

The second most common reason for the delays was said to be **the system's reliance on clients' understanding the FDR process and co-operating with the referral.** The professionals said that uncooperative clients could stall the process for months.

This is being used as a method of control for those parents who have the care of the child/children, meaning some parents are left waiting a considerable period of time before they can see their children. (2236, Lawyer; Survey)

The experience I have had helping clients navigate this, is that it is also peppered with delays. Too much time is given to those who don't really want to participate, further delaying resolution and exacerbating conflict. (2237, Lawyer, Lawyer for the Child; Survey)

There are long delays in the mediation process and confusion about the process even though thorough explanations are given either through FLAS 1 or 2 advice, the website or the 0800 number etc. There is a portion of cases that fall just outside the urgent

track so the delays through FDR are detrimental. (2259, Lawyer, FLAS Provider; Survey)

It takes too long because parents can easily make themselves unavailable or be slow to engage. (2481, Lawyer, Lawyer for the Child; Survey)

The remainder of the professionals who complained about delays made **general comments about waiting times being unsatisfactory** and contributing to negative outcomes for families.

The time it takes to get a mediation is not good enough. (2210, Not currently working in family justice sector; Survey)

Too long a process to get there - polarisation and conflict can increase in the interim. ...Waiting times without agreements are unsettling for children. (2162, Lawyer, Community Law Centre Staff/Volunteer; Survey)

This is a great service for clients to try resolve their issues. The only downside is the delay in clients often being able to attend mediation and resolve slightly more pressing issues. (2217, Lawyer, FLAS Provider; Survey)

FDR ties in with FLAS, and is sometimes not appropriate and can take a long time and, for some people, up to three months, which ties in with the Court system taking even longer. Therefore it can simply just be a hurdle rather than any assistance. (2586, Lawyer, FLAS Provider; Survey)

FDR is a good service, but there is no much delay involved. The process needs to be more streamlined. (2180, Lawyer for Child; Survey)

Access to Legal Advice and Legal Representation at FDR

Twenty-nine per cent of the negative statements about FDR concerned the need for greater access to, and involvement by, **legally trained people** in mediation. In turn, 51% of these professionals wanted **lawyers to be involved in the FDR mediation sessions** to help overcome the poor construction of FDR agreements, their lack of enforceability and/or to avoid FDR clients feeling vulnerable without legal representation.

There should be provision for lawyers to attend. This will assist with making sure that any agreements reached will stick. (2195, Lawyer, Lawyer for the Child; Survey)

They exclude lawyers, those run by non-legally trained mediators are poor in terms of the types of things that should be in an order. (2202, Lawyer, Lawyer for the Child; Survey)

Lawyers should be involved, particularly where there is power imbalance in the relationship. Agreements are currently non-binding and we often see people renege on the FDR agreements without repercussion. (2210, Not currently working in family justice sector; Survey)

It would be more helpful if sometimes the parties could attend with their lawyers and lawyer for child. (2220, Lawyer, Lawyer for the Child, FLAS Provider, FDR Staff Member, Mediator (Private Practice); Survey)

Either get rid of FDR or provide a mediation service that enables clients to be legally represented and advised prior, with a facilitator that has experience of family law. The agreements should be properly drafted and a lot of clients are unaware that the agreements are not enforceable or binding. A lot of client feedback that they gave in because they were browbeaten, suffered power disparity or not understanding the process sufficiently. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Very, very rarely have I seen people receive FDR actually come back with an agreed outcome that can be turned into a Parenting Order by consent. People either just disappear and never come back, which makes me worried as to what they are actually doing with regarding to parenting arrangements, or they come back and need some form of Court action. If it is not a without notice, it can quite often still need lawyer involvement for some reason, and the situation has dragged due to the delay in getting through the out-of-Court process. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

The system is better with lawyers (particularly lawyer for child) present. (2277, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

The parties are often not prepared for the process and are driven by their own needs rather than the children's. The absence of good legal advice and ability to bring a lawyer to mediation is a real disadvantage for everyone involved (particularly the children). (2278, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

There are power imbalances in most situations which go unaddressed as neither party has representation and there are many mediators who do not have the necessary knowledge to be actually doing mediation. (2291, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Lawyers should be invited and funded to attend - better insight around power and control. (2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It does not work as well as with professional assistance. Mediation, as previously where counsel attended with the clients, was much more effective. (2313, Lawyer; Survey)

Funding for lawyers to attend for clients who qualify for FLAS. I have had a number of FLAS clients come back to me to go to Court after they have had FDR settlements that did not work. If lawyers had been involved in the mediation itself then it may not have ended up in Court. (2344, Lawyer, FLAS Provider; Survey)

My experience is that the process would be hugely assisted by allowing lawyers into the FDR process. We are doing so many round table meetings once the matter is in the Family Court now. How amazing it would be to have a trained mediator with lawyers giving advice on the day, and an advocate for the child! (2439, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Lawyers should be able to attend and be paid under Legal Aid. There should be a Court-appointed lawyer and FDR as a Court referral rather than as a prerequisite. Often FDR agreements are not sustainable as the parties feel, in some cases, pressured without representation. (2558, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I have experienced a far greater success rate at Round Table Meetings as the parties both have legal counsel to assist, the child's views are represented, and the meeting is kept on topic. If there is a resolution it is recorded in terms which are actually enforceable under law. (2582, Lawyer, FLAS Provider; Survey)

Access to Legal Advice

The other 49% of professionals who wanted lawyers to be involved in FDR felt that **parents should have access to legal advice prior to and/or during the FDR process**. These professionals did not, however, specify that lawyers should actually be present during the mediation session, but rather felt that legal advice prior to mediation would result in better outcomes.

It would be helpful for clients to have received counselling and seen their lawyers prior to mediation. Mediation works best if people have recovered from their initial distress and can concentrate on the needs of the children and how the law assesses those. (2285, Lawyer, Lawyer for the Child; Survey)

Again, it's horses for courses. For the right families, this is an excellent service. The parties could possibly benefit from receiving some legal advice prior to attending FDR - this could be subsidised, e.g., via Legal Aid. (2212, Lawyer, Community Law Centre Staff Member/Volunteer; Survey)

Useful for some parents, but in my experience FDR is best after entry to the Court system and once parties have had advice. (2216, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I have little hands-on experience with FDR as once I refer people to it, I rarely see them back. So I have no idea if it has met the needs of the family or not. This could be seen as a good thing, but I think the ability for the FLAS lawyer to go over the implications of what they have agreed or not agreed could be worthwhile. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Allow parties access to good legal advice and free counselling before they come to mediation. (2278, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Legal advice is not available through FDR, so sometimes people go into it with no idea of their legal issues. They can end up reluctantly agreeing to arrangements that are quite different to the likely outcome of going to Court, or not agree to arrangements that are similar to what a Court would likely direct. (2325, Lawyer; Survey)

[It would be improved] by the system being replaced by counselling and legal assistance as per previous practice. (2449, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

Concern that parents may not have adequate legal advice and that the 'weaker' (education, intelligence, confidence, eloquence - lots of areas) individual could be compromised. Participants do not always seem to be aware that decisions agreed at FDR are not Court orders and therefore not enforceable. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Parties should be going to mediation with an awareness of their legal rights so they know what they are agreeing to. (2582, Lawyer, FLAS Provider; Survey)

[There should be] better preparation for mediation and easier access to legal advice before pre-Court FDR. (2590, Lawyer, Lawyer for the Child; Survey)

Twenty-six professionals also commented on the **unenforceability of FDR agreements** and said this created difficulties when a party did not adhere to the agreement and/or then sought legal advice to convert the mediated agreement into a Court order. They felt this both diluted the efficacy of the FDR process and wasted time and resources.

People can walk out of the agreement within five minutes - making it useless and a massive waste of time. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

There needs to be a better process to then have agreements 'converted' into orders by consent - the practice around this seems to vary. (2496, Lawyer, FLAS Provider; Survey)

For the right clients/disputes, FDR can work well, but it does not give you a Parenting Order at the end. If the parties want this, and they often do, an application still has to be made to the Court. (2325, Lawyer; Survey)

In principle it is a good way; in practice I am wondering if the mediated outcomes are effective. (2497, Community Law Centre Staff Member/Volunteer, Private Practice Mediator; Survey)

It is a good process, but needs some fine tuning. People know the system - you can get a good agreement today and tomorrow one party decides, 'No I don't like it.' (2497, Community Law Centre Staff/Volunteer, Private Practice Mediator; Survey)

FDR Unsuitable for Some Families and Lack of Adequate FDR Screening

Fifty-three professionals were concerned that **not all parents/caregivers were suitable candidates for FDR** and that there was a **lack of adequate screening processes**. As a result, some of their clients had reported feeling unsafe during mediation due to the presence of intimidating or poorly behaved parties.

Mental health/addiction issues are often undetected in screening with the screening simply accepting the self-reporting of the parties. (2278, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Better analysis of participants to identify and manage power bases, controlling, ASD spectrum parents. (2490, Lawyer, FLAS Provider; Survey)

We were told prior to the changes by the Ministry of Justice and service providers that victims of domestic violence would not be required to attend FDR. But, in practice, they

are bullied into it and lied to by providers who tell them they MUST attend and that if they do not then it will reflect badly on them in Court. This has caused distress and anxiety in victims and forced some into having to face their abusers in FDR. (2328, Lawyer, Lawyer for the Child; Survey)

Better monitoring of cases that are not suitable for mediation i.e., background into any domestic violence. (2582, Lawyer, FLAS Provider; Survey)

Can be great for parties where there are no violence/safety concerns, but there is the risk of people signing things without legal advice, and people who are scared of ex-partners having to go through the process. It needs to be easier to get an FDR exemption because I've had a couple of clients who have gone through FDR when they were terrified and they've had panic attacks during mediation, but the Court rejected a request for exemption. (2433, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

FDR, at times, can be useful for appropriate families. However, there are a number of issues with it, particularly where there have been power imbalances in the relationship or where one party lacks confidence. I often find myself having to request exemptions from FDR due to violence, one party being in prison, etc. (2529, Lawyer; Survey)

FDR only works if parties are reasonable and committed to getting an agreement. It is not appropriate when one or both parties have serious personality issues or issues of violence, crime, addiction or mental health at play. (2537, Lawyer; Survey)

I think FDR works well for the majority of the families that have minor problems in coming to agreement on care arrangements. I do not think it works well for the families with complex needs that engage most of the resources of the Family Court - FDR might even add to the harm through delaying access to obtaining Court orders. (2352, Psychologist, Specialist Report Writer; Survey)

The Pre-2014 Counsel-led Mediation was Preferable to FDR

Twenty-three professionals commented that **the pre-2014 system produced better outcomes than FDR**. Most of these professionals considered that the previous model of **counsel-led mediation/EIP was preferable**.

Mediation to settle care arrangements for children right at separation is not the right timing. Parents are upset, distressed and uncertain. No legal advice if limited to government funding for fees, apart from FLAS. Go back to counsel-led mediations. (2177, Lawyer, Lawyer for Child, FLAS Provider; Survey)

I believe FDR falls well short of what the Family Court, particularly in the [city] Family Courts, was providing. (2196, Lawyer, FLAS Provider; Survey)

It does not work as well as with professional assistance. Mediation as previously, where counsel attended with clients, was much more effective. Also, if one party refuses to attend FDR, the Court is clogged up with unrepresented litigants. (2313, Lawyer; Survey)

Put it back into the Court process. It used to be (when it was just called mediation) and, in my opinion, it worked more successfully. Outside the Court process parents find it hard to imagine it will work and do not want to try it when they see an issue as being urgent and needing to get resolved before the Court. Effectively we now have this other stage - the Round Table Meeting - which is mediation in its old form, but where Lawyer for the Child is placed in the sometimes uncomfortable position of being both the mediator and advocating a position. (2343, Lawyer, Lawyer for the Child; Survey)

Not a good one size fits all. The old mediation model was better. (2216, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Return to a better model more akin to EIP with the parties able to have good representation and the children's voices being heard through Lawyer for the Child. The FDR service is a watered-down version of the previous EIP system. I believe the outcomes for families have been diluted as a result. (2455, Lawyer, Lawyer for the Child, FDR Mediator; Mediator (Private Practice); Survey)

Funding

Concerns expressed about the funding of FDR included the amount of remuneration paid to FDR mediators; the inadequate number of funded FDR hours; the lack of discretionary hours for complex cases; the need for FDR to be a free service for parents/caregivers, and free for both parties; and the lack of funding reducing the uptake of FDR.

FDR Mediators' Remuneration

Twenty-nine professionals expressed **dissatisfaction with the financial remuneration** that mediators received for their FDR role. They raised **three specific issues**:

1. the amount that FDR mediators were paid did not reflect the skill level required;
2. the funded hours did not provide sufficient time to complete all the administrative tasks involved;
3. the unhelpful, inconsistent allocation and administration of referrals by FDR suppliers.

FDR requires specialist expertise in terms of risk, developmental processes and blended family dynamics. Treat it as such. (2428, FDR Mediator, Counsellor, PTS Facilitator, Social Service Staff Member; Survey)

I don't see it as being financially viable for a practitioner to deliver this service as the income received is poor for the amount of work and skill needed to provide this service. (2250, FDR Mediator, Mediator (Private Practice), Counsellor, Therapist, Social Worker; Survey)

The payrate is reasonable – HOWEVER, I may spend at least double the time charged answering texts/ questions/ emails/ drafting agreements/ admin/travel. So once you take into account everything else including tax and GST it is very labour intensive and brings the hourly rate down considerably. (2166, Mediator (Private Practice), Counsellor; Survey)

It is meaningful, challenging and interesting work, BUT I would always advise others to rather look to Australia or Europe if they want to make a living from this work. (2428, FDR Mediator, Counsellor, PTS Facilitator, Social Service Staff Member; Survey)

FDR mediators are not properly paid. There is a large amount of administrative work which is unpaid. (2509, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Too poorly funded for the time involved. (2481, Lawyer, Lawyer for the Child; Survey)

The small number of FDR referrals has made my practice essentially a self-funded exercise. It costs me more in professional certifications, CPD, etc., to be able to deliver this service than what I earn in fees for the service. This is unsustainable and I am considering relocating to Australia where I can get more work and better remunerated work. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

Poorly remunerated, constrained by third party supplier requirements, unnecessary complications through involvement of Fairway, Family Works etc., who just seem to be clipping the ticket. (2292, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

Given the cost of and time away from work for ongoing training, as well as the requirement to attend regular professional supervision, the hourly rate ought to be increased. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

The funding is inadequate. I get paid less than half my usual charge-out rate for mediation - thereby limiting the amount of cases I am able to take on. (2278, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

I think the pay scale should be consistent across suppliers. Funding assessments are cumbersome. (2233, FDR Mediator, Counsellor; Survey)

The costs and time involved in the correct regime or 'system', e.g., being unable to charge for time reading intake notes, Court reports, meeting the child and/or speaking to the child professional, organising the mediation, inadequate travel costs and hire of venue etc., still outweigh the fees allocated. (2576, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

Several of the 29 professionals commenting on remuneration issues had actually **withdrawn from providing FDR due to its lack of financial viability**.

The funding, in terms of number of hours, payment, was inadequate. (2575, Counsellor, Professional Association Staff Member; Survey)

I do not provide it as it is not economic for me to do so. (2568, Lawyer, Lawyer for the Child; Survey)

I gave it up. It didn't fit in with my practice as a lawyer, and I found the process put in place was too limiting and time constrained. You couldn't do a proper job. Also, it was not financially viable. (2549, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I chose to remove myself from the list of Providers as I found the process too cumbersome and stressful. (2413, Mediator (Private Practice), Counsellor; Survey)

I provided this for perhaps a couple of years at the start. The support from the supplier was great. However, I consider this to be a highly conflictual process. The allotted time for FDR mediation, and therefore the payment for service, were totally inadequate and I felt as though I was providing a free service. Parents often didn't want to fully engage despite attending. Reflecting back on my work as a Family Court counsellor I consider that I had better outcomes through a less conflictual process. By that, I suggest that the involvement of the Ministry of Justice/Family Court adds a layer of perceived conflict/antagonism that isn't helpful. (2575, Counsellor, Professional Association Staff Member; Survey)

The Funded Hours for FDR are Inadequate to Meet Client Need

Fifty participants made one or more comments criticising the inadequacy of the funded FDR hours in meeting the needs of the clients. Firstly, they said **the limited hours did not allow time for assessment and Preparation for Mediation to be delivered adequately.**

Only three hours are allocated for pre-mediation counselling. In most cases this is far, far too short. I am sometimes given couples who have not been in the same room together for over a year. I am then expected, in three hours, to take these strangers into the room, build immediate rapport, learn a little about their story and the reasons behind the present dynamics, and then pull out a magic wand that settles all of their hurt and anger so they can sit in a room together well enough to make good decisions for their children. This puts enormous pressure on me - and is very unfair to the parties involved. I work exceptionally hard to try to let them feel they have been heard and understood so they can move forward in the process. I can honestly say I put four hours of effort into every precious hour - but the session allowance is madness. (2389, Counsellor; Survey)

The coaching hours were unreasonable. (2390, Counsellor; Survey)

Exemption numbers could be reduced by a more creative approach of mediators and time for a more in-depth assessment. Also, by ensuring it is the mediator who makes this decision, rather than administrative staff as with some suppliers. (2465, FDR Mediator; Survey)

Secondly, the complex nature of family life was thought to necessitate the use of sophisticated mediation strategies, which could not always be completed in the funded time allocated.

The hours are inadequate. The model is 12 hours, but Preparation for Mediation takes three of that; then if I interview the children that takes 1.5 hours; let's say .5 for admin - that leaves two hours for individual meetings with the parties, which is compulsory, so five hours to conduct a mediation. (2165, Lawyer, FDR Mediator; Survey)

I found that, after all of the training I did, and in light of the fact that people were dealing with what could possibly be the most important decisions to be made for them and their children in their lives, the time allowed did not do the process any justice. (2549, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I have found that a large number of clients who go through the Family Court, after going through FDR unsuccessfully, go on to resolve matters by consent. I think this indicates that perhaps FDR didn't have enough time to truly address the issues properly. (2208, Lawyer, FLAS Provider, Citizens Advice Bureau Staff Member/Volunteer; Survey)

The only issue I have is around the funding of the time. To truly understand a family dynamic, then facilitate a mediation, then allow time for a review, but this requires more time than is currently funded. It is that same equation; preparation and solid execution equal a decent outcome. (2266, Mediator (Private Practice); Survey)

More time would be better. Where commercial mediation involves a lot of 'facilitated negotiation', FDR is more focused on evolving relationships. Rather than: 'How can we settle this dispute?', FDR is about: 'How can we get to where we can co-parent these children until they are adults?' This takes time; people have to work through their hurt and, although everyone is getting better at helping them do that (especially the Preparation for Mediation providers), the current 9- or 12-hour model really only gives parents two 'goes' a year; three would often make a real difference. (2270, FDR Mediator, Mediator (Private Practice); Survey)

Clients report that it is generally unhelpful, that they are forced to make quick decisions, that it doesn't allow time to go away and reflect and consider options and then come back and gradually work towards good decisions that they both feel happy with. (2392, Counsellor; Survey)

Discretionary Hours

A further issue about the funded time allocation for FDR concerned the **unavailability of "discretionary hours" for use with particularly complicated cases**. Several FDR practitioners wanted the funding model to be more flexible to enable the provision of extra hours for parties requiring them.

The adoption of the 12-hour model of FDR provision was a great improvement on the earlier 5-hour model (which I thought was completely inadequate). I'd like to see a further improvement in the number of chargeable hours. While not all clients need more than 12 hours, more flexibility in the system would allow for better outcomes for the clients. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Survey)

I think 12 hours works for a great number of families, but there are some families that need more. A discretion to fund additional hours would be helpful, especially when the child/children are involved in the process and time is needed for additional meetings with them and feedback sessions to parents. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

Overall, extra hours should be available, on a discretionary basis for more complex cases/situations/disputes. One example could be deaf parties; the extra time utilised with interpreters and coordination etc., means effectively that deaf people are discriminated against as they do not have the equivalent hours of mediation due to these considerations. We need to be addressing the diverse needs of the population as 'one size fits all' is not sufficient. (2465, FDR Mediator; Survey)

FDR Should be a Free Service for Separated Parents

Fifty-eight professionals said that cost was a barrier for many clients and that FDR should be offered free to all separated parents and caregivers. The majority of these participants simply stated that it should be free for all clients.

The parties should not have to pay. Mediation should be free. Mediation is provided free in other areas e.g., employment. (2330, FDR Mediator, Mediator (Private Practice); Survey)

FDR is often unhelpful and expensive for clients. Simply to engage an FDR mediator, a person has to pay \$50 upfront without anything being done. Often the other party doesn't want to engage and the first party is out \$50 for no service at all. Regular people cannot afford losing that sort of money. Even if the other party engages, this incurs a further hefty expense and often there is no final agreement. The agreement, obtained expensively, isn't even an enforceable order. (2172, Lawyer, FLAS Provider; Survey)

It should be free - the State has an obligation to assist people to resolve their differences. We have a Rule of Law system, not thuggery, or who is richest is the winner. (2373, Lawyer, FLAS Provider; Survey)

It needs to be fully funded by the government. (2195, Lawyer, Lawyer for the Child; Survey)

Be free for all. (2216, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The Lack of Funding Reduces FDR Uptake

The cost imposed on clients was regarded as a direct barrier to FDR service uptake.

The cost is a problem and lots of people refuse to engage. Many people are referred but need support and there is no funding for them to get legal advice during/after mediation. (2173, Lawyer, FLAS Provider; Survey)

I cannot understand why the take-up is so low. Cost appears to be a factor when trying to sell FDR to clients (even though paying a lawyer will be far more expensive) especially if one party will be exempted, but the other party not. (2572, Lawyer, Lawyer for the Child; Survey)

The poor uptake needs to be better understood. Suspect it is largely cost. (2185, Judge; Survey)

Remove price barriers (either by reduced fees, or means testing, or Legal Aid, or even fully funded). (2212, Lawyer, Community Law Centre Staff Member/Volunteer; Survey)

It is still expensive if you are not eligible for government funding - so it is not really accessible to everyone. (2280, Lawyer, FLAS Provider; Survey)

The cost of mediation is a huge barrier for some. The cost is a ridiculous reason not to participate in mediation, but I know it is a key reason that participation is low. If we

focused on this being a service for children, couldn't it be justified to subsidise it for everyone. (2300, FDR Mediator; Survey)

FDR Should be Funded for Both Parties

The current system whereby one party at FDR, who meets the eligibility criteria, is government-funded while the other party is self-funded was said by professionals to contribute to a greater level of animosity between the parties and to also detrimentally affect FDR uptake.

Difficulties arise when one party is funded and the other is not. There is resentment if the party being asked to attend mediation has to pay and the initiating party doesn't. (2294, Lawyer, FDR Mediator, Mediator (Private Practice); Survey)

It needs to be more accessible and free to all. The requirement for payment, or one party to pay, is a real barrier. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, PTS Facilitator; Survey)

It fuels conflict when one parent is eligible for free mediation and the other not. (2300, FDR Mediator; Survey)

It should be free to both parties and all mediations should have the nine hours. (2205, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

It should be funded for both parties. All too often you are dealing with one party who wants to engage and one party who doesn't. (2220, Lawyer, Lawyer for the Child, FLAS Provider, FDR Staff Member, Mediator (Private Practice); Survey)

When one party is funded and one party is unfunded that creates a huge amount of resentment in the clients and makes it much harder to achieve a positive outcome. In my view, both parties should be funded. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Survey)

Children's Views, Participation and Best Interests in the FDR Process

Seventeen professionals made one or more **positive statements** about **FDR meeting the needs of children** and/or **including children's voices in the mediation process** (note: all of these positive survey comments were made by professionals working as FDR mediators).

Lawyers talk about the voice of the child not being heard in mediation. Well, that's not correct - there are many ways of getting the children's voices heard. (2294, Lawyer, FDR Mediator, Mediator (Private Practice); Survey)

To include children in the FDR process is an added bonus because I see that it works for children, whereas having their own lawyer in a Court process just adds to the harm done. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

A number of mediators also made comments about the **strategies they used** to work with children and to elicit their views.

With regards to representing children in mediation, I talk to the parents and ask what they would like. Each family is different and it's designing a process that works for their family. In most cases no external person meets with the children in cases that I mediate, but it's always a possibility. (2295, FDR Mediator, FDR Staff Member; Survey)

It is essential that children feel that they are a part of the process, that mediation is family-centred. Thus, depending on the particular family, the need to include children in the process is all about working with the family in finding a way to do this successfully. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

The child/ren should have a voice within the mediation. We make it clear that it is not about the child making decisions, but it is about the child having their views heard. Sometimes this writes the parenting plan. Other times it allows the parent to consider the impact their actions are having on their child/ren and to reconsider. Other times it allows us to ascertain risk. Other times it allows us to refer the child on for further help and support. Other times it allows us to address issues that one party has raised, but the other party denies. It is such a powerful part of the mediation, I have never understood how it is not considered to be a normal or standard part of the process. Obviously, there are exclusions and limitations to this but, as a rule, it should be a standard part of the mediation and it should be funded. (2167, FDR Mediator; Survey)

Child Participation is now an integral part of the FDR mediation with the practice adopting an 'opt out' policy rather than 'opt in.' We have attached a consent form for the parents' consent to the Agreement to Mediate form. (2168, FDR Mediator; Survey)

I encourage parties to think about the age of their children and the fairness on them of being a part of the process of decision-making that is primarily the responsibility of Mum and Dad as parents and how the children's participation might affect the emotional security of the children. This sometimes influences parties to proceed to make decisions without the children's participation, especially if they did not want to visit their conflict on the children. I think it is important that when children are involved, the process, the questions asked of the children, and what is reported back to the parents, requires careful consideration. (2364, FDR Mediator, Counsellor, Social Worker; Survey)

When asked about how children's voices and views should be taken into account in FDR, 28 professionals suggested funding should be available for **an independent, specially trained person to work with children in mediation**. Various suggestions were made about the ideal background of this person.

There should be more child-inclusive processes and the FDR Provider should be able to access a MVCOT social worker, a child consultant, when he or she identifies such is needed to keep the process safe and in the welfare and best interests of the child. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

It is imperative that the voice of the child is brought to the mediation table. I strongly encourage parents to have someone appropriate bring this information. ... However, many parents cannot afford this service. It is very difficult to get a good outcome without this input. (2286, FDR Mediator, Mediator (Private Practice); Survey)

As a mediator it would generally be inappropriate for me to consult with the children and be a voice for them in mediation (although I have done this at the request of the parties on one occasion). ... Generally, if parties want the children's voice heard I would recommend a professional (psychologist, social service worker, etc.) could provide feedback to the joint mediation session if they thought this would help with their deliberations. We'd establish how this would be actioned, including the questions both parties wanted addressed and their agreement on this. There needs to be moderation between professionals regarding the approach taken in these matters. I believe accredited professionals, mostly child and family psychologists and experienced family workers/social workers, should be trained and accredited to perform this task if parties want this. An agreed procedure should be developed by the Ministry of Justice in consultation with those involved in the FDR mediation process. This would need to be adequately resourced and additional to the hours currently available for FDR mediation. (2364, FDR Mediator, Counsellor, Social Worker; Survey)

I, and my colleagues, prefer to have someone other than the mediator to hear the child/ren's voice/s. This is to ensure there are no preconceptions prior to meeting with the child/ren and to help the process. I believe it is paramount to hear from the child/ren affected and that it can really positively affect the mediation process. How it is done needs careful consideration, parental consent, and to be undertaken by an appropriately competent and experienced practitioner. I have heard it mooted that a family member or friend may be an appropriate person to hear the child/ren's voice. This raises many concerns for me, including safety, neutrality, relationship boundaries. Also, that the practitioner needs to have good background knowledge on child development, interviewing techniques with children, and the ability to report any concerns that arise. A family member could be extremely conflicted and not have the correct understanding and/or skills to ensure the interaction and any implications are safe and what is relevant. Also, to ensure there is no burden placed on the child/ren around decision-making. (2465, FDR Mediator; Survey)

Children's views should be ascertained by a specialist child advocate e.g., psychologist specially trained in ascertaining children's views who doesn't ask them direct questions where they have to make choices between their parents. (2511, FDR Mediator, Counsellor; Survey)

I strongly feel that the children should, as of right, be seen by a trained child therapist and have their views heard in that process. (2413, Mediator (Private Practice), Counsellor; Survey)

I would appreciate more opportunity for children's thoughts feelings and views to be ascertained by an independent consultant. (2385, PTS Facilitator; Survey)

A further 14 professionals asserted that the role of representing children in FDR mediation should be undertaken by **Lawyer for the Child**. This would both fulfil the UNCRC Article 12 requirements and meet the needs of children in a practical and effective way.

We NEED Lawyer for the Child to be present at these mediations to represent the children's views. This is a significant failing of the system as children's views are a basic human right and codified in the UNCRC (Article 12) and in the Care of Children Act. While, as mediators, we do our best to try to get the children's views put, we meet huge obstacles, sometimes from parents, sometimes as a result of limited resources.

Being resourceful, as we Lawyers for the Child are, many of us are now utilising the Court system and seeking judicial direction for the dispute to be referred back to FDR with Lawyer for the Child to be present. This is working well, but is probably a significant waste of resources and delays when Lawyer for the Child could be appointed at the outset of FDR. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

It will be interesting to see how the role of the voice of the child develops in FDR. A few years ago I asked, as Lawyer for the Child, to be able to attend FDR rather than host a Round Table Meeting. I was refused, but now this is becoming more common. There are different approaches to when a child participates in FDR and how their views are brought into the process. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Where referrals have been made by the Court back to FDR the involvement of Lawyer for the Child and counsel for the parties has led to much improved outcomes for children and parties. (2455, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

The system worked much better pre-2014; when an application was made, Lawyer for the Child was appointed, then Lawyer to Assist who ran the mediation - it was seamless, quick, efficient and also meant the children had representation every time. While the parents were technically 'in Court' as they had filed an application to get there, it is a nonsense to view it that way as effectively they were being diverted away from Court. Those cases almost always resolved at that stage. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, PTS Facilitator; Survey)

I was part of the Christchurch [EIP] Pilot Programme where we had input from Lawyer for the Child. That was a much more useful process than the one we have to use now. I am glad to provide this service, but there are times when I can see that an independent advocate for the children would be helpful. When a parent refuses to let me talk to a young person and maintains that their view is what is in the child's best interests, and I can't challenge that, it is difficult to include the voice of the child as the legislation requires. (2266, Mediator (Private Practice); Survey)

Having Lawyer for the Child present is an enormous advantage in producing an agreement that is child focused. This has been particularly noticeable in FDRs that have started off outside of the Court process, then have been referred back to FDR with the Court process having started and Lawyer for the Child appointed. (2277, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

The processes for having children's views at an FDR mediation are inadequate. The mediator, in order to maintain neutrality, should not in my view be meeting the children. The old EIP scheme of appointing Lawyer to Assist to run a mediation and having Lawyer for the Child present was easily the best system we had in terms of good outcomes for children. The present FDR system often involves parents who have not had legal advice and are focused on their own needs rather than those of their children, which has a significant impact on the effectiveness of FDR. Parties in regional New Zealand do not have the funds to pay for a private person or child lawyer to independently ascertain children's views. (2455, Lawyer, Lawyer for the Child, FDR Mediator; Mediator (Private Practice); Survey)

This is a vexed issue. Ideally, it should be Lawyer for the Child in every case, even for FDR. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, PTS Facilitator; Survey)

The process has significantly improved since Lawyer for the Child has been able to attend FDR. (2169, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

There needs to be a more sophisticated resource for having children's interests and views included within FDR mediation. This lack is a major barrier to the interface between FDR mediation and the Court process that would be ideal for families. Occasions when Lawyer for the Child has attended mediation to represent the children has been really helpful as long as that does not make the mediation process become like a Round Table Meeting with a focus on 'settlement' rather than empowerment/upskilling. (2365, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, FDR Mediator, Mediator (Private Practice), PTS Facilitator; Survey)

This is really difficult as the voices of the children have been lost in this new system. Under the previous Court-based mediation, Lawyer for the Child was able to participate and I thought that worked well. Now it is harder to get the children's voice heard. I have spoken to children, but I am aware of the need to protect the children from the adult conflict. (2518, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Better funded and always to include a child specialist - this would ideally be a Lawyer for the Child who would then be able to ensure that any agreement took account of legal principles and issues. (2515, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

The FDR Mediator Should Consult with Children

Seven professionals considered that the best person to consult with children was **the FDR mediator** and that extra funding should be provided to allow time for this to occur.

As an experienced child clinician, I am aware of the conflicted loyalties that children struggle with when considering their parents' separation. It is crucial, therefore, that the children's developmental, social, emotional and physical needs are brought into account (as both parents' responsibility) when the mediation takes place after interviewing the children. (2284, FDR Mediator, Counsellor; Survey)

I believe that mediators should have more hours to include the children's voices in the process as potentially the most important aspect of the mediation and New Zealand's duty as signatory to the UN Convention on the Rights of the Child. (2465, FDR Mediator; Survey)

I think children's views can be communicated by meeting with the parties, a child consultant if necessary. But robust discussion and questioning of the parties can often ensure their focus is on the children's views as much as possible. (2422, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

The Child Consultation Model

Eight professionals endorsed the Child Consultation model developed and utilised by Family Works Northern. One suggested its expansion to allow for more questions to be asked of the child.

I think child consultations are always helpful. It takes the discussion to a different level and often we've been able to fine-tune the parenting arrangements to accommodate a child's or adult's specific needs. (2428, FDR Mediator, Counsellor, PTS Facilitator, Social Service Staff Member/Volunteer; Survey)

I think the Child Consultation model that Family Works Northern use needs to be expanded. The children are only asked a few questions. The two I have had done were of little help. This is why most parents don't bother with it. I think there needs to be an opportunity for the mediator and/or the parents to put forward the questions they wish to have answered. (2378, FDR Mediator; Survey)

However, two participants expressed concerns about this model.

I don't think the Child Consultation is helpful. (2409, FDR Mediator, Mediator (Private Practice), Counsellor; Survey)

FDR provides a necessary service, but it has shortcomings. There should be provision for the children's views to be more carefully represented. Child Consultants interview the children on a superficial level which can be counterproductive. (2509, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Best Interests of Children Not Being Well Served by FDR

Seventy-one participants felt that the current FDR process is not working to serve the best interests of children. Most of their concerns related directly to the issue of child representation, as discussed above, while other more general concerns were also raised. These included the lack of clarity regarding how children's views should be included in FDR, which can lead to parents making decisions out of self-interest rather than in the best interests of their child/ren.

The FDR system is not set up to deal with the issues relating to the best interests of the child. The child's views and best interests are not being taken into account. On too many occasions, I have seen mediated agreements that have been made simply to meet the needs of the parents, when the arrangements cannot work, and do not work, for the child. (2505, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

The lack of having the child's voice available is concerning. As most of my other work is as Lawyer for the Child, I am very concerned about this matter. Family Works only deals with children who are 10. I find that younger children often have strong opinions and often just want someone who will actually both talk to them and listen to them. (2174, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

It is a failure of the system that children's views are not available at FDR. (2285, Lawyer, Lawyer for the Child; Survey)

I think the system is entirely inept at taking into account children's views and feelings and indeed does not formally provide for it. (2304, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

When I was offering this service I was led to understand that children could not be included and I was not to talk to children. I suggest that the voices of children are most definitely not heard or taken into account adequately and the process of mediation has appeared to me to be more about what fits in with the parents' work schedules or that of their new partners (if they have one). Also, I have experienced children being used as 'pawns' between warring parents. (2575, Counsellor, Professional Association Staff Member; Survey)

FDR seems incentivised and ideologically driven to find that all parents can, and should, make arrangements by agreement. Not enough priority is placed on making arrangements that work best for their children. (2562, Lawyer, Lawyer for the Child, FLAS Provider, Survey)

There is no voice for the child in FDR (not that there should be in many cases). But in some cases a poor result is achieved when the parents focus on themselves (not intentionally) and not their child. (2303, Lawyer, Lawyer for the Child; Survey)

Real concern that the children are not represented in any way. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

More provision/resources need to be provided to ensure that children have the opportunity to engage in the process. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

The lack of a formal way to include the views of the child is really concerning. It's hard to see how the views of the child can be at the heart of this decision-making when they are not expressly included in the process. I am aware that mediators work around this by asking parents to get a third party to talk to the kids, but a 'work around' isn't good enough. (2339, Community Law Centre Staff Member/Volunteer, PTS Facilitator; Survey)

When I consider it is needed to be through someone other than the parties, there should be enough (and extra) time and thus funding given to the mediation. I am not opposed to the child giving their views to the mediator and many issues have to be considered as each situation is different i.e., should the child be at the mediation? Should a professional person voice the child's views at mediation? Should the mediator meet the child and what protocols should be considered in that? (2576, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

If the mediator has the right skills (training in working with children), and specific FDR training, it may be useful for the same mediator who is working with the parents to also be able to interview the children - with adequate training and supervision for this. Currently, my supplier does not allow this, so I have no personal experience of this. But

I am also a trained family counsellor, and would be keen to include this as part of my family mediation. There are huge risks associated with this, so it would have to be very well done. (2520, FDR Mediator; Survey)

Counselling Should Be Reinstated

The removal of the counselling service was frequently mentioned as a casualty of the 2014 reforms and 38 professionals specifically said it should be reinstated. Many commented that **counselling should be available** prior to FDR and/or used in combination with FDR.

People should be supported through counselling to ensure both parties are in the right head space before they are forced into confronting one another in mediation. (2510, Lawyer, Lawyer for the Child; Survey)

FDR works really, really well if the parents are ready. Parenting Through Separation and Preparation for Mediation do a great job of getting many parents ready. But, at the moment, all the FDR providers I talk to have stories of parents who were not at all ready for mediation by the time the mediator held the 'preliminary meeting'. So much depends on the level of acrimony between the parents. If/when there is real hate or real fear, it is 'too soon' for mediation - the parties need more help than is currently available to get them past that, to the point where they are no longer so overwhelmed with emotion. So counselling/training for the super-emotional ones would be really great! There needs to be a means of referring parties to this advanced training after the preliminary meeting. (2270, FDR Mediator, Mediator (Private Practice); Survey)

A return to the three free counselling sessions to be available in every case that is likely to go to FDR. Better preparation for mediation and easier access to legal advice before pre-Court FDR. (2590, Lawyer, Lawyer for the Child; Survey)

Allow parties access to good legal advice and free counselling before they come to mediation. (2278, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

More hours available for families and an ability for people to access counselling as part of the process. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

It is disappointing that there is not the opportunity for counselling as a precursor, which could reduce the necessity to use FDR mediation. (2364, FDR Mediator, Counsellor, Social Worker; Survey)

It would be helpful for clients to have received counselling and seen their lawyers prior to mediation. Mediation works best if people have recovered from their initial distress and can concentrate on the needs of the children and how the law assesses those. (2285, Lawyer, Lawyer for the Child; Survey)

Counselling in combination with FDR works well. (2277, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

Other professionals felt that **the Family Court counselling that was on offer pre-2014 resulted in better and more efficient outcomes** for families.

I had better results with my Family Court counselling for resolving conflict and parenting plans. ... 80% resolved and saving of marriages. (2409, FDR Mediator, Mediator (Private Practice), Counsellor; Survey)

Bring back ns 10 and 19 with counsellors. As a counsellor, 85% of the cases I saw made an agreement and exited the Family Court process. (2390, Counsellor; Survey)

FDR has replaced the six previous counselling sessions. Sometimes, I do think that that system with parties meeting lawyers, getting advice and the Family Court arranging counselling worked as well as, if not better than, FDR. (2576, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

FDR is mandatory – that's why I refer clients. I think the old counselling system was better. (2592, Lawyer, Lawyer for the Child; Survey)

It was much more financially sound to have parents go through traditional Family Court counselling as a first step, rather than mediation. (2400, Ex-FDR Provider, Ex-Family Court Counsellor, Not currently working in family justice sector; Survey)

FDR suits some parties, but these are generally the parties we were referring to counselling previously and they were resolving disputes there pre-proceedings. (2210, Not currently working in family justice sector; Survey)

The old six sessions funded by the Ministry was far more cost-effective and helped parents before they got so distanced from each other. (2254, Counsellor; Survey)

The wealth of expertise we had in Family Court counsellors lays to waste. I get three hours pre-mediation - and then I get three hours after a judge has told them what to do! I could be making a difference. I WAS making a difference before the reforms. (2389, Counsellor; Survey)

I don't believe FDR is an effective process for all parties to be funnelled through. Free counselling historically in my view, tweaked slightly, could have achieved the same result, but retained the access to legal support where it was necessary. (2261, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

FDR is probably helpful to some parties, but the previous system of Court-directed counselling prior to non-urgent proceedings being progressed was more useful generally in assisting with communication and a child focus. (2279, Lawyer, Lawyer for the Child; Survey)

FDR, in my mind, is very much 'ambulance at the bottom of the cliff', rather than the previous 'fence at the top of the cliff' offer of s9 relationship counselling (pre-2014). Anecdotally I would say that around 80% of the couples that I saw under s9 were able to resolve their differences and continue on in their relationships with some new understandings of themselves and each other and some new skills to create more harmonious relationships - which had a positive impact for the child/ren. Leaving matters until the relationship broke down completely and then providing some State-funded mediation for parenting agreements was a very unwise change. The damage done to children and parties alike was very traumatic in many cases. (2363, FDR Mediator; Survey)

Bring back s9 counselling or a similar funded service. This is where many situations were sorted in the past and now people don't have it and have become polarised instead. This system does nothing to assist the couple sort their relationship in the early stages; it does nothing for families for preserving the family. (2511, FDR Mediation, Counsellor; Survey)

Replace it with the free counselling, which in my (extensive) experience was highly successful. (2394, Counsellor; Survey)

FDR Should be Optional, Not Mandatory

Fifty-seven professionals commented that **FDR should not be the mandatory first step in resolving parenting disputes**. Their reasons were wide-ranging and included issues concerning the suitability of the parties or their disputes for FDR, the pressure placed on parents/caregivers to reach agreements, and the resulting delays in Court-ordered outcomes for cases that failed to reach agreement at FDR.

FDR should not be compulsory. Quite frankly, forcing people into this system does not work. It leads to resentment and doesn't encourage 'good faith' participation. Also, the information given to participants by some FDR Providers is frankly alarmingly inaccurate - they are told that they must attend even in circumstances of risk (DV) and they have inappropriate pressure put on them to reach a settlement. (2342, Lawyer, Lawyer for the Child; Survey)

If not all non-urgent proceedings were required to go through FDR that would hasten finalisation of those matters where Court intervention will be required. (2537, Lawyer; Survey)

Inappropriate cases get pushed to mediation e.g., international relocation. No way will that resolve at mediation, but clients need to go through the motions before they can get into Court. Waste of everyone's time. (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer: Survey)

I only recommend FDR because it is the necessary first step toward resolution. If a parent has concerns about the arrangements for their child, then they need to be seen as proactive by engaging in FDR. It is simply a hoop they must be seen to jump through. (2400, Ex-FDR Provider, Ex-Family Court Counsellor, Not currently working in family justice sector; Survey)

I think that most of the cases that I have been given either aren't ready for mediation or are not suitable. It can be frustrating at times trying to work with clients who won't buy in to mediation, but are doing it to keep a negative relationship with the other party going. They don't actually want to resolve things in regards to caring for the children. (2163, FDR Mediator, Mediator (Private Practice); Survey)

We have to recommend FDR as that is what the law dictates must be done if parents are only eligible to apply on notice for orders. (2177, Lawyer, Lawyer for Child, FLAS Provider; Survey)

It should not be compulsory prior to making an application. Often FDR is too early for the parties. (2195, Lawyer, Lawyer for the Child; Survey)

Lots of people only engage in FDR as it's a barrier to Court, so it's a battle to get real engagement in the process. (2542, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

The mandatory nature of FDR, coupled with a reluctance by some lawyers to engage with the process, was said to have resulted in a **higher number of without notice applications** being made to the Family Court. Nine professionals commented on this directly, and a number of others alluded to it in a more oblique way.

I understand the allocation backlog is high. FDR should not be a prerequisite to making an application - it is too fraught with difficulties (e.g., screening, violence, children's views not being heard). I see FDR as something a judge should be able to direct parties to with the proper information at hand, rather than it being a requirement before applications are made. It is this single issue which is primarily responsible for forcing clients to apply without notice so they can gain access to the Court system for relief. (2361, Lawyer, Lawyer for the Child; Survey)

I think it is unhelpful to have FDR as a prerequisite to bringing proceedings. It can simply mean delay in cases when it is clear Court will be needed. It clearly results in more without notice applications to get around the prerequisite. (2568, Lawyer, Lawyer for the Child; Survey)

The process is working well for the parties that engage, but It needs to be better advertised. Perhaps more commitment to an FDR mediation process from the legal profession would be beneficial to clients, rather than unnecessary without notice applications. (2233, FDR Mediator, Counsellor; Survey)

I don't think FDR is working well. People actively avoid it and make spurious without notice applications to the Court to get around the system. (2304, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Still too much influence by lawyers, advising their clients not to engage and ask for an exemption rather than give mediation a proper, respectful and meaningful go. (2421, FDR Mediator, Mediator (Private Practice), Counsellor; Survey)

I believe in the FDR model. Unfortunately, there are policy and other factors which can inhibit the smooth running of the FDR mediation. ...The non-buy in of 'some' lawyers who use the application without notice to bypass mediation. (2168, FDR Mediator; Survey)

There appears to be a channelling of cases into the Family Court through without notice applications. (2360, Psychologist; Survey)

I would be very open to more FDR work, but as parties and their lawyers often opt for the without notice pathway, the FDR process is sidelined. It was always designed to be an 'out-of-Court' process with less cost and Court time used. Now many cases are put on this pathway to Court which otherwise should stay with FDR mediation in the first instance and then, if no agreement is reached, proceed to Court if the parties so wish. (2363, FDR Mediator; Survey)

Relationship between FDR, the Family Court and the Ministry of Justice

The nature of the relationship between FDR, the Family Court and the Ministry of Justice was a recurring theme throughout the professionals' survey data. A key feature of FDR is its **placement outside of the Family Court process** and, while the majority of participants who identified as mediators considered this to be appropriate, 38 professionals said it was problematic. Their **three key concerns** were i) the fragmented nature of the FDR process for clients; ii) the lack of cohesion between FDR and Family Court processes; and iii) the lack of referrals to FDR by Family Court personnel.

The Fragmented Nature of the FDR Process for Clients

FDR is providing a service to those who contact the various suppliers. Many don't know where to go, how to contact etc. Advocacy for FDR, counselling etc. is poor and each group works in isolation. Look at the model that British Columbia has put in place. It leaves us light years behind because we have missed the fundamental tenet. (2346, FDR Mediator, Counsellor, PTS Provider/Facilitator; Survey)

The FDR service could be improved if government agencies had wrap-around service provision. Social services, justice, health and education are areas a separated family touches and need assistance with, so it would be good if these services matched and were part of one pathway solution. (2533, FDR Mediator; Survey)

I stopped being an FDR provider because I did not believe this new system worked for clients because it was too disjointed. The changes were about budget cuts, rather than the good of the parents and the children. (2400, Ex-FDR Provider, Ex-Family Court Counsellor, Not currently working in family justice sector; Survey)

I think the FDR engagement process confuses clients. They are first contacted by the Contract Holder i.e., Family Works or Fairway, they are processed through there and then contacted by the mediator. They get confused about who they spoke to and from where. ... it is disjointed through the Ministry of Justice channels to the mediator at the Provider level. (2422, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

The system is still too slow and the clients are interacting with too many different people - the initial intake person, the mediation coach, the mediator. (2330, FDR Mediator, Mediator (Private Practice); Survey)

The Lack of Cohesion between FDR and Family Court Processes

The only 'improvement' that I would suggest is having the FDR system work with the Court system. In the days before FDR, when senior counsel provided mediation as Counsel to Assist, the agreements immediately became Court orders, and therefore enforceable. I have had a few situations where agreement was reached at mediation, then a party changed his or her mind, and the parties ended up back at square one. (2174, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Court Orders resulting from FDR should be part of the usual process, rather than clients then needing to engage in FLAS or instruct a lawyer. (2180, Lawyer for Child; Survey)

If Court follows FDR, the Court procedures should change to reflect the agreement, or lack thereof, in the FDR forum. Expedited procedures should be available for cases in the Family Court that have gone through the FDR process as an encouragement to use the FDR process. I also believe that all outcome agreements for FDR should be registerable with the Family Court so that the Court has access to the agreements reached. That is essential to understanding the dynamics of a dispute and the dynamics of the agreement between the parties! (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

Put it within the Court system so that it operates like the former Counsel-led mediations, but after parties have filed their initial on-notice application. (2554, Lawyer, FLAS Provider; Survey)

It should be part of the process of the Family Court - it should not be a prerequisite to proceedings. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The Lack of Referrals to FDR by Family Court Personnel

More cases should be referred from the Courts. The in-Court and out-of-Court processes need to be more seamless. FDR providers should be at the Family Court for cases to be referred to them. That is basic and needs to be resolved. The Court and lawyers need to support FDR. The 'them and us' mentality is not helping parties or the children we should all be focused on. (2292, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

The problem is getting parties to mediation. There need to be clearer expectations from the Family Court and other professionals about the mandatory nature of Parenting Through Separation and FDR mediation. It is extraordinary that 50% somehow avoid this potential resolution option and end up in Court. The Court should redirect all cases to mediation where this has been avoided. (2364, FDR Mediator, Counsellor, Social Worker; Survey)

It might work better if the process was changed where the judge met and referred parties to mediation. I find people are requesting mediation in the first week of separation, and by the time they get to mediation it has all turned to custard. (2497, Community Law Centre Staff Member/Volunteer, Mediator (Private Practice); Survey)

FDR is good for many disputes, but it would be better if it was linked up with the Court process as Court referral is not happening enough. (2542, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

The mediations come through very unevenly. Some months there are lots and then a drought for a couple of months. It would be nice if there were more mediations being referred by the Courts, but I sense a resistance to do so. (2294, Lawyer, FDR Mediator, Mediator (Private Practice); Survey)

FDR has the potential to really free up the Family Court. Fewer applications without notice would be a great start. Judges referring back to mediation is really powerful. (2167, FDR Mediator; Survey)

The Promotion and Uptake of FDR

Better publicity was considered important in promoting FDR to the public and increasing uptake of the service by separated parents.

Unless they have been provided with information by a professional or friend, most parties have commented on not knowing about FDR and finding out about it difficult. (2368, FDR Mediator, Counsellor; Survey)

Better marketing to the general public would increase people's awareness of the process and increase its use. People still automatically go to their lawyer when separated, as they don't know what else to do. (2520, FDR Mediator; Survey)

It works for most participants. This issue is what the Ministry of Justice, family justice professionals and others could be doing better to promote it, especially at the intake, engagement and assessment phases of party needs. (2364, FDR Mediator, Counsellor, Social Worker; Survey)

More parties could be encouraged to use FDR, rather than using the Court process. (2507, FDR Mediator; Survey)

I think it would help for there to be more education of judges and lawyers and communication between them and FDR suppliers and providers. I talk to family lawyers and they have no idea what FDR mediators are doing. Lawyers and judges still seem to have a negative opinion of FDR providers and mediators and I think it is from a lack of knowledge about what each system does. (2378, FDR Mediator; Survey)

Lack of Cultural Competency

A small number of professionals commented on cultural competency issues. Two felt that the ethnocentric model of FDR and lack of Māori providers inhibited families from accessing the service. Others also believed the funding model disadvantaged tangata whenua.

The only comment I have is that there is a need to be able to have facilitators in this area who can work in a culturally safe and competent way with Māori. (2410, Not currently working in family justice sector; Survey)

The cultural appropriateness is reliant on the provider/supplier, as is the venue. Funding for parties to travel would help increase face-to-face kanohi ki te kanohi opportunities. (2511, FDR Mediator, Counsellor; Survey)

The majority of people I see are white middle class. I practice in a community where 40% recognise as Māori, yet I don't see them making applications or, when they do, they do not participate. (2292, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

There are not enough Māori providers and it would be great if the Ministry of Justice would fund ADROs to help more Māori reach FDR Provider status as that is a barrier. (2295, FDR Mediator, FDR Staff Member; Survey)

Interview Findings

Seventy-three of the 100 professionals (73%) who were interviewed in this study commented on FDR. Twenty-eight (38%) were FDR mediators, 13 of whom were also mediators in private practice and 15 of whom were lawyers. The other 45 interviewees (62%) were lawyers ($n=33$, 45%), PTS facilitators ($n=5$), counsellors ($n=4$), a private mediator, a psychologist/specialist report writer, and a Ministry of Justice/Court staff member.

The comments and issues raised by the professionals during their interviews included general positive, mixed and negative perspectives on FDR; client feedback on FDR; the lack of promotion of FDR; referrals to, and uptake of, FDR; intake assessments by telephone; Preparation for Mediation (PFM), FDR agreements and outcomes; mediators' role, training, supervision, peer support and cultural issues; mediators' backgrounds (legal vs non-legal) and presence of lawyers at FDR; the purpose of FDR and the difference in its approach to the Family Court; the cost of FDR; FDR timing, the 12-hour model and delays; administrative and contractual issues; child participation; and suggestions to improve FDR.

General Positive, Mixed and Negative Perspectives on FDR

Eight professionals spoke in **very positive** general terms about FDR. They supported the FDR concept, had received positive client feedback on FDR, liked that it was an out-of-Court dispute resolution process, and thought the majority of FDR providers were providing an excellent service.

All I know about it is very positive. Lots of people who've done it all speak really highly of the mediator - even the ones who don't get anywhere because their ex is just not responding at all. All I've ever heard from dozens of people is positive feedback. ... As far as I can tell it seems to be working really well. ... I happen to think we've got a Rolls Royce service in a very small country. I just think we're lucky compared with many, many countries. (2385, PTS Facilitator; Interview)

There are files where actually taking the lawyers out of it and making the parties sit down face-to-face with an independent person is really, really positive. ... The vast majority of the FDR providers are excellent at the work they are doing. They are facilitating really good outcomes. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

The FDR element is great and has potential in numerous situations to make a difference for the children. (2422, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Interview)

There are people who wouldn't ordinarily have access to out-of-Court resolution processes who now do. I firmly believe that these are much less damaging to family than in-Court processes, for the majority of cases. ... I love the fact that FDR is an out-of-Court process. I think it would be a giant step backwards for it not to be. (2533, FDR Mediator; Interview)

Just three professionals expressed **generally negative views about FDR**, describing it as “a disaster”, “a terrible failure” and “foreign”.

In my view, FDR has been a terrible failure. Many people come into the Court system angry because of their experiences in FDR, so that's unhelpful as well. (2362, Counsellor, Psychologist, Specialist Report Writer; Interview)

The mediation is foreign. The fact that they're forced to go it alone. If you have self-esteem issues you're very reluctant to actually take a step forward to do anything. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

More professionals ($n=16$) held **generally mixed views**. They had "great faith" in the concept of FDR, thought it was "well-intentioned", "has its place", "an excellent tool", a good process for some people to go through in appropriate cases and liked that FDR had "reduced costs", but felt it was "still under-evolved", "needs tweaking", "had not sped things up", was "poorly executed", "not able to deliver as well as it could", was unsuitable for families with more complicated needs, and "has not been the magical answer that the government suggested it would be."

I think that FDR has its place. The problem from my area of practice is that in [city], you very rarely have cases where there isn't domestic violence, alcohol and drugs and all the rest of it. So, it's not really an initiative that serves the people that I deal with. It may be that it's a good initiative for inner middle New Zealand who are struggling to decide where Johnny goes to school and who he lives with. I think it is a good initiative for a certain section of New Zealanders. (2361, Lawyer, Lawyer for the Child; Interview)

There are definitely good elements in that reform, but it's just not working well enough for enough of the people who are actually trying to use it. ... The concept is good, but the way it's been executed is poor. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

You've got the FDR at the start, and that's great, and I suspect that for a lot of families that actually works well. The ones that have got relatively moderate disputes, but are actually quite child-focused and they go to that and they can work it through. (2329, Lawyer, Lawyer for the Child, Community Law Centre Staff/ Volunteer; Interview)

Mediation is definitely great for some families and works really well. ... It has its place, but it's not the be all and end all. (2167, FDR Mediator; Interview)

I think the idea behind mediating first to see if you can reach agreement is a good one, but not if it leads to the mess that we're in now. ... It's very well intentioned and that is the ideal - that people should try and resolve things without going to Court, but the way it's set up I don't think it is working very well. It's too easy for one parent to opt out of it and the payment of the fee has proved quite a barrier to some people. It would be better to return to the system where applications are filed in Court and then every attempt made to resolve them - short of a hearing. (2288, Lawyer, Lawyer for the Child; Interview)

Client Feedback on FDR

Eight professionals reported that their clients had provided them with feedback about FDR. Only one (a lawyer) said they "always get positive feedback" from their clients who had "found FDR a really good option for them." Another lawyer commented that it was difficult

to know if FDR was liked by clients because if they have reached a mediated agreement then they never usually consult a lawyer. However, those who do come to a lawyer after FDR has failed usually complain about it.

It's actually quite difficult to know [if parents like FDR] because if it works for them, you frequently don't even hear from them. The ones that it hasn't worked out, they're not at all impressed with it at all and have frequent complaints about it, for one reason or another. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

The other six professional all reported **negative client feedback** on FDR. This was for a variety of reasons including the exhausting duration of some mediations, failure to address the issues, pressure on the parties to reach an agreement, perceived mediator bias toward one party, not feeling protected by the mediator in situations with a power imbalance between the parties, and poorly executed agreements that quickly fell over.

Anecdotally from my clients, there's lots of problems with FDR. I've had a number of clients who've been in FDR for a whole day and felt completely exhausted by the process and said they just kind of agreed "because I was done in; it's 5 o'clock and we've been going all day." Predominantly my practice is with females, but the FDR provider has been a bloke and they've felt that he sided with the bloke. Now I'm not saying he would have, but their perception is that because of their history. So they're going into a system that they don't completely understand, that they don't feel comfortable with, that they don't have a voice other than their own, and then they're coming up against a male mediator and their ex-partner. I'm not suggesting any male mediators here are doing that. That's the clients' perception, and I get why they feel like that. It's meant a huge increase in the without notice applications. (2186, Lawyer, Lawyer for the Child; Interview)

Some of them say, "We went to mediation and it was sort of put to me that if we didn't get an agreement now we'd have to go back to Court." And they just thought, "Oh God, that's not fair on the children" or "I can't afford any more", whatever, whatever. ... Anecdotal evidence that comes through with [my private] clients who have gone through the FDR process and still end up here [with me] saying "I felt pressured." Or "I thought we'd reached an agreement, but there were so many bits that were left out, it's fallen over." (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Interview)

I've been quite interested by the number of clients who did go to FDR and how, in most cases, just how appalling the experience was. ... They didn't know that they could have pulled the DV thing and got on a without notice track. The primary reason people say it's been hopeless is that it didn't address any of the issues. It was a forced approach to try and get people to resolve things where there was no hope they were going to resolve things in that way. People also said things that were unhelpful. ... One [specialist] report that I've just finished, the FDR actually made the situation dramatically worse. (2362, Counsellor, Psychologist, Specialist Report Writer; Interview)

What they commonly say to me is, "I didn't feel protected by the mediator. I felt like he or she bullied me through. I didn't feel that the mediator was able to accommodate the power imbalance." ... So, we have a lot of clients who don't want to go. They say, "it's going to be no use – he's said he's not going to agree to anything." Then they

come out and say, "it's no use, he said he wasn't going to agree and he didn't." (2161, Lawyer, FLAS Provider, Community Law Centre staff member; Interview)

A disadvantage that I hear is that some clients feel they had to make a decision on the day, and they've often gone with a decision just to get a settlement that they then didn't feel happy about. (2392, Counsellor; Interview)

The feedback I've been getting is that people feel that either the mediator is one-sided or not equipped to deal with the issues that are brought up; and that if they are equipped to deal with the issues they're not necessarily encouraging participation by both parties in the process, they're standing back and letting one party drive the process. I haven't heard lots of great things about it, to be fair, from any of my clients. (2183, Lawyer, Lawyer for the Child; Interview)

Lack of Promotion of FDR

Seventeen professionals expressed concern about the inadequate publicity on FDR and the confusion, misinformation and lack of awareness that resulted. The lack of publicity about FDR when it was first introduced in 2014 and the subsequent failure to promote it to the public and to professionals was specifically criticised by three professionals. This contributed to FDR being "difficult for the clients to understand" and "a very hard sell."

More publicity. There is no publicity, or very little, for people to know where to go. So, it has fallen on the shoulders of the likes of Family Works and the other suppliers to try to float their own boats, pay their own money, to produce their own pamphlets. When FDR came out there was nothing on TV, no billboards, "having problems separating? Ring this number." I know that I have the capacity to do a whole lot more mediations and I'm not getting them - where are all the people? (2378, FDR Mediator; Interview)

There's been a lack of promotion of it. There wasn't any sort of promotion offered, any media advertising, or anything like that. ... If it was promoted, I think it would be a useful process. (2509, Lawyer, Lawyer for the Child, FLAS, FDR Mediator, Mediator (Private Practice); Interview)

Clients' lack awareness of FDR meant they **did not know how to access FDR** or avoided it because they **still thought it preferable to consult a lawyer and/or make an application to the Family Court** to get before a judge.

The difficulty of the reforms is that there's a lot more confusion around the process. I don't believe that the general public are still aware enough about how the system works. There's a lot of people out there that throw their hands in the air at an earlier stage and don't take any action as a result of just being unable to find appropriate information about it. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

The key group we're not getting through to is the Dads who haven't been involved. When you've had a father who has been distant and the other parent is wanting to engage, a mediation process doesn't necessarily engage that person. (2368, FDR Mediator, Counsellor; Interview)

There is still a fair bit of suspicion or misinformation or ignorance with parties and their advisors about what FDR mediation involves. A lot of people think what they need is a judge and a Court order and so they find ways of being able to get into Court, without going through FDR first; finding ways of avoiding the FDR process. (2365, Lawyer for the Child, FLAS Provider, Community Law Centre Staff/Volunteer, FDR Mediator, Mediator (Private Practice), PTS Provider/Facilitator; Interview)

There is a lot of confusion about what FDR is and whether decisions made at FDR are enforceable. ... Parents ask me, "well, what is FDR for?" They perceive it just as a barrier to getting into the Court system where children's needs will be addressed by trained judges and lawyers. That's the perception I'm picking up from clients. (2227, Lawyer, Lawyer for Child; Interview)

This whole idea that people would access their provider off a Ministry of Justice website; then if it turned out they were able to have the funded service, they would access their provider through a supplier, it's just nonsense. ... One of the greatest stupidities is this whole thing around competition in the market between suppliers, because all that did for people is just create confusion. The fact that there are now three suppliers, how do people choose? (2471, Lawyer, Lawyer for the Child, FDR Mediator, FDR Staff Member; Interview)

Parents don't know about FDR; they still have a mentality that they just have to go and get a lawyer - that's the first step that they think is the right step. So they don't go online and check it all out first. Some people do and for them it's fabulous, because then they get the opportunity to do things in a much more collaborative way. But I think people just automatically go through a lawyer. I also hear a lot from private clients that there's such a high level of fear, they're so frightened, that maybe if they get a good lawyer they'll get to see their child more. I think that's still really prevalent, which is really sad. ... It's just more knowledge needed for more people. This has been in place for four years and, seriously, for the majority of the people that turn up FDR is still not well-known enough. Why would they know, because they haven't separated before? We need to promote it, without it being lawyer-driven, that it's about parents coming up with arrangements for their children and having that power and that responsibility. That's the culture shift I would like to see. I'm hoping in 10/15/20 years it might be the case. (2299, PTS Provider/Facilitator; Interview)

FDR was said by two mediators to be "useful if people know about it" and one of them particularly liked the way **the reforms had shifted mediation from being perceived as "witchcraft" to a more mainstream method of resolving parental disputes.**

I've been advocating for family mediation for a really long time. What did the changes mean? They put a structure around the fact that parents who come to family mediation receive actual encouragement and support to do that now. A lot of parents came thinking they were being a bit naughty before the FDR Act came in. Will it get them into trouble? That sort of thing. The structure, encouragement and support have been really good. I do think there are things that we could do better but, in general terms, I think it's been a very positive experience. ... Before the reforms, mediation was very much like the original idea of alternative health treatment, it was witchcraft. Whereas these days it's actually sane and balanced, and more people know what you talk about when you say what you do. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Interview)

A lawyer and a mediator suggested that FDR, and its benefits, also needed to be **promoted to Family Court staff and lawyers** to enhance the quality of advice to clients and FDR uptake.

FDR should be promoted a bit more actually in the Family Court. Court staff and lawyers need more education on the benefits of it. (2374, Lawyer, FLAS Provider; Interview)

It would be quite good if the Court had a better understanding of what we do. At one stage we were talking about providing a workshop for the people who work in the Family Court, and just saying, "this is who we are, this is what we do, this is how we do it." Because they often don't really know a lot about what we do. So, if somebody arrives at a Family Court counter and says, "I'm separated and I don't know what to do now", they could get very good advice if the administration staff, and the clerical staff, were more well-educated about FDR services. I'm not sure that they are really. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Interview)

Three professionals commended the **presence of suppliers/FDR mediators in some Family Court waiting areas** where FDR could be directly promoted to clients and/or lawyers and judges could make immediate referrals of parties in appropriate cases. However, two of these mediators, who were keen for this approach to be adopted in their local Family Court, were disappointed that "it just kind of came to a stonewall" and was disallowed.

I don't think they [clients] know about it, I don't think they know how to access it. ... There's just a lack of information and awareness about FDR. I've heard in other Court districts that the suppliers have somebody in the Courthouse, sitting there basically with a table and promotion saying, "here, this is what we can offer you." I go around to the social groups, to the community networks in our hub where all the social workers have interagency meetings. I go to those meetings and I tell people, "did you know that your clients are entitled to this?" There's a general lack of awareness about FLAS and FDR from my experience. (2165, Lawyer, FDR Mediator; Interview)

When Family Works has tried to set up, as some Courts have allowed, a little thing in the Family Court waiting room saying, "look, this is our service that you could consider", they haven't been allowed to do it in [city]. I think it's happening in [another city]. It's like people from Family Works and that, having a little table with a couple of seats in the waiting room, so that as the parents and the lawyers are sitting around, they are trying to explain what the service does and there's an option pack for those clients to start working together. But the judges just said, "no, you are not coming into the Family Court - basically we don't want anything to do with you." (2378, FDR Mediator; Interview)

Referrals to, and Uptake of, FDR

A variety of issues were raised regarding referrals to, and uptake of FDR. These included the referral process, engaging the second party, lawyers' and judges' perceived resistance to FDR, FDR uptake and mediators' workloads, non-participation in FDR and exemptions, and FDR as a mandatory requirement.

FDR Referral Process

Sixteen professionals commented on the FDR referral process. One FDR mediator promoted referrals to FDR by speaking to parents at the local PTS course every month. Another mediator was proud that many referrals came directly into their practice, but described **the process as "convoluted"** to then get the FDR supplier involved.

The common perception is that the referrals go to the supplier, that they ring up FairWay, or they ring up Family Works. Ninety-five per cent of our referrals come direct to us. So we've then got to send them through to Family Works, who do their bit around privacy and funding, and all that sort of stuff, and then they send them back to us. So it's a bit convoluted, and it could be streamlined, but that's really between us and Family Works - that's how they've chosen to do it. I think our practice is unique with the majority of the referrals coming direct to us, and not to one of the suppliers. (2168, FDR Mediator; Interview)

Some clients were reported as being **"ecstatic" about the availability of FDR** and the opportunity to resolve parenting issues more quickly without needing to go to the Family Court. However, **client resistance** was raised by others as one of the key barriers to getting parties involved in FDR, despite them being informed about the service, given the phone numbers to call, and encouraged to attend. **Engaging the ex-partner** could be particularly problematic and sometimes cause the party keen to attend FDR to "lose heart" or "just walk away from it."

If a couple separate, and this is a fairly common scenario, where the children go with Mum, and Dad doesn't get to see them, or the contact is just not working. There's nothing urgent, which means they can't go and get a lawyer. So they'll ring up a lawyer, who says, "well, you have to go to FDR and then you have to do your own application and so on." A lot of people just walk away from it. The inevitable outcome is that there are a lot of situations where kids are not having the relationship with both parents that they deserve to have because it's just too hard to achieve. (2279, Lawyer, Lawyer for the Child; Interview)

You say to them, "hey, here's some numbers for some mediators, ring them up and say, 'look, I've got a problem, can you please arrange a mediator?'" But to find so many of them don't do that, so there's an unresolved problem. ... Unfortunately, a lot [of my FLAS clients] don't even get as far as ringing the mediator. Or, if they do contact the mediator and the mediator then has difficulty contacting the other party, they seem to lose heart and there's a bit of muttering about the whole thing being a waste of time and blah, blah, blah, so the problem isn't solved. (2373, Lawyer, FLAS Provider; Interview)

The futility of FDR because in many cases the people are ending up in Court anyway. ... It's the person with mental health that's ringing the mediator and saying, "I want a

mediation” and the other person gets dragged in. ... They just go along because they are worried – someone’s called them and said it’s about the kids, and they’re worried about losing their kids, so they just sort of comply. ... Some of them don’t want to go – “but I really didn’t know what to do because they said I had to do this.” (2188, Lawyer, FLAS Provider; Interview)

Some people are ecstatic that mediation is available; they don’t want to go to Court, they want to know that there’s an avenue and how they can resolve something. Others don’t think it’ll work and give every excuse under the book as to why it won’t work which can be, ‘we tried that and it didn’t work in the past’; or, ‘she’s really good at speaking and expressing herself and I don’t know what to say, so she will over-talk me’; or, ‘he will intimidate me’; those sorts of things. We now actually talk those people into giving mediation a try; we talk about the mediation process and the expertise of the mediators, if they are prepared to give it a go. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I’ve had a few clients that have said, “Well, what’s the other option?” They just don’t want to [go to Court], so I’ve sent them off to FDR, even though the father is threatening to take the children and move to Australia or whatever. They’ve just said, “Well, I just won’t allow the father any contact until we get to FDR.” Because the reality under the Care of Children Act is you apply without notice, you get a supervised contact order and they don’t have contact with the children for a while anyway because they refuse to go to Barnardos. Sometimes FDR actually works out quicker for the contact side of things. (2272, Lawyer; Interview)

One lawyer provided a useful explanation of the difficulties that could be encountered in engaging the second party in FDR.

There’s an issue around getting people along to mediation, and it’s a funny old one. I might see one parent and explain that there’s a mediation process - we have FairWay as the only one who does the funded model. So I say, “Here’s the phone number for FairWay. Ring them up. That first phone call could be half an hour so make sure you do it at a good time. You give them the basics of the situation, it gives them all of your details and all of the contact details for your ex-partner, because then they contact the ex-partner.” I think there’s an issue at that point because I’ve had a few people come back with, “Oh, FairWay’s saying they’re going to give him another chance, or some more time, to think about whether he’s going to do it.” I’ve never seen those correspondences so I don’t know what it is that’s being said to that second parent by FairWay. I think that’s something that has to be managed extremely carefully. ... I had one client that ended up in the Court system. She had got a call from FairWay saying, “Will you come to mediation?” She said pretty much “No” and hung up the phone in a fright, kind of thing. So, of course, FairWay went back to the original person and said, “She’s declined to go to mediation.” So he went off to Court going, “Oh, she’s being unreasonable and won’t go to mediation.” At that point she came to me and, of course, the case was perfect for mediation. If she’d have had an opportunity to properly understand what was being asked of her, to come and see me under FLAS at that point, the whole application to Court could have been avoided. ... It’s terrifying for people, if they’re not in a good relationship with their ex, presumably they aren’t, to get this call from this official organisation. If that first phone call isn’t handled really carefully then what happened in that case is going to happen. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Three lawyers felt inhibited about referring clients to FDR because of **uncertainty** about the mediator, the **lack of follow-up** once a referral was made, and the “vacuum” that resulted when there was **little clarity about the issues needing to be resolved**.

A lot of people will use the ‘get out of jail free’ clause and not even bother with the FDR. I’m really reluctant to send clients to FDR because you just don’t know who you are going to get. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

My concern was those people who we’d refer off to FDR and then you never know if they got there, so you never knew what happened, you never had the follow-up. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

With the FDR nothing’s actually been filed in Court and I’ve had a lot of people when I’ve been appointed Lawyer for Child who had no idea what the issues were when they were just told, “Well, we want you to attend FDR.” So it’s a little bit of a vacuum. I would prefer to go back to using lawyer-led mediations where things had been filed. We knew what was going on. (2279, Lawyer, Lawyer for the Child; Interview)

Professionals were also concerned about the “**lead-in time**” for parents wanting to access FDR, the initial “**long wait list**”, the timing of FDR being “a little bit too soon”, the **FDR mediators “who’ve given it up** because they weren’t getting enough work or the administrative side of it was too much”, or the effort needed to persuade some parents to attend FDR because their “**mindset**” is to **consult a lawyer**.

They come to the lawyer straight away. So I’m trying to explain the Parenting Through Separation course, FDR, to them but I lose them. They’re not that interested in going to FDR. They have that mindset. They’ve come to a lawyer; they want to go straight to Court. My clients can afford to do that as well. ... Even though there’s been quite a lot of publicity about FDR, I still feel they’re a little bit mysterious, even to me with all my experience. So when people come in, I go through in terms of assessing whether or not they’ve got grounds to apply without notice. If they have, great. I’m quite mindful of my obligation to the Court in terms of just not doing those without notice applications willy nilly. But I’m thinking, oh, I really hope I can go down the without notice application track because trying to explain to clients everything they’ve got to do, before they can even get an application into Court, and then telling them they’ll still have to do the application themselves - that they can pay me to do it, but appear themselves - you just lose them in terms of their interest, their confidence, everything. So if you go through the Parenting Through Separation, the FDR, and all the rest of it, it’s actually quite hard to persuade people to go down that track. ... Even explaining the cost - it should be persuasive in terms of \$470 for each party, compared with paying your lawyer. But clients seem to have a lack of confidence, or whether it’s that they want their lawyer to be with them. ... I have got the odd one or two examples of clients that have been quite resistant because they probably haven’t understood it or whatever. They’ve gone and they’ve actually reached an agreement. But it still feels like a bit of a mystery to me. (2572, Lawyer, Lawyer for the Child; Interview)

Lawyers' and Judges' Perceived Resistance to FDR

Resistance to FDR by lawyers and judges was raised by 15 professionals. Six were concerned about the lack of support for FDR by judges, the lack of Court-directed referrals to FDR, and “the disconnect between in-Court and out-of-Court services”.

In the whole time I've done FDR I've received one that's been Court-referred and we've settled it. (2165, Lawyer, FDR Mediator; Interview)

There's been a general reluctance to refer people to FDR because it's just being seen as another delay. I haven't seen in the whole four years one judge refer anything off to FDR. (2329, Lawyer, Lawyer for the Child, Community Law Centre Staff/ Volunteer; Interview)

The way we went about it, “we” being the collective everyone involved, was not conducive to a happy ending. The fact that the judiciary were never totally on board before it was implemented was a mistake. I think everyone, including children, have been reaping the consequences of that mistake, because Court processes, like without notice applications, like Removal Orders, like Protection Orders, Trespass Orders, have been used almost with abandon without checks and balances to ensure that those processes are not being abused. I know that's difficult because the reason they're there is to protect people who need them. However, people who don't need them, but who want them to serve a different purpose, have been using them. ... It would be nice if the judiciary gave more weight to FDR mediation as having a valid role in the whole family justice process, and therefore were more aligned with the base level regarding which cases belong in Court and which just don't and should actually go back out to mediation. There is a very distinct difference across the country with where that boundary is and there's a lot of family that are being affected by that. ... An aligning of the judiciary in terms of what belongs in Court and what actually should be given a go out-of-Court is needed. A lot of that is a lack of respect for FDR mediation by some judiciary - not all. (2533, FDR Mediator; Interview)

There's been a failure of the Family Court Rules to properly reflect the s46 mechanism in COCA for a judge to refer to FDR. So we get very limited Court referral to FDR. The rules are all focused on keeping people caught in the Court system and not being able to access an alternative resolution system. (2187, Lawyer, FLAS Provider, FDR Mediator; Interview)

Two FDR mediators were pleased they had “**a lot of lawyers who do refer to us**”, but said they had to be “proactive around not upsetting the lawyers or stepping on their toes.” It had taken much **networking and promotion to get local lawyers onside**.

We've got a lot of the legal fraternity onside with us now, and they refer to us when they think FDR would be better than an application to the Family Court. ... I've done a lot in terms of promoting FDR in the face of quite fierce resistance from the legal fraternities in some cases. The model itself, I think could've been introduced better - it got offside with a lot of people. I know of solicitors in [city] that had been doing Court mediation and this was virtually their whole practice, and as of 31 March 2014 their practice disappeared. You could understand their vitriol and vindictiveness about this whole new process. ... We know the lawyers that'll work with us; we know the ones that won't. If people already have lawyers and they're ones that will work with us, it's

really easy. We just give them a call and say, "We've had an application, this is what we think. Are you okay with that?" They'll say, "Yep, go for it. We're back in Court on such and such a date." So we'll have a plan completed if we can by that date, so they've got it in Court. If it's a solicitor that won't work with us, we tell the parent that "Okay, we can put up a plan, we can take it and put it into Court, but there's no guarantee the solicitor's going to wear it. So you can either withdraw your application and just go with mediation, or leave it in Court and carry on with that and see where that gets you." (2168, FDR Mediator; Interview)

However, five mediators lamented the **negative attitudes towards FDR by many lawyers**. The impact of FDR on lawyers' work and income was suggested as a possible reason for legal resistance to the FDR service following its introduction in 2014. Mediators were also concerned about the lack of respect for non-legally qualified mediators and the "vibe" they received as the lawyers' "poor cousins".

I just see that there's a capture going on by some professionals, and lawyers in particular, around their work. They are worried about losing out on the potential to do work that doesn't necessarily need to get to the Court. I kind of worry a bit about perceptions of when and where lawyers might need to be involved. I think it's particularly true in [region] and so the mediation processes are not encouraged or stimulated in that area, which is very disappointing. But it seems to be the case in other areas as well to more or less degree. (2364, FDR Mediator, Counsellor, Social Worker; Interview)

One of the biggest problems with the way this system has unfolded is the number of lawyers who don't appear to have brought into FDR, who are blocking the Court with without notice applications for decisions, instead of actually going through the FDR process. ... Despite all of the work that the legal profession and the Family Courts Association has put into educating lawyers, there still does seem to be quite a misunderstanding of what the [FDR] process can offer. ... I don't think every family lawyer understands mediation and, this is the cynic in me, I am kind of wondering how much financial stuff governs some legal responses? I don't know. I should probably look into what you might earn as a lawyer if you take a client to the Family Court for a without notice application versus if you just say, "Well, look, how about I get you to sign on with Fairway Resolution and give you this advice and see what happens." (2266, FDR Mediator, Mediator (Private Practice); Interview)

I don't believe that lawyers are very supportive of non-legally trained mediators. I find I don't get very many mediations. ... Lawyers don't recommend people to me and I find that lawyers are the biggest blockage. ... I think it's a little bit unfair that clients are walking in totally biased. We're on the back foot because it's almost like we've got the door shut in our faces before we're able to go through it, if you know what I mean. I feel we've got barriers put there for us. (2250, FDR Mediator, Mediator (Private Practice), Counsellor, Therapist, Social Worker, Child Consultant; Interview)

Lawyers in [city] are not fond of FDR; they've taken quite a staunch stand against it. A lot of it seems to be, yes, you can be an FDR provider, but you can only charge this much money. For lots of law firms it is simply not economic to have that you can only charge this much per hour, and you can only do these many hours. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Staff member/volunteer; Interview)

The biggest thing that doesn't work well is the lawyers and judges and the interaction with them and us. I happen to work on the same floor as the family lawyers. I get that vibe that we are the poor cousins, the mediation service, we don't really know what we're doing and we are taking work away from them. In the beginning they actually said, "we don't have any work anymore." I also belong to the Family Court Association and when we go to the monthly meetings, the similar vibe is there. There's a lot of tension. (2378, FDR Mediator; Interview)

One lawyer noted the "tension", lack of trust and "protecting their ground", and another explained the **broader reform context** as to why lawyers and judges were not "on board" with FDR.

They should promote FDR, whether they bring it into the Court system in some way, or link it in with the Court system better, so the Court system trusts that then - because at the moment there is a bit of tension between non-lawyer mediators and the agencies; sort of protecting their ground. (2509, Lawyer, Lawyer for the Child, FLAS, FDR Mediator, Mediator (Private Practice); Interview)

The legal profession has been dim on the other pre-Court reforms because s7A was such a blow. To be told basically you don't really add value; you're not really necessary and so therefore you can only act in certain circumstances when it's really, really, really necessary for a lawyer to be involved is a very difficult pill to swallow. So when it was coupled with, "Oh and here is this other service - they can probably do the job better than you" - there wasn't buy-in from all the participants in the system to the reforms. One of the struggles with it is that I don't believe the judges were on board; lawyers certainly weren't on board. So, there wasn't a willingness to be able to make all these things come together; and some fundamental philosophical opposition to the changes as well in terms of right to representation and equality of arms. So, it's got to be looked at in the context of the roll-out of the reforms; that context and the bitterness that was around those. The context of the roll-out has tainted some of the positives that are there. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Two professionals were optimistic that **attitudes towards FDR were changing**, and there was more buy-in, as FDR had become more embedded.

Since I've been in this role, as FDR has got more embedded, it is changing I think, albeit slowly. I've seen some changes in the people in the system. What I'm hearing more now is that people are being advised by a lawyer they should do PTS and FDR first, and then come back to them. So that has been a shift that I've seen over the last year. My feeling is that maybe there's more buy-in from the legal profession now - the legal profession didn't actually want these changes because they were financially impacting negatively, big time. (2299, PTS Provider/Facilitator; Interview)

At first certain people were very threatened by it, but it seems to be becoming more accepted because generally it works better. I suspect this will become a normal accepted part of the process of the separation. (2269, FDR Mediator; Interview)

FDR Uptake and Mediators' Workloads

Mixed views on FDR uptake and workloads were expressed by eight professionals. Two mediators spoke **positively** that they had “enough clients” or had seen **significant growth in their referrals over time**.

In my first year I had 21 referrals. Last year we did 250 mediations, and that's a lot. Our exemptions last year were two, and I think we had seven withdrawals or something like that. Of the 250 mediations, we were able to get to an agreement in about 85 per cent. The balance we had what we call a partial agreement - where they sign off on an agreement which shows the bits that are agreed and the bits that aren't. It's then up to them to take that to Court for a settlement conference for a judge to rule on the parts of the agreement that they don't agree on. (2168, FDR Mediator; Interview)

Three professionals were concerned that the low number of FDR referrals they received made it difficult for them to earn a living, to remain accredited, or to cover the certification and professional indemnity insurance costs they incurred.

So I get my FDR qualification and I think about how I can restructure delivery of my services. I'm already to go. From day one I could not earn a living from FDR appointments. The cost of certification and professional indemnity insurance - for me that's \$2500 to \$3000 a year. I was barely able to earn that in FDR referrals - because in the first year I never got to conduct a mediation - 40% of initiated cases to FDR do not result in a mediation because a party refuses to participate. So my first year of FDR was all in that bundle where the FDR supplier was unable to engage Party Two. Year Two I finally managed to get a couple of mediations. (2187, Lawyer, FLAS Provider, FDR Mediator; Interview)

We didn't get a huge amount of work actually. It was hard to get enough work to even remain accredited. I spent most of my time doing the assessments and trying to persuade people of the benefits of mediation. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I might do one every two months. I hardly do any. And it's barely economic. I accept them all pretty well, unless there's a conflict. But I get very few and, from talking to other lawyer practitioners, I don't believe they get that many either. There may be a few swings and roundabouts but, generally speaking, I don't think the numbers are really there. (2501, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

Three professionals disliked the **erratic and unpredictable nature of FDR referrals** or felt there was still “**capacity**” to grow the numbers.

The flow of work is much less predictable. The information I get is less. When the intake was at the Family Court they already had an affidavit and knew the level of violence and knew some of those issues, so that the assessment of whether the parties would go to counselling or move straight to Court was made at the Family Court with that information. Now, people are ringing cold. They're then coming to one process and having to then go to another. I think that that is less cost-effective and more clunky for everyone. (2368, FDR Mediator, Counsellor; Interview)

People have a mistrust or, for some reason, they don't like mediation. They're not flocking to it, that's for sure. Some people are really, really, really busy all the time and some people aren't busy very often. (2161, Lawyer, FLAS Provider, Community Law Centre Staff Member; Interview)

Non-participation in FDR and Exemptions

Five professionals were concerned about **non-participation** in FDR due to the high number of **exemptions** being granted. Some felt that it was **too easy for a parent to avoid FDR** by deciding not to attend.

It's too easy for one parent to opt out of it. (2288, Lawyer, Lawyer for the Child; Interview)

Quite often if people are applying on-notice, it's not because the FDR wasn't successful; it's because one party just simply didn't go. So there is just non-participation really. (2272, Lawyer; Interview)

People want to talk about arrangements for their children and the other party won't even respond to the mediator so, of course, nothing can happen unless you then make an application to the Court and have a direction made that FDR is to be attended. ... The cost puts a lot of people off and the fact that you have to have done it or have an exemption before you can apply to the Court is a bit of a shame because there are cases where you need to make the application to the Court, but the people haven't done FDR, so then you're trying to come up with a reason why they should be exempt. (2183, Lawyer, Lawyer for the Child; Interview)

FDR as a Mandatory Requirement

Five professionals liked the mandatory nature of FDR, but also commented that it should therefore be a free service for separated parents or is not currently positioned in the right part of the family justice system.

It has a mandatory aspect which I think is good. (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Interview)

I've got no difficulty with it being a prerequisite. I just have difficulty with people having to pay for something that's mandatory. I'm very firmly in favour of FDR being fully subsidised if it's going to continue to be a mandatory prerequisite to Court. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

It should be a mandatory part of the process, but where it's placed is in the wrong place. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

The concept of compulsory mediation with less exceptions than what there are at the moment is great as an idea. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Everyone has to say, "You've got to do this, unless there's massive safety concerns and, even then, you can mediate between rooms or on Skype or whatever. "You know that for most people they should have to do that, and it should be enforced that they have

to do that before they enter into the Court system. So, it's more the players rather than the system. (2299, PTS Provider/Facilitator; Interview)

Three others were less positive about FDR as a mandatory requirement and thought that this did not “always help” or led to FDR becoming a “hurdle”, a “big stumbling block” or a “tick-box” exercise.

There are some people who are going through and they're not really in good faith - yet they are doing it because it's a tick-box thing. (2266, FDR Mediator, Mediator (Private Practice); Interview)

The reason most people are doing FDR is not because they want to, but because they've got to get through that hurdle, along with doing a PTS course, before they can file something in the Family Court unless it's urgent. That's a big stumbling block. (2471, Lawyer, Lawyer for the Child, FDR Mediator, FDR Staff Member; Interview)

Intake Assessments by Telephone

Suppliers **conducting intake assessments over the telephone** was criticised by four professionals, two of whom were suspicious that it was for economic reasons. There was also concern that the staff undertaking the telephone assessments were not accredited mediators.

When I started out I was with FairWay and I pulled away from them because they were trying to do assessments on the telephone. That is just a nonsense, but they're still doing that. In this last contract, Family Works tried to introduce a similar model and I said, “there is no way in the world that I would be part of that.” It's just nonsense; you cannot do a risk assessment on the telephone. So they acquiesced, which surprised me actually. So we got the assessment back. That's the biggie for me. You need to be on the spot, eyeballing people and taking in the whole picture. The thing is the people who are doing the assessments on the phone are not accredited mediators, so that needs to be addressed. (2168, FDR Mediator; Interview)

I guess, for economic reasons, FamilyWorks did the screening themselves, by telephone. So we'd just end up with Mum and Dad in the room. It just wasn't being done properly. (2549, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

My experience with both of the suppliers that I've dealt with, and it could just be me being suspicious, but I can't help thinking that it's a revenue generating practice, with mediators that are on the phone, doing the initial consults with, and getting rid of, parties that they don't think can go to mediation or dealing with it at that level before it actually filters through to mediators. (2422, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Interview)

It's fairly arbitrary this distinction that they have between the assessment phase and the mediation phase. Quite early, when you start the assessment phase, you're already thinking about what the mediation agreement might look like. So with the mediation underway, even within the first 20 minutes, you can be trying things out with people and getting a feel for stuff. I really don't see why they bothered to contrive it as they do. It's an arbitrary distinction. (2524, Mediator (Private Practice), Counsellor; Interview)

However, one FDR mediator, despite her initial scepticism about telephone-based intake assessments, found them to be very successful.

We have intake assessments that are done over the phone. I wasn't convinced that that was actually a good way of doing it. At the time I thought this is not going to work, it's really impersonal. But I've only been doing it for three or four weeks and have found that it is actually more successful than face-to-face. It sounds bizarre but, from my perspective, I've found it far more successful. I glean a lot of information, I find out the story that's been going on. If I'm the only one doing the intake assessments, I pass it onto the mediator and I'm hoping I give them a really full picture as to what is going on. So I find that really useful. (2250, FDR Mediator, Mediator (Private Practice), Counsellor, Therapist, Social Worker, Child Consultant; Interview)

Preparation for Mediation (PFM)

Six professionals spoke positively about Preparation for Mediation (PFM) because of the assistance it provides parents to deal with their emotions and get ready for the mediation sessions. Two mediators recommended that the time allowed for PFM be extended, especially to focus more on communication skills. Another one suggested that other types of counselling (for example, drug and alcohol counselling) were also required.

FDR works really well in those cases where there's no safety issues, no alienation or influence issues, if both parties are willing to agree and engage, and particularly if they have PFM because that makes a big difference for us as mediators. We get parties into our office that are focused on the issues, focused on the agenda and focused on solutions. They've already been well prepared and it's a much speedier and smoother process. That works exceptionally well. I have to say that that is a positive aspect of the reforms. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

It is a lot of work to get people ready for mediation and even now I kind of struggle with that a bit because so many people aren't there for the right reasons. At employment mediation, it's very much a sort of business transaction, although people's lives depend on their jobs. But this is so much more emotional, especially if they've been in a long-term relationship, they know how to push each other's buttons, and know what makes each other tick. (2163, FDR Mediator, Mediator (Private Practice); Interview)

The coaching they get prepares them and will have some communication stuff in it. I'm just suggesting perhaps a full hour instead of 45 minutes. Again, resources. Or maybe offering another lot of coaching halfway through the mediation or just making sure that mediators are trained in communication skills or there is a communication package that's an extra hour along the way or something. (2378, FDR Mediator; Interview)

Doing the preparation for mediation work is interesting because it's all by telephone. While it's a chance to give some of that therapeutic intervention, it's more like mentoring, it's more like dealing with people's emotions and what it might be like in the mediation room and how they can manage all those sorts of things. It's only an hour and a half for each party, which is not very long to do anything meaningful. (2511, FDR Mediator, Counsellor; Interview)

The arrangement is that you can get pre-mediation - PFM counselling – but it isn't always the kind of counselling that's required. We've got a concept of PFM, which is just what it says; helping people to get their ducks in a row and get their arguments marshalled and to look at how they can present themselves and get through the mediation and so forth. That's okay, but that's not the kind of counselling you need. Quite often it can be drug and alcohol counselling. (2524, Mediator (Private Practice), Counsellor; Interview)

FDR Agreements and Outcomes

Nineteen professionals commented on the agreements reached at FDR and the outcomes more generally. Three mediators spoke positively about the **content** of the FDR agreements they prepared.

I write parenting plans that are quite detailed, and reasonably easy to follow. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Interview)

I'll hear all sides and then I'll have a go at writing what I think might be a possible agreement. Then they can tell me where I'm wrong. We'll shape it out, step-by-step. Assuming I'm writing, that has the advantage of making the statements clear. It means I'm drafting, re-drafting, re-drafting. I put check-in things for the kids. So that if one parent has a concern about something, they don't go charging off to the other parent. Rather, there's a mechanism whereby they can establish an appointment with our office and the other party must then front up to that. So they can immediately have either counselling or mediation for \$45 bucks each. (2524, Mediator (Private Practice), Counsellor; Interview)

There's a part in every agreement asking "How you're going to do this in the future?" And some of them have said, "Well, we'll try and have a coffee once a month", or "We will do three times a year planning", or "We'll come back if we need some more help." So that focus on future dispute resolution is definitely good. (2471, Lawyer, Lawyer for the Child, FDR Mediator, FDR Staff Member; Interview)

The inclusion of a **review clause** in the agreement was thought to be particularly important in giving parents the confidence to implement their parenting plan.

The other integral and important part of the plan is the review - we always put a review in. That's then up to the parents about whether they want to come back to a review. Quite often it's been a length of time since the children have seen a parent. The interim plan would be a transitional plan to build up that relationship again, staged over however that would work. Then they would come back and we'd try to manage that within our 12 hours. (2168, FDR Mediator; Interview)

One nugget that I can say always works in my private mediations is when I say to the parties, "look, you're close to agreement on this. Tell you what, why don't we give it a six to eight week run and then why don't we re-group, review, and if either of you have got any concerns let's work on those concerns?" I suppose I'm talking about interim stuff, but I'm doing it on a very professional, but more casual basis. So they're not having to armour themselves with legal expertise. They just have on good faith that they're going to come back around the table. That gives them the confidence to try

something new without feeling they're going to be locked in. That's the difference between what some of them say which is, "we went to mediation and it was sort of put to me that if we didn't get an agreement now we'd have to go back to Court." And they just thought, "oh God, that's not fair on the children" or "I can't afford any more", whatever, whatever. So I think an approach, almost from the family assistance point of view rather than from, you know, an expert mediator. I think we need an amalgam of both skillsets in the one person. (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Interview)

However, there was also considerable **criticism** of various aspects of FDR agreements – in particular, their i) **impracticality and lack of detailed content**; and ii) unenforceability. Ten professionals commented that the agreements were “not practical”, “shoddily written”, “don't come up to scratch”, insufficiently detailed, and too ambiguous and vague, particularly when written by mediators who were inexperienced or lacking in knowledge of the law and drafting.

They aren't waterproof. They're not practical. People have agreed, but what they've agreed doesn't make sense. (2373, Lawyer, FLAS Provider; Interview)

Some of the agreements that come out of FDR are so shoddily written that it's inevitable they fall apart. They just don't hold water at all. (2288, Lawyer, Lawyer for the Child; Interview)

I've seen FDR agreements which are unworkable. I've seen what are described as interim agreements, but without any penalty for parents who choose not to come back for another round of FDR. (2227, Lawyer, Lawyer for the Child; Interview)

Anecdotal evidence that comes through with [private] clients who have gone through the FDR process and yet still end up here saying, "I thought we'd reached an agreement, but there were so many bits that were left out, it's fallen over." ... It's not about just getting an agreement. It's about getting an agreement that's going to be weather tight for the best reasons. (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Interview)

People who are doing the FDR are not skilled enough. I've seen some of the mediated agreements. Mine will be 70 and 80 points long and I've purposely been as thorough as I can. I try and line them up with the Parenting Through Separation programme which I think is particularly good. I've seen other parenting agreements that are like two, three points long. The details aren't there. My goal is always to be, if your relationship falls down with your other co-parent and you cannot actually associate with each other in a positive way, at least the impact on the children is going to be minimum because we've covered all the detail. It's about doing the right thing and committing to your kids. (2250, FDR Mediator, Mediator (Private Practice), Counsellor, Therapist, Social Worker, Child Consultant; Interview)

People that are mediating that have been Family Court lawyers, or involved in the Family Court, come up with more robust agreements because they know the pitfalls. They can help people craft better agreements. I've seen some agreements where clearly mediators had just no idea and things fell over because you could see that they weren't thought through well enough. (2316, Lawyer, Lawyer for the Child; Interview)

Some of the plans that I've seen I don't think make the grade really. They're not detailed enough. They don't address the issues in terms of risk. I really don't think they come up to scratch. That comes back to the lack of experience. (2168, FDR Mediator; Interview)

Ten professionals were also concerned about the **lack of legal enforceability of FDR agreements**, as Consent Orders (which cost a further \$220) were only being sought in a small number of cases. Some believed the agreement should become a Family Court Parenting Order, while others were concerned that the lengthy content of some agreements negated their ability to be easily converted into a consent order.

The amount of FDR agreements that I saw become consent orders was very minimal. So, of course, people go. 'well, we had an agreement, but then without it being enforced, what is it actually worth and why is \$900 being spent on it?' (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

Sometimes if people reach agreement [at FDR], we get the agreement back and they want them to be turned into Parenting Orders and you think a judge is never going to accept this. I mean, it's 15 pages long, first of all. Or it just talks about all the stuff that's not legal. We can't put it in an order and so people's expectations of what they think they can get and the reality are completely out of whack. (2310, Lawyer, Lawyer for the Child, FLAS, Community Law Centre Staff/Volunteer, Citizens Advice Bureau Staff Member/Volunteer; Interview)

There is a lot of confusion about what FDR is and whether decisions made at FDR are enforceable. (2227, Lawyer, Lawyer for Child; Interview)

More often than not, people aren't aware that agreements reached at FDR are not legally binding. And some of the drafting is absolutely appalling, so from the get-go, even if you can get an agreement, you've got ambiguous drafting. The way that we draft Memoranda of Consent is very specific and we've been doing that for an awful lot of years and we're pretty good at it. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

If one parent takes that agreement and then wants to register it with the Court and get an order, there might be heaps of stuff in that agreement that can't be ordered and might be written in a way that doesn't make any sense for it to be an order and might be really vague. Lawyers are really careful about the way they write things. It's just not something that some mediators are used to doing. (2303, Lawyer, Lawyer for the Child; Interview)

People can go to FDR, sort their problems out, but all they've got is an agreement. They've got nothing that's enforceable or anything like that. (2500, MOJ/Court Staff Member; Interview)

One mediator was positive about the conversion of FDR agreements into **consent orders** and always explained this option and the process to clients.

I always tell people that it's an option to turn your FDR agreement into a consent order. For people who come to FDR mediation because they've been separated maybe for ages, they've had various iterations of private parenting plans. It seems that one

person either tends to regularly take advantage of it, or regularly not turn up when they're supposed to. So if you are the other partner, it's quite handy to know that you have an enforcement process, and it will cost you \$220, and you might not even have to be in Court. You can just hand the papers over and ask for them to be approved as orders by consent. That's quite useful for people to know. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Interview)

Another mediator noted that an FDR agreement “has a life of its own” and that parents needed to carefully consider “the audience” because it was **highly likely that their children would read the agreement** during their childhood and/or adulthood.

People think the agreements are all about them. They don't dwell on the fact that the youngsters themselves are going to read these agreements. Because you're putting them in two households with various degrees of chaos. Children, being what they are, of course they want to read the stuff about Mum, Dad, and themselves. When they start doing that, they might be say, ten years of age and they read it, what they take from it is going to be appropriate for a ten-year-old. When they're 16 and 17 they're going to read it again. Indeed, they could even be reading it when they're 35. So the document actually has a life of its own, and the audience is not whom we think the audience might be. (2524, Mediator (Private Practice), Counsellor; Interview)

Family justice professionals held diverse views on the **outcome and impact of FDR**. Eleven commented **negatively**, describing FDR as “not good”, “not working that well”, “a waste of money”, successful for only “a very small handful” of parents, or resulting in parents becoming “more entrenched” in their positions.

FDR is just a waste of money. They need to do something else. ... We end up on a lot of the files where there's been a mediation and it hasn't worked. Essentially, they have agreed to something that they probably shouldn't of. Then it just ends up back in the Court anyway on a without notice clogging up that system. So it's like double tracking. With family law, the on notice applications would have nipped that in the bud. It would have never ended up on a without notice track and it probably would have been sorted earlier. So it's kind of like, what's the point of the mediation at all? (2188, Lawyer, FLAS Provider; Interview)

It increases my client's frustration. It increases lawyers' frustration. It doesn't seem to make things faster or smoother in the files I see where FDR hasn't worked that well. ... If FDR is working really well the clients in general won't come to a lawyer. So I'm seeing the ones where they've tried FDR, or they were reluctant to try it, and they've got a messy outcome. (2201, Lawyer, FLAS Provider; Interview)

The ones who have been to FDR I am finding are more entrenched in their positions when they're getting to me than before they went. One or the other will come away feeling very justified because they perceive they've been supported by the mediator. They won! (2347, Counsellor; Interview)

One of my criticisms is that we don't know whether FDR is actually achieving outcomes for children. (2227, Lawyer, Lawyer for the Child; Interview)

Three professionals were concerned that parents felt **rushed or pressured to reach agreement** at FDR.

On occasions, they will come in from FDR having felt that they were beaten into an agreement, or mostly that, on reflection, while they've got an agreement they didn't feel heard. So they come in to me and say, "I don't agree with this." "Well, I'm sorry about that; I can't do much about that." (2186, Lawyer, Lawyer for the Child; Interview)

However, eight professionals were **positive about the outcome and impact of FDR**.

FDR works really well; it's really like the best addition to the 2014 reforms. It's just wonderful. (2299, PTS Provider/Facilitator; Interview)

Of the 250 mediations, in about 85 per cent we were able to get to an agreement. The balance we had what we call a partial agreement - where they sign off on an agreement which shows the bits that are agreed and the bits that aren't. It's then up to them to take that to Court for a settlement conference for a judge to rule on the parts of the agreement that they don't agree on. ... For our district, I believe that we are having an impact. (2168, FDR Mediator; Interview)

Parents have said "I feel more confident" or "I'm more able to manage making decisions going forward." I can tell you individual stories of people who have been in the Court system for years, who have been to FDR and sorted stuff out. In one case, the parties had had arguments over just about everything and they acknowledged that the FDR process had helped them. They shook hands at the end and then the mother kissed the father and said, "Thank you". (2471, Lawyer, Lawyer for the Child, FDR Mediator, FDR Staff Member; Interview)

I see a significant number of these cases go through the mediation process and come out with very good outcomes; reducing conflict, reducing cost and delay and achieving outcomes that are all around the best interests of the children. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

In one particular case I was involved in I saw a miraculous outcome. It very, very much depends on the quality of the mediator. There's no doubt that some cases are resolved with FDR that might have gone to Court, but it's just impossible to say what percentage those are. (2288, Lawyer, Lawyer for the Child; Interview)

It can be incredibly helpful. I've seen a client come out with the most detailed and amazing FDR agreement, which you would never get with lawyers. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

If I think about the FDR cases that I've done, there are relatively few where you don't get 100 per cent success or a reasonable degree of success. It's a good vehicle to use to achieve that. (2501, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

Others held **mixed views**, believing that FDR was successful for some families, but not for others – “sometimes it fails, sometimes it succeeds.”

Mediation is definitely great for some families and works really well. In some instances it can be a bit of a bandaid until Court to stop things escalating. ... Mediation has its place, but it's not the be all and end all. Some people need to go to the Family Court, there's no question about it. (2167, FDR Mediator; Interview)

Of those [FLAS clients] that you can contact later, some have sorted out during mediation a workable and satisfactory resolution that they are happy enough not to get made into a Parenting Order, but the majority of them haven't. ... I am prepared to accept that most of our cases do resolve at mediation, so there was some logic in making mediation the first step. (2373, Lawyer, FLAS Provider; Interview)

The other day I had a client who has told me that his wife wants to relocate the children to another city in New Zealand, to the North Island. He lives overseas. They had a mediated agreement that was working. But, because of circumstances, it needed to be reviewed. Rather than making a without notice application to the Court preventing the relocation, which he would have been entitled to, he agreed to fund mediation himself and call her to a mediation to try and resolve things in that way. The system was very responsive. I got on the phone to FairWay and made an urgent referral. They put in a mediator pretty much within 24 hours. The other lawyer acting for the mother of the children was agreeable and supportive of that. That was a really good response, whereas before we would have probably lodged applications. I think the way the system has evolved is good. It's got some really good response times and it's got some really good people that we can draw on. I guess what's not so good is that [the system is] not like that in every case. There is a loss of co-ordination. I hear horror stories all the time from people that I either act for or that I have been to appointed to work with as the mediator, where the system does harm. It prevents families getting on with making decisions. (2560, Lawyer, FDR Mediator, Mediator (Private Practice); Interview)

Mediators' Role, Training, Supervision, Peer Support and Cultural Issues

The family justice professionals interviewed raised a range of issues concerning FDR mediators' role, training, supervision and peer support and culturally appropriate ways of working with Māori, Psasifika and Chinese families. Discussion also occurred on the distinction between counselling and mediation, and changing between FDR suppliers.

The **FDR mediation role** was considered quite “nuanced” with careful attention needing to be paid to such aspects as communication patterns and “power and control dynamics.”

FDR, if it's actually to be done well, is a very nuanced role and it is not about simply getting to an agreement. It needs to be a considered, flexible, multi-skilled process, albeit done in a timely fashion, but with an outcome of both parents being heard within the orbit of the welfare of their child. To see it being done very professionally it needs to be sort of the gold standard. (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Interview)

In mediation you are helping people to establish a different pattern of communication through the process, so they actually have an experience of listening to one another and having some support to talk in person, as opposed to sending inflammatory texts to one another at 1am in the morning. (2266, FDR Mediator, Mediator (Private Practice); Interview)

Eight professionals commented on the importance of **training** in developing mediators' skill sets and improving the quality of their work. Some also criticised the cost incurred in the training, its brevity, and its inadequacy in relation to family dynamics.

We could afford further training for mediators, because a good mediator has got to have a good tool kit. These mediations need to be what I call therapeutic mediations, not because they're therapy, but because they need to be attended to with right-up-to-the-moment research on issues like alienation, on how people manage their way through the grief process, on how parents bring in their own childhood issues. This can be done quickly by someone who's trained enough to pick up the signals, go to the heart of the matter and work it through with welfare and best interests as the navigation tool. (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Interview)

I am concerned about the training. I've seen mediators run mediations and I'm quite embarrassed that they're mediators. I don't think that they're thorough. I liken it to the Treaty of Waitangi. The journey that it's been on to get us to where we are now has been very significant and treated like it's a very special thing. I think mediation is the same. It's had a long journey to get here and we need to treat it with the utmost dignity and respect to give it the credence – it's earned it. But we've had these massive reforms and people can be a mediator on a week's training. ... They're charged an absolute fortune and I think the training is inadequate. I don't think that there is anything on family or family dynamics. FDR is an absolute real area of skill and specialisation and I don't think a week's training cuts it. (2250, FDR Mediator, Mediator (Private Practice), Counsellor, Therapist, Social Worker, Child Consultant; Interview)

The quality of the mediator is hugely variable and normally impacts on the outcomes for families in really serious situations. (2303, Lawyer, Lawyer for the Child; Interview)

You can't compare someone who's done a one-week course with someone with four, five or six years of training and experience. There's just no way you can compare those two. I think how well it's worked has been very dependent on who the mediator has been, which is really not ideal. (2471, Lawyer, Lawyer for the Child, FDR Mediator, FDR Staff Member; Interview)

To go and do the FDR training with the Law Society was really expensive. (2501, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

All the training that we did for FDR, hours and hours and weekends of mediation, which I did through the Law Society, Part A and Part B and all that. The FDR mediation that we have now is not reflective of what we trained for at all. You should really be able to get in there, boots and all, and spend a good amount of time with each side first and spend like half a day, or a day, mediating with people. I just found that the

whole FDR process was so short-circuited. (2549, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Six FDR mediators discussed the importance of **supervision and peer support** and felt that both were important in facilitating their work.

We do have a really good peer network in the region and we're really lucky that there is a group of us working together, which I know isn't common with mediators. If it is a tricky case we can co-mediate. Or we can ring up another colleague and go, "oh, look, they've just said this to me. What do I do with that?" So we have that real advantage of working closely with other mediators. But you do talk to mediators that don't have that relationship. How unsafe that would feel to me to not have that network of people around me, dealing with these really high risk, complex cases that we do see. I think we take them on because we have that network, that support. (2167, FDR Mediator; Interview)

Six professionals discussed how **FDR mediation differed from the s9 and s10 counselling** offered prior to the 2014 reforms. Some preferred the previous free counselling that was available as it was "a system that was working" and lamented its abolition. Others felt parents should either be able to choose between counselling and mediation or access counselling in tandem with mediation to work on issues that are inhibiting their ability to reach agreement at FDR.

The mediators approach it, perhaps, from a different perspective than the s9 counsellors used to. The counsellors weren't expected to get a result, necessarily. They were there to promote conciliation and help people move past what had happened and work out how they could keep moving forward as parents or, if they were wanting to get back together, as a couple. Whereas the mediators think they're there to try and get an outcome to stop it going to Court. So, they're coming at it from quite different angles and I wonder whether that's why, within the legal profession generally, the opinion is that FDR hasn't worked the way that the s9 counselling used to. The mediators and the counsellors have a different methodology toward a different desired outcome. (2183, Lawyer, Lawyer for the Child; Interview)

Another tack is the relationship between counselling and mediation. The way the mediation stuff's written, you don't get involved in counselling when you're doing mediation. It's a different role, but you might only be with people 20 minutes in mediation and you decide that somebody needs a counsellor. They can get Preparation for Mediation, but that isn't always the kind of counselling that's required as it's just what it says; helping people to get their ducks in a row and get their arguments marshalled and to look at how they can present themselves and get through the mediation. That's okay, but that's not the kind of counselling they need. Quite often it can be drug and alcohol counselling or other issues that come up. I end up saying to them, "well, how about you just get a counsellor on this. Do a bit of work etc." If the relationship is good, it usually seems to happen. So then parallel to the mediation, one of my counselling colleagues will be seeing somebody to try and help them. People get awfully intimidated in these things. They're kind of like the possum in the headlights. They can't get forward or backwards, they're stuck. That's pretty sad, because the overall thing is that we're trying to do what's best for the child. It's awfully messy. (2524, Mediator (Private Practice), Counsellor; Interview)

People should have a choice of whether they go to FDR mediation or whether they go to six sessions of counselling, like we used to be able to send people off to. (2362, Counsellor, Psychologist, Specialist Report Writer; Interview)

Counselling and mediation go hand-in-hand because when these two parents come you're doing both. (2393, Counsellor (Pasifika); Interview)

Five professionals raised **cultural issues** in relation to FDR, primarily in relation to the need for more mediators to work with **Māori, Pasifika and Chinese families**.

In the north with the Māori population they don't like to talk to a mediator, or a filter on the phone if that's how they're doing it. They like to come and talk to you face-to-face; it's just a cultural thing. (2188, Lawyer, FLAS Provider; Interview)

We're also developing much more culturally appropriate practices at FairWay; really getting into what does a kaupapa Māori service look like? What are the accreditation standards for a kaupapa Māori FDR provider? These sorts of conversations - they've never been able to be had before because it's always come from the Eurocentric perspective. (2471, Lawyer, Lawyer for the Child, FDR Mediator, FDR Staff Member; Interview)

There's only maybe three or four Pasifika mediators in [city] and they're all lawyers. I'm the only counsellor that went through the mediation training. I end up with Pasifika families and I end up including extended families because you can't just work with two parents – leaving out the two families because they have a lot of say in this. The successful cases are the ones that are willing to participate, willing to make the change, see the importance of children and safety, and of course love their children, but also grandparents because in the Pasifika you can't just have Mum and Dad, no. There are grandparents and they have a say, and even a stronger say, when it comes to extended family. When someone is in trouble the whole family is in trouble. ... One family was in [one town] and one family was here in [city]. The Family Court asked me to do it on the phone. I said to them, "it doesn't work that way. It's face-to-face when it comes to Pasifika people. It's talking." The outcome was so successful, so emotional - a lot of crying, a lot of asking for forgiveness, that kind of thing. The outcome far outweighed the expense for my travel. (2393, Counsellor (Pasifika); Interview)

It would be good if we had more Chinese mediators, because they'll understand it. But the families do not want a cultural person coming in because it's shameful. They don't want the expert. But if we had more Mandarin-speaking mediators they would understand a bit more of what's happening with this case - because a quarter of all people in Auckland are now Chinese. (2576, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

Five professionals commented on their experience of **changing between FDR suppliers** due to concerns about i) the timeliness of referrals; ii) the telephone assessment process; iii) not being able to meet parents prior to the mediation; or iv) a preference for the ethos or approach of a particular supplier.

I stopped working for Family Works because the service was not good enough. The time frames from initiation of FDR to sitting down with the mediator could be up to three months and that was too long a period of time. So I changed to the FDR Centre

where the mediation will be allocated within the next week or two. (2187, Lawyer, FLAS Provider, FDR Mediator; Interview)

When the changes occurred in 2014 I was a subcontractor with FairWay. I changed to Family Works simply because they did things better in my view because they're social service providers and dealing with family issues is a way of life for them. (2250, FDR Mediator, Mediator (Private Practice), Counsellor, Therapist, Social Worker, Child Consultant; Interview)

When I started out I was with FairWay. I pulled away from them because they were trying to do assessments on the telephone. That is just a nonsense. (2168, FDR Mediator; Interview)

I started my mediations with Family Works and then I left them and moved onto FairWay. Each of those suppliers has a different way of doing things. (2511, FDR Mediator, Counsellor; Interview)

Family Works is quite good because they're a one-stop shop in a way. I did use to mediate for them, but I left them about two years ago because I didn't like their new system of not being able to meet parties before you mediate which I find is really essential because you establish that rapport with them, and you understand a little bit of what the dynamic is of their particular situation. ... The FDR Centre seemed to be so efficient and professional and they said, "you're the mediator and you just go do your work." I feel really supported by them, and it's not top-heavy, and they're letting us do all the pre-mediation assessment which we need to do. (2576, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

Mediators' Backgrounds (Legal vs Non-legal) and Presence of Lawyers at FDR

The professional backgrounds of FDR mediators were raised in relation to their perceived expertise in successfully fulfilling their role. Six lawyers were of the view that **mediators ideally needed to be family lawyers** who were familiar with the dynamics of parental disputes and knowledgeable about the family justice system. They believed that non-lawyer mediators lacked proper understanding of the relevant legislation and had difficulty drafting agreements and reaching acceptable outcomes.

A lot of the mediators are pure mediators and sometimes my hair curls as to their lack of understanding of the paramountcy principle. They are after a solution and don't appear to understand the legislation. We get much more workable solutions when we have people who are familiar with the Court process and familiar with what outcomes a judge may accept. (2563, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

FDR, well, it's a disaster. You've got people who are not family lawyers trying to mediate often complex disputes and manage the dynamics - even simple disputes can be quite complex. It's completely different to every other branch of law. You've got people from maybe a commercial background who are trying to get an FDR agreement, but they don't have a core understanding of the dynamics of family disputes. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

Lawyers know what the agreement can and can't include and they have an idea of what's going to work or what might fly at Court or if someone is being completely ridiculous, even if they are not giving advice about that. They have that general understanding of the Court structure. So that's missed. (2303, Lawyer, Lawyer for the Child; Interview)

Mediators who have been Family Court lawyers, or involved in the Family Court, come up with more robust agreements because they know the pitfalls. They can help people craft better agreements. (2316, Lawyer, Lawyer for the Child; Interview)

However, a lawyer acknowledged the reality that FDR mediators are a “mixed bag” as “you might have a lawyer, or a counsellor or a teacher or other different people that are approved under the system.” Another lawyer differentiated between the **respective strengths of mediators trained in either the law or the social sciences**.

I think the greatest attributes are actually personal attributes. I think mediators are born and so whether they come through the social work or the legal framework - the lawyers struggle with not jumping to solutions, which is often what lawyers are trained to do. But those from the social science background want to help and they want to help too much - helping isn't any better than jumping to solutions. (2471, Lawyer, Lawyer for the Child, FDR Mediator, FDR Staff Member; Interview)

Two non-lawyer mediators emphasised that mediators with counselling or other social science backgrounds can also be “really good mediators,” but one did think that being a lawyer helped, especially because parents were coming to FDR with little prior legal advice.

Meaning no disrespect to lawyers, because some of them are fantastic mediators, but they aren't all fantastic mediators, and there are lots of people who aren't lawyers who are really good mediators. I think being a good mediator has to be paramount in the process of who does the work. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Interview)

Some of the counsellor mediators I've come across are very good, particularly the ones that have had psychotherapy or psychology training. They've all had a good grounding and learning in the family context. They've all learnt about the family justice system. I don't think you necessarily have to be a lawyer, although I think it helps, to be honest, especially because parents aren't solid in the legal advice they've received before they've come to mediation. If they then deal with a mediator who has got no idea about the law either, or a not very good working knowledge of the law, I think it weakens it a bit. (2560, Lawyer, FDR Mediator, Mediator (Private Practice); Interview)

Twelve lawyers were concerned about the **absence of lawyers or Lawyer for the Child at FDR** and/or wanted these professionals included in the mediations as they felt it would assist the mediator, protect the parties, and lead to a “higher success rate.”

What they commonly say to me is, “I didn't feel protected by the mediator. I felt like he or she bullied me through. I didn't feel that the mediator was able to accommodate the power imbalance.” Mediation is always exceptionally dependent on the skills of the mediator, and here there's no lawyers to mitigate anything. The mediator has got a tonne on their plate, and there's nobody else in that room to mitigate anything. I understand why lawyers are not allowed in that forum, and that could be a very good

thing, but it can work badly as well. So we have a lot of clients who don't want to go. (2161, Lawyer, FLAS Provider, Community Law Centre staff member; Interview)

The general idea of allowing people an opportunity to sort it out themselves before they go to Court is good, but they should maybe be allowed to bring a lawyer with them if everyone agrees. A bit more flexibility around who can attend would be helpful. (2220, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Interview)

It's completely illogical to make lawyers not involved. (2373, Lawyer, FLAS Provider; Interview)

Clients should be allowed to take lawyers to FDR because they feel completely vulnerable at those processes. (2186, Lawyer, Lawyer for the Child; Interview)

Look at streamlining it and including lawyers in the process. People need to have lawyers available to them for any pre-Court process because lawyers are quite good at what we do. We can sit around the table, we can convene a meeting, and quite often we can get some settlements or narrow the issues. It would be more beneficial and cost-efficient for the lawyers to be involved earlier rather than later. These people are emotionally involved, they are not able to think objectively, so you've got a lot of the emotional stuff coming out and need the ability to look at what the legal and factual issues are and cut through the emotional stuff. People cannot do that on their own. The concept is good, but the way it's been executed is poor. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

FDR is flawed because lawyers are not able to attend with clients. We're not even allowed to have clients if it's an on notice application. To me that is causing a huge amount of backlog in the Court. You wouldn't tell somebody with bad teeth to go and sort out your teeth yourself. You'd send them to a dentist, wouldn't you? (2225, Lawyer, FLAS Provider; Interview)

They had the right idea about mediation, but they had the wrong idea to exclude lawyers from it. If they'd funded lawyers to attend the mediation before you got to Court, you might get better outcomes. Some mediators have the view that lawyers shouldn't be present; I totally disagree with that. I think there's power imbalances that are present all the time, and that lawyers need to be present. ... Have representation at mediation if you're serious about getting a proper result at mediation. You wouldn't get two commercial companies to mediate without lawyers, so why is it different for the poor people who are dealing with this situation? Don't be stupid about that. (2528, Lawyer; Interview)

I'd like to see Lawyer for the Child appointed really early and able to participate in the mediation. That reality-checking process would be much better if it was coming from the totally independent view of Lawyer for the Child. (2518, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Interview)

Two non-legal FDR mediators were also in support of **Lawyer for the Child being present at FDR** to help centre the parents on their children's needs.

What I considered to be a serious change in law and challenge number one is the removal of the lawyer for child as an automatic part of the FDR process. That, in my opinion, has had a huge impact on the readiness of parents to put their children ahead of their own issues and needs. (2266, FDR Mediator, Mediator (Private Practice); Interview)

I'd like to see an ability for Lawyer for the Child to be available in some mediations. There are times when I've started mediating and discovered that despite earlier denials, there has been what I would've termed fairly serious domestic violence going on. And then it's always that thing of, so what happens now? Do I go, "I can't work with you anymore? Do we have to talk about this? How can we talk about it properly?" Having a Lawyer for the Child involved could be very helpful particularly when one parent has extremely rigid views about the parenting, and has complete contempt for the other parent. Contempt is the one emotion that communicates itself so effectively to everybody. If you have contempt for the mother or the father of your child, your child will know about that really thoroughly. Having a person in the room going, "can we just talk about what's good for children here?" would be useful. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Interview)

The model of **EIP counsel-led mediation** prior to the 2014 reforms was preferred by 12 lawyers who believed it was far more successful than FDR and should be reinstated.

The mediations that I used to find had the best results, largely, were the ones under the old EIP scheme. (2220, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Interview)

I would prefer to go back to using lawyer-led mediations where things had been filed. We knew what was going on. (2279, Lawyer, Lawyer for the Child; Interview)

FDR, you fall off the system. You go into an abyss. Basically, FDR's considered a process totally separate or outside of the Court system, whereas with EIP you were all involved. You had the ability to have a lawyer represent you. You had Lawyer for the Child and you had experienced people who knew the Family Court system running the mediation. Whereas FDR is quite a mixed bag as to who you would have as your mediator. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

There's a difference between a settlement model of mediation, which is designed to settle the issues as they have been described, which is what EIP was, and a planning model which allows parents to plan children's lives. I think the settlement model worked when it was only around settling the issues that the Court had asked to be settled, but it doesn't work when the issues are so messy and all over the place and you have to first of all start diagnosing what the issues actually are. ... I would like to go back to where we were four or five years ago. It would be different now, but back then if you were an approved Lawyer for the Child and had mediation training the Court would often refer things to you as counsel to assist, but really for the purpose of mediating. Back then we had the advantage of lawyers for children being involved and that worked really well. Maybe if we got rid of the current mediation process under

FDR, but went back to allowing that to happen there would be a lot of success because there was a lot of success back then. The advantage in the future would be you would have Lawyer for the Child potentially involved. I would like to see something like that happen again and I wouldn't be bothered if the FDR process disappeared really. That wouldn't bother me. (2471, Lawyer, Lawyer for the Child, FDR Mediator, FDR Staff Member; Interview)

I'm not sure that taking it out of Court is at all sensible, although some have settled. But maybe they would have anyway if it had been in the Court process. So the old system of filing your document in the Court and the Court then sending you off to an EIP mediation conference doesn't seem to me a waste of the Court's time or jurisdiction at all; it seems to be set up for doing exactly that. (2373, Lawyer, FLAS Provider; Interview)

The Purpose of FDR and the Difference in its Approach to that of the Family Court

Seven professionals commented on the purpose of FDR, the success of the “empowering parents” mediation model utilised and its ability to keep some separated parents out of the Family Court. The ways in which mediation is different from the adversarial processes of the Family Court were also highlighted.

In the Family Court you really need to present the other parent as the worst person on the planet, and certainly much worse than you, in order to win this prize of time with your children. I've read some affidavits that people make and I think to myself, how are these people ever going to recover from that? They'll go to Court, they'll play this out, the Court will make a decision, and they're both going to be left with the memories of what was in those affidavits. Basically, the Court says, there you go, you've got a prescription now, take the medicine and get on with it. But the damage to those parents' relationship in that process is extraordinary. I think that the difference in FDR mediation is, first of all, we make it really clear that not only do we not require that kind of approach, but that's the last approach that we want really. “We want you to think about the best things about the other parent because together you have to make some decisions about how you're going to do this parenting job together. You're going to be team mates. It's like at work - you don't always like the people that you work with, but you have to find a way of working with them.” It's much easier to do that if you don't have systemic support for the adversarial process. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Interview)

Mediation isn't rocket science. It's about engaging with people, getting them on side, getting their trust and for them to know that what we're working towards is something that is going to be of benefit to their kids, irrespective of what they feel about their ex-partner. ... What I've instilled in the people that I work with is that we have a philosophy of not why we can't do this, but how we can do it. So we approach it from a positive point of view, and we'll take on anything really. We work in the prisons, we work with protection orders, we work with domestic violence, and really anything that we think we are able to negotiate, cajole, whatever, people into coming up with the plan that is going to be good for the kids, then we'll have a go at it. (2168, FDR Mediator; Interview)

People like being outside of the Court system, because there's a stigma of going to Court even if you don't ever enter the Court doors. ... It's great that people are being encouraged to use alternative methods of dispute resolution, because the Court process itself can really erode relationships further and can be very destructive to relationships and to people. It's great that they can have the out-of-Court opportunity. ... With mediation outside the Court setting you probably have more freedom to ensure that you can explore some other areas perhaps, like communication problems, or a third-party new partner, that might not strictly come under the legal umbrella of what the Court would be prepared to look at and discuss and decide. You are able to broaden the mediation to ensure that all of the issues that are impeding settlement can be dealt with, whereas in the legal context you're limited to legal issues. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, PTS Facilitator; Interview)

To convince people to go into FDR is so much more productive - not just to be able to have a probably more helpful conversation without throwing rocks from both sides, but also that they actually have a voice. In Court, you don't have a voice; the lawyer has the voice. But in FDR you get to talk things through and the nature of it is just so much more collaborative. Whereas the nature of the Court system is that it's very combative. The best people to make arrangements for their children, 99 per cent of the time, are parents. ... I'm a big advocate of mediation, where the mediator's skilled and they remain totally focused on the child. So, for example, if someone said, "I want to have the kids seven days a week about", and that person works nights then they'll have to then say in mediation, "Well, talk me through how that would work?" And actually they might not be able to. So, then they might be able to consider, "Well, how will that impact little Johnny?" So, you can have those real-life conversations – that's got to be like a learning for the parents, because they've virtually got to justify themselves, or put their money where their mouth is. (2299, PTS Provider/Facilitator; Interview)

I'm a huge fan of FDR. Honestly, this is just amazing. There's people I work with, who it absolutely keeps them out of Court. There's some cases where it becomes clear to me they actually would be better in Court. The odd case where I think this child probably needs a Lawyer for the Child. But, honestly, the rest of the people, they end up learning to talk together better. Some of them you can see in the carpark laughing and joking. I've seen them hugging each other. There's a huge change in them. For me, the communication tips along the way are quite a large part of it. ... I have these people who come in the beginning and there's subtle hostility and they are on their best behaviour. But we get into it and we really do good work and they are finally talking to each other about their children and it's just fantastic, it really is. I can't speak highly enough of it. (2378, FDR Mediator; Interview)

Six FDR mediators and one lawyer discussed the importance of **collaboration, partnership and interdisciplinarity** in ensuring a "seamless transition" between professionals and services and "more alignment between the in-Court system and the out-of-Court system."

I think any good work with families' needs to have a kind of collaborative aspect to it to be good. FDR needs to be honoured as an out-of-Court process. We're trying to strip it from its legal moorings to some extent, whilst also acknowledging that in the end this needs to take place within the context and framework of family law. Here's a quick example of something that comes up all the time with parties - one party will say, "Look, I'll agree to that, but only if his girlfriend is never around on the premises while

my children are there.” I always say, “Look, I completely understand that, but do you know if we were in Court the only reason a Judge would agree to that I think is if there was a health and safety issue? So, one of the issues we need to talk about here is how much do you trust each other? One of you needs individual rights to conduct your life with new partners. But the other party needs the reassurance that a good co-parenting relationship will give them - that your children will always be safe and, in fact, you will go lightly and carefully in those first introductions to a new partner.” So, if you see what I'm saying, it's sort of a legal setting, but it goes off into a kind of nuanced discussion that, actually, with the best intent puts both parties at ease. Makes them feel heard and they've always got a review to come back to - to talk about how it's going. That's a very truncated example, but you probably get my drift. (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Interview)

FDR mediators and Court staff and lawyers and judges - if I had a magic wand we would all understand each other quite a lot better, and not see each other as the enemy. There can be - it's not quite hostility, but certainly suspicion - and it would be good to reduce that. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Interview)

Two professionals agreed that FDR was inappropriate in “obvious risk” cases, but differed in their willingness to engage with **parents with personality disorders** or where **severe parental alienation, domestic violence, drug use and/or mental health concerns** were occurring.

Mediation needs to be seen as an option for every family until proven otherwise. There's the obvious risk stuff, but there are mediators out there that are willing to do domestic violence, mental health, drug use. That's the likes of us - instead of just going, “Oh, no, it's too hard, go to Court.” Mediation needs to be given more value I guess, and more kudos for being able to actually help. (2167, FDR Mediator; Interview)

FDR works really well in those cases where there's no safety issues, no alienation or influence issues, if both parties are willing to agree and engage. If you're looking at a situation that's got an alienating parent, who is either active, which means that they know what they're doing is wrong and they're still going about trying to influence the child, or severe, where they just don't care, they will do anything to destroy the child's relationship with that parent, then mediation is completely inappropriate because there is a strong association between severe alienation or an active or obsessed alienator and psychopathology. Any kind of mediation where one party has a personality disorder is completely inappropriate because of the issues that arise with power imbalance etc. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

The Cost of FDR

The \$897.00 cost of FDR to the two parties attending was criticised by 19 professionals who felt that this was “prohibitive”, posed “**a barrier**” to participation, was “inequitable” or was **unaffordable** for many families needing to utilise the service. Several suggested that the fee should “be scrapped” as it came from “a place of meanness” and **FDR offered for free**.

It should be free for everyone. I think the money is a barrier. If you took that away you might find that people are more willing to engage. (2220, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Interview)

Many people have got the income on paper, but cannot afford \$897 for the FDR. (2347, Counsellor; Interview)

FDR should be fully funded. I don't think there should be a user charge. If something is going to be compulsory for you to be able to access the Court system it absolutely has to be accessible and even though I agree that half of a \$897 fee is not a large amount of money when you compare it to private legal fees and so on, some people just do not have that money and it is completely unacceptable that people should be excluded from being able to access the justice system because of finances. It just should not be allowed to happen. I'm very firmly in favour of FDR being fully subsidised if it's going to continue to be a mandatory prerequisite to Court. I've got no difficulty with it being a prerequisite. I just have difficulty with people having to pay for something that's mandatory. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

FDR has failed because the majority of people have to pay for it. It's quite expensive if you don't qualify for exemption. That puts a lot of people off. (2183, Lawyer, Lawyer for the Child; Interview)

It's all very well to say to people, go and do FDR. If they're not eligible for funding, who's got \$500? No one. Like, no one. None of the families that we deal with. Those that fall into that gap, that don't qualify, they are never going to be able to afford that. (2508, Lawyer, Lawyer for the Child; Interview)

The working poor, or the working middle class, can't afford to go to FDR. They just don't have that money and they don't have the money to get lawyers. But their partner may be legally aided so they're sweet. (2563, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Unfortunately, because it's not fully funded, some people are having to pay and some people aren't, so it's a very inequitable system. It needs to be fully funded. I think that would meet the ends of justice better. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, PTS Facilitator; Interview)

The reforms were seen as being another step towards trying to save money, rather than a step towards something positive. The FDR mediation model requires people who are over a certain income level to pay a half share of the mediation fee. That itself creates a huge amount of work for mediators because you're dealing with people who are often being asked to come to a mediation that they didn't initiate. So the other party is not having to pay anything and they're having to pay \$500 and they're saying, "Well, how is that fair?" So, you're having to spend a whole lot of time working with people to get them to the table. A whole lot of mediations that should be able to happen constructively that aren't or that are happening in an environment where people have got a bad taste in their mouth for the sake of saving \$500 bucks. Which is insignificant in the scheme of things, compared to the cost of fixing stuff up when it's not sorted. That comes across as being very ideologically driven in terms of, we can't possibly give people something for free unless we actually have to. That seems like the culture underpinning the whole system. It seems to come from a place of meanness,

rather than a place of support, and I think that's just kind of the taste that's in a lot of people's mouths at the moment, which is unfortunate. Rather than saying, this is a really tough time people are going through, for a minimal cost we can make it really helpful through the resources available and make it as easy as possible for people to come into the process, rather than creating barriers to it. (2365, Lawyer for the Child, FLAS Provider, Community Law Centre Staff/Volunteer, FDR Mediator, Mediator (Private Practice), PTS Provider/Facilitator; Interview)

Two professionals, however, felt that **the cost involved is reasonable** and much less expensive for the parties than paying legal fees and Family Court costs.

If privately paying it's cheaper for them to pay for FDR than to pay for both their own lawyers, and Lawyer for the Child with a cost contributions order where they'd have to pay a third each. So FDR is a good way. (2272, Lawyer; Interview)

The cost should be persuasive for each party, compared with paying your lawyer. But clients seem to have a lack of confidence or whether it's that they want their lawyer to be with them. (2572, Lawyer, Lawyer for the Child; Interview)

Explaining the cost of FDR to parents, especially the one who had not initiated the referral, could be a challenge for mediators.

At the pre-mediation interview we'd work out whether they're eligible financially and, if they're not, they've got to pay. We've got to have that conversation with both parties. That was always a very interesting conversation to have, especially with the other party or the non-applicant because, in essence, you were saying, "Oh, by the way, the mother or father of your children wants a mediation to discuss your kids and, by the way, you might have to pay for it." They're like, more often than not, "Well, I don't have a problem" or "Why are they doing this and what do you mean I have to pay \$498 for the privilege of doing it?" So that was always an interesting start to the process, which sometimes put people on the back foot. As a mediator I had to do quite a lot of work at that point to explain why. (2163, FDR Mediator, Mediator (Private Practice); Interview)

Two mediators mentioned "**working for nothing** a lot of the time" because "a lot of cases go over the 12 hours." Other mediators suggested "**more funding**" for FDR as this would mean less having to be paid for the Family Court which "of course, was one of the aims" of the reforms. One professional also noted that FDR is "**economically quite a good investment**" because it enables parents to resolve their children's care arrangements without going to the Family Court. The subsidisation of FDR by the Government was also acknowledged.

Of course, the cost is not \$897. In order to make FDR available, the government has subsidised it considerably. ... I don't think anyone disagrees that an out-of-Court family mediation service is more cost-effective than anything that happens in Court, but each one has to be available because there are situations that require that an in-Court service. (2471, Lawyer, Lawyer for the Child, FDR Mediator, FDR Staff Member; Interview)

FDR Timing

Ten professionals were concerned about issues regarding the timing of FDR. Some mediators felt that **FDR came too early in the dispute resolution process** for some parties, with one mediator saying that only four out of 10 cases were “ready to go and suitable for mediation.” Some attributed this **lack of readiness** to the emotional rawness of separation and the unavailability of the pre-reform counselling sessions.

You arrange to see the parties individually pre-mediation and then you assess whether they're suitable to do a mediation. Literally, at that point, you're checking that they're buying into the process, you're checking that they're going to be there for the right reasons. What I find is that, let's say out of 10 cases, there may only be four that are ready to go and suitable for mediation. ... It is a lot of work to get people ready for mediation because so many people aren't there for the right reasons. At employment mediation, it's very much a sort of business transaction, although people's lives depend on their jobs. But this is so much more emotional, especially if they've been in a long-term relationship, they know how to push each other's buttons, and know what makes each other tick. ... We see so many people that aren't ready. It would be better to see the people that are really ready and not still playing games or where there's underlying issues like property or financial stuff that's being dealt with, or one's got a new partner or something. (2163, FDR Mediator, Mediator (Private Practice); Interview)

The biggest problem with mediation now is that there is no counselling available. Ordinarily, under the old system, they would have been sent off to counselling and that would have resolved a lot. But now they don't get counselling, so they come to mediation - sometimes way too early, sometimes bang on separation, which is too early for where they're at emotionally to move forward. They should be having counselling at that stage, not mediation. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, PTS Facilitator; Interview)

My experience as an FDR mediator is that sometimes it is just too early in the dispute process to try to realistically reach an agreement. It's unrealistic to expect in the early stages of the separation of a family unit, in the rawness of all of that, for people to happily sit round the table and reach a lasting resolution. It just doesn't happen like that in reality. There's hurt feelings - it takes time. The FDR process is somewhat unrealistic and optimistic that that's going to resolve some issues. But it's not going to resolve any more issues than the old counselling system that existed before the reforms resolved for low level cases where things can be tweaked - they can sort those things out. (2304, Lawyer, Lawyer for the Child, FLAS, FDR Mediator; Interview)

Having **more time** available for the successful completion of mediations (e.g., 16 hours) was proposed by four professionals as they felt that 12 hours was insufficient.

I would like there to be more hours because some people need more support. Probably not a lot more, but if it was 16 hours that would mean that every quarter those parents could come for four hours and they could just talk about how it's going. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Interview)

The problem I have with the FDR system is there's just lack of time. I was told the other day by a lawyer, "I've had two clients that have been in mediation with you and you can be very forceful." I said to her, "I've got five or six hours!" It's like, I could just sit there and let them argue, or I could tell them to pull their heads in. So, I do have a forceful approach and sometimes it worries me, but I don't think I'm being too forceful. People will come and say, "Oh, we've got 12 hours of the mediation, haven't we?" I say, "Well, no, you haven't" - because the supplier takes three hours I think for admin and preparation and things. Then I have to do a pre-mediation meeting, and then my own admin. So you actually have six hours, and that's if you haven't interviewed the children. More time needs to be allocated to the FDR process. (2165, Lawyer, FDR Mediator; Interview)

The 12-Hour FDR Model

Three mediators acknowledged the difficulty in getting the number of FDR hours right and felt that "the majority of families manage with 12 hours" although some flexibility and discretion would be helpful for complex cases or those involving child participation opportunities.

It's important that there's continued scrutiny of the amount of time and the period over which FDR runs and I don't think it's totally simple to get that right. Because too short is not good, but for it to meander too much is also tantamount to a further type of delay. (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Interview)

The way it's running now is actually good, but it would be nice to have a discretion to have more than 12 hours. For the majority of families, 12 hours is fine because you can have interim arrangements and review them. But if you've got more complex cases, where you might have two or three children that need to be included and have either been spoken to by the mediator or by a child expert or confidante who provides feedback to the process, then 12 hours is a bit tight. Same when you've got grandparents involved or just wider family step-parents. Twelve hours doesn't meet their needs. But the majority of families manage with 12 hours. (2560, Lawyer, FDR Mediator, Mediator (Private Practice); Interview)

The 12-hour FDR model was particularly liked by six professionals as it enabled parents to return for a second mediation or for a review of their agreement.

Since we've had 12 hours instead of five hours - I have to say that five hours drove everybody insane - but now that we have 12 hours over a 12-month period, it's quite a good practice for me to leave two or three hours aside so that people can use that extra time in their 12-month period to go, "it's all working really well except the Saturday swap over. Can we just have a talk about that?" So they can now tweak things. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Interview)

I quite like the 12-hour model that has been introduced so that people can try some arrangements for the kids and then come back in three months, see how it's going and have another look at it. I think that's good. (2220, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Interview)

What they can do now is they can come back in three months, they can review it. They might have an under-two that is starting to spend a bit of time with, usually Dad, and overnight hasn't been introduced, so they do need to come back. When things have moved on and perhaps the property's been resolved and they're each feeling a bit calmer and the contact with Dad is going okay, and it does to need extend, then we might do another three hours. (2576, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

We can now say, "well, how about you guys try this for a couple of months and then we can get back together." It's building that rapport and relationship with the parties, and being able to see them move from not wanting to have anything to do with each other at the first session to then reach a really good robust co-parenting agreement and being nice to each other. (2422, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Interview)

Delays

Criticisms were expressed by just over one-fifth of the professionals ($n=21$) regarding the **delays (6-12 weeks) between referral and mediation**, particularly in the early stages of FDR implementation in 2014 and 2015. "Bottlenecks" resulted and "procedural administration" was also blamed.

It's slow. People can take six weeks to eight weeks from contacting the mediator to getting to the mediation. (2165, Lawyer, FDR Mediator; Interview)

There have been changes with FDR more recently, but at that initial stage it was appallingly slow, so people were left in a vacuum. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

The time frames from initiation of FDR to sitting down with the mediator could be up to three months and that was too long a period of time. ... By the time people have got around to putting up their hand and asking for help they've been struggling with something for two-three years generally. It is urgent. Their dispute has already been raging out of control, causing utter frustration and desperation, for a couple of years generally. They can't then see any sign that the concrete steps they have just taken are going to result in anything other than the pattern of failure they have got used to over the period of time they've been trying to resolve it themselves. (2187, Lawyer, FLAS Provider, FDR Mediator; Interview)

Because there were so many delays and there was such difficulty at the start, there's been a general reluctance to refer people to FDR because it's just being seen as another delay. (2329, Lawyer, Lawyer for the Child, Community Law Centre Staff/Volunteer; Interview)

When the people enter the system, it's supposed to be fast, but they can be months in all the admin and putting them into coaching. I often get these people months after they have started the process. If there were more resources, then surely that could be made faster. (2378, FDR Mediator; Interview)

The theory is we get at it early, the reality is we really don't. I often find that people have started the process [with the supplier], say in March or April, and I hear about it

when I'm asked to do a mediation two or three months later. (2471, Lawyer, Lawyer for the Child, FDR Mediator, FDR Staff Member; Interview)

Delays also occurred because **“one party won't engage or won't pay their fees”**

Initially, my concerns were about the lead-in time, when people needed access to FDR - there was a long wait list and also the other person needed to agree to go for it to be an option. Sometimes, not all the time, the other person doesn't want to engage in having the conversation at all. (2303, Lawyer, Lawyer for the Child; Interview)

A lot of people, we hear, get really frustrated with the FDR process, because when they make a phone call to apply for it, it can take a very long time for the initial meeting to be set up because of waiting on the other party - if they decide they do not wish to engage, it just delays the process. We've heard of delays of up to six months, which is not suitable for the children's sake. (2431, Social Worker, PTS Facilitator; Interview)

It was acknowledged that the FDR suppliers were “working hard to try and cut down the delays” and that this had been assisted by “systems improvements”

I think the way the system has evolved is good. It's got some really good response times and it's got some really good people who we can draw on. I guess what's not so good is that it's not like that in every case. (2560, Lawyer, FDR Mediator, Mediator (Private Practice); Interview)

Administrative and Contractual Issues

One mediator spoke positively about the supplier's efficiency with respect to administration and payment.

It's got better than it used to be and we can make the system work quite well. We just notify [the supplier] of steps taken and when we get to the end we tell them it's completed, they print out the bits of paper we have to then sign, we send them back to them, and they just pay us automatically. The system is quite efficient. (2476, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

Five other mediators, however, were less than complimentary, describing the administration and payment as a “nightmare”, “appalling”, “bureaucratic” and “time-consuming.”

It was an administrative nightmare. The payment system is just appalling. It was so user unfriendly. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

The [supplier] does the paperwork. I don't want to be entering in RMS. They do all that. I get a lower fee, but it's just easier for me. I can just get on and do the mediation. (2576, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

I've found it very frustrating. Actually doing the mediation with clients to help them reach a parenting agreement is the work that I'm here to do and enjoy doing, but it's so much more bureaucratic and so much more time-consuming. It's hard to quantify that at times, but I know how many hours a week I spend not with clients doing paperwork and reporting and so forth. (2368, FDR Mediator, Counsellor; Interview)

Child Participation

Thirteen professionals spoke about children's participation in FDR mediation. Some were critical that "it's not working" or that FDR agreements were being reached that did not take account of what children wanted because they have "no voice in the FDR process." However, child inclusion "is starting to get a little bit more defined now, but that's really quite a recent development." Several mediators outlined the approach they take to child-inclusion in the FDR process, some using child consultants, whilst also noting the inadequate funding for it to be done properly (especially with sibling groups), the need for greater buy-in from those "higher up", the desirability of greater promotion of child participation to families and the public, and more training to build mediators' skills.

We do voice of the child and have been doing that routinely since probably November 2017. We now have more of an opt-out than an opt-in system pretty much if the kid is over five. It's not mandatory, but we strongly encourage it. We don't get many declines now because we make it such a normal part of the process. ... I remember saying when I first came on board, "why aren't we routinely including children?" To me it makes sense. Why wouldn't you do it? There were still people going that the kids shouldn't have a say. Well, it's not around them having a say; it's around them being heard. I think the message isn't coming through from the right people around how important it is. Like the higher up. The Ministry of Justice has now included it, but they haven't included extra funding. How can you see a family of five children and get it sorted in two hours? It's that kind of mentality! It's important enough to make it a subset, but not important enough to give it separate funding, or emphasise to the community and the families how important it is to have the voice of the children in a mediation. We're driving that at grass root level and I think it should come from higher up. (2167, FDR Mediator; Interview)

It's a work in progress because I think there are better ways of doing it, and we're just feeling our way. The VOC⁸ really has evolved to a point where it is a large part of what we do now, but by doing VOC we're reducing the number of hours that we have for mediation. If we can do mediation in six hours, that leaves four hours for a review and for the VOC, which isn't sufficient. (2168, FDR Mediator; Interview)

In the Family Works system you can have the child's views brought in by a child consultant process. I've done that - I think there's been about three or four mediations where, say if there's kids over 10 and the parents agree that the children's views should be sort of independently checked out, they give consent to me as a mediator to get a child consultant engaged. That person meets with the child and just has a very low-key discussion with them, asks them a few key questions and then provides a written report which is sent back to me. I can't give it to the parents, but I read it out to them. They aren't obliged to follow the kid's views, but it's meant to inform them a little bit to help them make better decisions. It's better than nothing. I give respect to the organisation, but some of the questions that are put to children could be put a little bit more helpfully. It's intended to, I suppose, fill that gap, because otherwise it would be a really big gap. It has helped in one or two. It lacks a bit of sophistication because the questions don't go deep enough. They might say, how much time do you want to spend with one parent? They get this sort of simple answer, but they don't

⁸ Voice of the Child.

explore more fully why. It's not a very sophisticated process. (2509, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Interview)

If we're going to get anywhere, we need more time and we need more money and so forth. That's particularly the case if we're going to bring the voice of the child in in a meaningful way. ... There should be some provision to consider mandatory screening of those kids for safety purposes. There's nothing in the legislation that says when you meet them, you've got to give them any sort of screening regarding violence, or even depression, or anything like that. Yet, these are vulnerable children, and this might be the only time that they actually get in front of a professional person. So, there's a kind of an anomaly in that. It also runs into agency policy. When I talk to my colleagues in other agencies, they haven't got the focus that we've got on youngsters at all. There was a very major conference to do with mediation and the voice of the child stuff was invisible. Absolutely invisible. They're doing other things, including good sessions on how to increase your customer base. So, that makes you wonder. In terms of my agency, everyone has been under the auspice of the voice of the child. That's the thing that's there. But not every agency has got that, that's for sure. I think that for a lot of people, it's too big an ask. Mediators aren't necessarily qualified in child development. Even when you are qualified in child development, assessment is a whole thing that you have to build as a skill over years. (2524, Mediator (Private Practice), Counsellor; Interview)

Some FDR providers have got an opt-out clause in the agreement to mediate. I don't think that's the way to go. What you need to do is give the parents the opportunity to talk to the children to see whether they want to take part and how they want to take part. I think that needs to be worked through, especially with teenagers. But even kids as young as nine have got an opinion. (2560, Lawyer, FDR Mediator, Mediator (Private Practice); Interview)

I don't understand how it is that a mediator who is meant to be mediating between Mum and Dad is also then meant to look after the interests of the child. I think that's a splitting of that role and I don't understand how that's done well or given anything but lip service. That's not a criticism of the mediator, but they've only given a certain amount of time to meet with Mum and Dad. They get them in the room, so all of their information comes from Mum and Dad. There's no Lawyer for the Child giving the child's views. So, you've removed that voice. I don't think that the changes fundamentally assisted the children in any way. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Only one professional expressed concern about children being involved in the mediation process.

I also have a bit of concern around this increasing thing about mediators wanting children to be present. I've had a couple of cases where the mediator has asked the child to front, not necessarily a violent parent, but certainly a parent with a lot of issues. Making a little kid front the parent, who they still love, but don't want to necessarily live with – it's terrible. (2310, Lawyer, Lawyer for the Child, FLAS, Community Law Centre Staff/Volunteer, Citizens Advice Bureau Staff Member/Volunteer; Interview)

Other Suggestions to Improve FDR

Eight professionals provided other suggestions for improving FDR. These included “more integration between FDR and the Family Court”, the introduction of new “guidelines on when a case should be referred back to FDR”, re-introducing counselling, and providing greater support for mediators. Three professionals thought “it would be a shame to throw out the baby with the bath water”, that “FDR should remain part of any future process” and that while the FDR model was “still under-evolved in terms of what we really want” tinkering “around the edges a little bit more” to address the skillset, philosophy and other issues could assist FDR to become a more effective service for more parents.

There probably needs to be more integration between FDR and the Family Court. Why doesn't FDR take place in the Courthouse like the Disputes Tribunal, for example. Then it would kind of have the support of the Court. (2374, Lawyer, FLAS Provider; Interview)

I find FDR has had a bad rap and I think it would be a shame to throw out the baby with the bath water. Conceptually there are aspects of it that I still completely agree with. It is a further extension of Family Court counselling. It has a mandatory aspect which I think is good. I just think with a bit more time and tweaking we can turn it into a better vehicle than it was at its beginning. ... I do continue to feel that in order to get it right we need to tinker around the edges a little bit more. That includes the skillset, it also includes the philosophy of why we're doing what we're doing. So, just to qualify what I'm saying there, it's not about just getting an agreement; it's about getting an agreement that's going to be weather tight for the best reasons. So a) I think the concept is great, and b) I think it's still under-evolved in terms of what we really want. (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Interview)

FDR has been its own learning process over the last four years. It's been a developmental process and evolution of service provision – we've worked quite hard; we're a fair way to trying to get a very seamless transition between us and through to the mediation service. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

What the Minister needs to understand is that this could be a really good model. We have proved that. ... With more input into the structure of FDR, with more input into the accrediting of mediators, ensuring that they are up to the task, putting some blocks in the way of solicitors just using the without notice application as a means of avoiding mediation, would go a long way. (2168, FDR Mediator; Interview)

Finally, one professional suggested extending FDR to other contexts besides parenting disputes under the Care of Children Act 2004 – such as the division of relationship property and the PPPR Act.

The FDR Act is about establishing an out-of-Court mediation service and at the moment it's only activated with one arm which is the Care of Children Act 2004. But there's no reason why the FDR Act couldn't apply to relationship property, and to PPPR Act applications which obviously would benefit from family mediation often. I thought it was an inspired piece of legislation which was establishing opportunities for the future, so we should use that. (2471, Lawyer, Lawyer for the Child, FDR Mediator, FDR Staff Member; Interview)

Summary

Seventy-two per cent ($n=261$) of the survey respondents shared their views and experiences of FDR, either by answering specific questions ($n=197$) or commenting more generally ($n=64$). Of those who answered specific questions, the majority (95%) had referred or directed separated parents/caregivers to FDR, and 48% had experience of providing some aspect of FDR, most commonly as a FDR mediator (40%). However, 19% ($n=15$) of those with experience of providing FDR mediation were not doing so at the time they completed the survey.

The majority (55%, $n=43$) of those currently delivering FDR reported seeing between one and four new cases per month; 14% were seeing between 5 and 19 new cases per month; and 12% indicated they provided FDR infrequently or irregularly. The FDR mediators were evenly split in their satisfaction with the number of FDR referrals they received: 47% said the number of referrals was about right, while 48% said it was too few. Only 5% ($n=4$) reported receiving too many referrals. The mode of FDR delivery for joint mediation sessions was primarily face-to-face, but many mediators also reported using shuttle or caucus mediation (68%), videoconferences (53%) and teleconferences or the telephone (41%). Just over half (53%) of the FDR mediators were satisfied or very satisfied with their role in providing FDR mediation, and nearly a third (32%) reported they were dissatisfied or very dissatisfied. The family justice professionals were generally positive in their ratings of FDR. Less than 5% would *not* recommend it to separated parents/caregivers, while 70% indicated they would recommend FDR, and 26% said they might. Sixty-eight percent thought that FDR was helpful or very helpful for separated parents/caregivers, with only 12% rating it as unhelpful or very unhelpful.

When asked about children's thoughts, feelings and views, almost all of the 74 FDR mediators indicated that they took children's thoughts, feelings and views into account within their mediation practice in some manner, most commonly by discussing these with the parties (93%) or through the use of some other professional or a child consultant (69%). Nearly a quarter (24%) of the mediators spoke directly with children themselves and seven mediators had children attend part of the mediation sessions. When a third party was utilised to ascertain children's thoughts, feelings and views the most commonly mentioned professionals were Lawyer for the Child, followed by counsellors and psychologists. Social workers, other mediators and teachers were also mentioned by a few professionals. Involving family members, either parents, siblings and/or extended family members, was also a practice some mediators employed. Some professionals commented that how children's thoughts, feelings and views were ascertained depended on the situation and whether Lawyer for the Child had been appointed. Involving parents in the decision about the best professional to talk with their children was also mentioned.

Two hundred and fifty-six professionals provided a codable statement in response to at least one of eight open-ended survey questions about FDR. Seventy-three (73%) of the professionals who were interviewed also commented on FDR, 28 (38%) of whom were FDR mediators. Combining the open-text survey and interview findings, FDR was regarded positively for providing an out-of-Court opportunity for parents/caregivers to communicate in a non-adversarial manner and reach agreement about their children's parenting arrangements. Other aspects of FDR that were particularly commended by the professionals included its cost effectiveness; high success rate; reduction in the level of conflict between the parties; assistance to parents in expressing emotion and improving their communication skills; equipping parents to better deal with any future conflicts about their children;

reducing the number of cases going to the Family Court; and positive client feedback. However, there was a view that FDR was primarily suitable for straightforward cases and therefore inappropriate for more challenging or complex disputes between separated parents and caregivers. The 12-hour model introduced in 2016 was widely considered to be a significant improvement on the initial 2014 model, but some professionals were critical that the number of funded hours were still insufficient. This was particularly so for child participation (especially with sibling groups), discretionary hours for use with particularly complicated cases, high quality assessment and opportunities to review and tweak FDR agreements. Several mediators indicated they did unfunded FDR work as a result.

The professionals also expressed concerns about a wide range of other issues including the lack of publicity to promote FDR to the public and increase uptake (especially when it was first introduced); clients still having the mindset that it was necessary to consult a lawyer; inconsistent service delivery; inadequate screening processes (particularly intake assessments undertaken via telephone); lawyers' and judges' perceived resistance and negative attitudes towards FDR; the timing of FDR being too early in the dispute resolution process for emotionally unready clients; the pressure on clients to reach agreement at FDR; cultural competency in relation to both the FDR model and the lack of Māori, Pasifika and Asian mediators; and administration and contractual issues. The unsatisfactory waiting times and delays in accessing FDR were attributed to i) the FDR suppliers; and ii) the reliance on clients' understanding the FDR process, co-operating with the referral, and engagement of the second party into the FDR process.

The widely varying level of mediators' skills and expertise was criticised. This primarily centred on whether the mediators came from legal or social science (e.g., counselling, social work, psychology) backgrounds. While there was support for diversity in the FDR mediator pool, lawyers were particularly critical of the non-lawyer mediators' lack of legal knowledge and poor construction of FDR agreements, which were said to be impractical, lack detailed content and unable to be easily converted into consent orders due to their lengthy or ineffectual nature. The unenforceability of FDR agreements was generally considered problematic as consent orders were being sought in only a small number of cases. Some professionals wanted parents to have access to legal advice prior to and/or during the mediation process, and others emphasised the need for lawyers or Lawyer for the Child to be present at FDR mediation sessions. The former EIP model of counsel-led mediation was preferred by a number of lawyers who believed it produced better outcomes than FDR and should be reinstated.

The \$897 cost of FDR was said to be unaffordable and a barrier to service uptake for many (potential) clients. The majority of those commenting on the cost wanted the FDR service to be free for all clients. The current approach to making FDR free for a party who met the financial eligibility criteria, but not for their ex-partner who had to self-fund, was said to create animosity between the parties and detrimentally affect FDR uptake.

The dissatisfaction expressed with the remuneration that FDR mediators received was related to their level of pay not reflecting the skill level required, the inadequate number of funded hours to complete all the administrative tasks required, and the erratic and unpredictable flow of referrals from FDR suppliers. Several FDR mediators had withdrawn from the role due to its lack of financial viability.

There were mixed views on whether FDR should be mandatory or optional, but the majority of professionals commenting on this did not want FDR to be a mandatory first step in the

dispute resolution process. There was a preference for FDR being an optional service for a variety of reasons: the suitability of the parties or their disputes for FDR; reducing the pressure on parents/caregivers to reach agreement; and avoiding the delays that resulted in Court-ordered outcomes for cases that failed to reach agreement at FDR. The mandatory nature of FDR, coupled with a reluctance by some lawyers to encourage clients to engage with the process, was said to have contributed to the much higher number of without notice applications being made to the Family Court. It was also thought desirable to reinstate the former counselling service both prior to and/or in combination with FDR.

Many of the FDR mediators acknowledged the rewarding nature of their role and the high job satisfaction that resulted from their work. They felt they were making a valuable contribution to their clients' lives. The role was considered quite nuanced, with ongoing training, peer support and supervision being important. Collaboration, partnership and interdisciplinarity were also emphasised.

FDR's placement outside of the Family Court process was supported by the FDR mediators in the study, but a number of other professionals considered this to be problematic because it fragmented the dispute resolution process for clients; stymied cohesion between the FDR service and the Family Court; and inhibited referrals to FDR by Family Court personnel.

Other suggestions to improve FDR included better integration between FDR and the Family Court; the introduction of guidelines on when a case should be referred back to FDR; re-introducing counselling; providing greater support for mediators; and extending FDR to include the division of relationship property and the PPPR Act.

Family Court

Survey Findings

Eighty per cent ($n=291$) of the professionals completing the survey had views they wished to share about the Family Court, either by answering specific questions ($n=258$) or commenting more generally ($n=33$). The majority (91%) of those who answered specific questions had referred or directed separated parents/caregivers to the Family Court.

Most professionals (93%) who answered specific questions about the Family Court had some experience of working in the Court. The majority (84%) had experience of doing so before and after the 2014 reforms, with 9% only having experience of working in the Family Court after the reforms came into effect.

These professionals indicated great dissatisfaction with working in the Family Court since the introduction of the reforms. Only 4% reported they were satisfied, while 83% indicated they were dissatisfied or very dissatisfied with this work (see Table 31).

Table 31: How satisfied are you with working in the Family Court since the reforms?

	<i>n</i>	Percent
Very dissatisfied	89	37.1%
Dissatisfied	111	46.3%
Neither satisfied nor dissatisfied	30	12.5%
Satisfied	10	4.2%
Very satisfied	-	-
Total	240	100%

Table 32 provides information about how helpful the participants thought the Family Court was for separated parents/caregivers making parenting arrangements. Less than half (45%) rated the Family Court as helpful or very helpful, with just over a quarter (28%) rating it as unhelpful or very unhelpful.

Table 32: In general, how helpful do you think the Family Court is for separated parents/caregivers making parenting arrangements?

	<i>n</i>	Percent
Very unhelpful	19	7.5%
Unhelpful	51	20.2%
Neither helpful nor unhelpful	69	27.3%
Helpful	101	39.9%
Very helpful	13	5.1%
Total	253	100%

Two hundred and ninety professionals provided a codable statement in response to at least one of 14 open-ended survey questions about the Family Court. The content analysis of these statements that follows details participants' views on their reasons for their (dis)satisfaction with working in the Family Court since the reforms and how well the

following aspects of the Family Court were working in relation to making parenting arrangements: the three Court tracks (simple, standard and without notice/urgent); self-representation/litigants in person; the appointment and/or role of Lawyer for the Child; the appointment and/or role of specialist report writers; Round Table Meetings led by Lawyer for the Child; judicial conferences and hearings; applications, filing, affidavits and forms; e-Duty to allow Judges to make decisions on urgent applications; caseload management; Cost Contribution Orders; in what ways the Family Court is working well, if any; how the Family Court could be improved, if at all; and any final comments about the Family Court.

The Family Court Tracks

Fifty-seven per cent ($n=207$) of the professionals completing the survey commented on how the tracks are working in relation to the making of parenting arrangements in the Family Court. Ninety-one professionals (44%) commented on **the tracks in general terms**. Six liked the track concept “**in theory**” or “in principle”, said “they sound great” and appreciated “the thought behind them”, but were not always sure “just how well they actually worked in practice.” Eighteen professionals were **positive** about the tracks as “working well”, “working reasonably well”, “working well enough”, “okay”, “fine”, “reasonable”, “all good”, “a good idea”, “no real issues as you can get proceedings moved from one to the other as required” and “there’s a clear process for parents.”

However, more professionals ($n=68$) were **negative about the tracks in general** and said they were “not really working”, “meaningless”, “pointless and usually ignored”, “too restrictive”, “a joke”, “a disaster”, “hopeless”, “confusing”, “complicated”, “unworkable”, “totally unnecessary”, “not working as anticipated”, “ignored”, “inconsistent”, “too much blurring between the tracks”, “don’t work”, “aren’t helpful”, “not practical”, “make no difference”, “are not adhered to”, “completely annoying”, “a complete waste of time”, “of no real moment”, “don’t seem to have any effect in reality”, “don’t make the process more efficient”, “no change that I have been aware of”, “have not made any improvement”, “are too slow”, have “added to Court delays” and are “just another admin task for the Court to decide which track the case is on - judges and lawyers find a way to meet the needs of the file regardless of the track system.”

The problems associated with these new tracks are, in my view, the biggest problem with the reforms. (2325, Lawyer; Survey)

The interpretation of the tracks is too restrictive and invites too many events. (2515, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

I find the tracks to be almost meaningless, except for the allocation of the first conference date. (2342, Lawyer, Lawyer for the Child; Survey)

A box ticking exercise for statistical purposes, but it doesn’t really change anything. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

What’s the point? Judges and lawyers were quite capable of assessing the appropriate next step/pathway through proceedings. I don’t see that imposing these tracks on proceedings has actually changed anything and certainly hasn’t speeded things up. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

They're not really working in terms of getting things resolved. The Courts are too swamped for any difference between the tracks. (2433, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Almost pointless - they are not followed by any users, and the reality being that approximately 75-80% are filed without notice. (2502, MOJ Staff Member; Survey)

Totally unnecessary. Confusing for clients, particularly where multiple changes across tracks are made as their case progresses. The tracks are often simply ignored by judges and counsel - we all know what needs to happen next so why add another label/box to it? (2246, Lawyer, Lawyer for the Child; Survey)

They are essentially ignored by lawyers and judges alike. Once a proceeding is before the Court, cases progress much as they always did under the old system. (2304, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

The tracks don't work to effectively allocate work or case priority. They are stupid. (2395, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The tracks are unnecessary and the only practical effect is driving complexity and delay into the system. (2361, Lawyer, Lawyer for the Child; Survey)

The three tracks are confusing for parties (and even counsel/judiciary) and this system has become an area of expertise in itself – the tail is wagging the dog! (2221, Lawyer, FLAS Provider; Survey)

The system is far too complicated. Lawyers struggle to understand it - I think it would be near impossible for self-litigants to understand it. (2508, Lawyer, Lawyer for the Child; Survey)

The previous system worked far better in allocating those files that were complex and needed urgency against those files that needed different forms of intervention. The current system means lawyers are only involved in without notice/urgent cases unless the file is transferred to the standard track. The classifications seem meaningless when actually trying to navigate the files. (2554, Lawyer, FLAS Provider; Survey)

The Court does not assist parents to make parenting arrangements. It eventually decides them if the parties do not agree. The tracks system is hopeless and meaningless due to the delays in processing. What is needed is issues identification and the availability for processes to manage those issues in a timely and cost-effective way. We don't have that in our current family justice system in the Family Court. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

The tracks haven't assisted in streamlining the process. There is often confusion as to when there should be a shift in track, and the processes are often given little more than lip service while we just get on and do what we need to do to make progress. (2306, Lawyer, Lawyer for the Child; Survey)

Of those professionals who commented on **specific Family Court tracks**, the majority ($n=108$) mentioned the without notice/urgent track, followed by the standard track ($n=53$), simple track ($n=45$) and complex track ($n=12$). Several spoke about several of the tracks in their comments, often comparing one track with another.

The without notice track is clogged because people were forced to wait to get there. The simple track is a joke and takes too long. The complex track is the only one that gets any movement, but to get that movement you have to be in a biggest mess ever. Children are suffering from this reform. (2308, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The simple track is never used properly. it provides for the matter to be dealt with in chambers without the need for Court appearances. in reality, the judges are setting these matters down for an Issues Conference or Formal Proof Hearing and appointing Lawyer for the Child often without any jurisdiction. The urgent track is being used by lawyers to circumvent the standard track and have lawyers involved. The timeframes for the urgent track are never complied with. The standard track is often a mish-mash of all of the tracks and things go backwards and forwards as the judge sees fit. Often the Court will make up rules so that the cases can progress the most appropriately for the issues. The tracks make no real difference - the Court does what it wants. (2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The simple track never gets to Court as they are not priorities. The standard track will get there eventually, but may take 5-6 months to get to a Directions Conference. The urgent track takes 2-3 months to get to the first hearing. Quite simply, it's not working. (2563, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Simple is not even a track the Court uses these days. Standard and without notice take the same period of time. The only difference with without notice is that you generally have your order as the application has been dealt with. Hearing time, Directions Conference dates etc., all take the same amount of time. There is no difference with all these tracks. The complex track simply allows for more conferences, although with the lack of judges it is probably no use at this point either. (2586, Lawyer, FLAS Provider; Survey)

Generally, the simple track seems to be working well. The standard track cases seem to take a long time to resolve especially as there is such a wait for Court time. Judges are directing Round Table Meetings often for standard track cases and these can be successful in resolving matters. There are so many without notice cases now that they take up significantly more of the Court's time than prior to the reforms. Sometimes cases are without notice because of the likely delays, whereas under the previous system lawyers would apply to reduce the time for a response rather than making a without notice application. (2344, Lawyer, FLAS Provider; Survey)

Things pretty much all stay on the standard or the without notice track once filed, but it doesn't seem to make any difference what track they are on as there is still such a delay in getting in the Court. (2311, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I have no knowledge of any case being completed on the simple track; judges invariably change them to the standard track. The standard track is too slow. The

without notice track invariably turns into some sort of hybrid. Cases never proceed as quickly as the programme designers envisaged. (2592, Lawyer, Lawyer for the Child; Survey)

In theory the notion of having tracks to deal with cases is good - if the infrastructure to support that was present i.e., dedicated case officers and judges. In my experience, the lines get completely blurred between standard and complex. It often depends on the judge and whether that person is a rules-based judge or pragmatic. (2501, Lawyer, Lawyer for the Child; Mediator (Private Practice); Survey)

Turning to the professionals' comments about specific tracks, the **simple track** (n=45) was said by five professionals to be "fine", "working well", "good in theory" and "helpful where matters are not contentious." However, the two most frequently raised issues were i) that cases were "**rare**" and "hardly ever seen" on this track; and ii) the "**huge delays**" that matters on the simple track experienced – they took "a very long time to be processed and heard." Some lawyers were "yet to see a simple track matter" and others said they were only seen when they had been "transferred there from the without notice track." The simple track was also regarded as "a waste of time", "a joke that takes too long", "ridiculous", "never used properly" and "not a priority."

Is there anything on the simple track? (2404, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Simple track - too many delays. Orders should be made on the simple track 21 days after someone is served. Usually the matter sits in Court for a lot longer. This is the same for consent orders. (2519, Lawyer, FLAS Provider; Survey)

Nearly all applications are now without notice. Expecting clients to file simple or standard track on their own is unrealistic. The forms are difficult to find and use and the parties do not understand the Court terminology. I am not aware of anyone using or referring to the simple track. (2366, Lawyer, Lawyer for the Child; Survey)

In practice the without notice track is usually used to enter the Court system and to circumvent the simple track. Many matters are often lost on the simple track and therefore resolution takes a long time. (2582, Lawyer, FLAS Provider; Survey)

I have no knowledge of any case being completed on the simple track. Judges invariably change them to the standard track. (2592, Lawyer, Lawyer for the Child; Survey)

Hardly any matter is "simple" and few are "standard" - if a matter was truly "simple" the parties would have been able to resolve the problem themselves. And each set of individual circumstances is particular to the people and the children involved, so is not "standard." The urgent track applies to almost all disputes. (2373, Lawyer, FLAS Provider; Survey)

The **standard track** (n=53) can "work well" or "work fine", but was said to be "seldom used" because of the much greater number of applications on the without notice track, although some were transferred to the standard track at times. The most frequent expressed concern about the standard track was that it was "too slow", "bogged down" and "a slow boat to nowhere." Standard track matters were said to often be "pushed back to accommodate

urgent hearings” or “don’t get a look in.” The lack of legal representation on the standard track was also criticised as this “denies access to justice” and means it can be “unrealistic” for clients to easily complete and file their own applications.

Standard track matters can get bogged down in the system as without notice take precedence. (2290, Legal Executive; Survey)

The standard track is just too slow. I have had clients wait months and months just to get an issues conference with lawyers unable to help hasten the process. (2468, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Good idea, but the standard track takes so long that, in my opinion, it’s not viable. (2565, Lawyer; Survey)

The standard track is like a slow boat to nowhere. Clients seem to be able to google that things are so slow that by the time the matter is heard the children will have reached the age where they are beyond the jurisdiction of the Court. I’ve had clients tell me that the other parent has told them, “Go ahead, take it to Court. It takes so long that the kids will be 16 and you’ll have wasted your money.” (2495, Lawyer; Survey)

There seems to be absolutely no difference as to how standard vs urgent matters are dealt with after the initial application is made. (2208, Lawyer, FLAS Provider, Citizens Advice Bureau Staff Member/Volunteer; Survey)

Standard track without lawyers acting causes delays, confuses clients and does not allow speedy resolution. (2570, Lawyer, Lawyer for the Child; Survey)

Standard track - lack of access to representation is the biggest issue wasting Court staff and judges’ time. Parties are disadvantaged if they are poor. (2519, Lawyer, FLAS Provider; Survey)

As there is no provision for a reduction in time for filing a notice of defence, any kind of urgent situation ends up on the without notice track. This means that any standard application is pushed to the bottom of the Court priority list, ending up with significant delays. (2315, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

The **without notice/urgent track** ($n=108$) was commented on positively by 13 professionals as “fine”, “necessary”, “clear”, “deals with applications immediately” and is “being used freely to get progress on cases.”

Without notice is the only track which has any real effect. (2589, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

It was noted that applications on the without notice/urgent track had “**increased significantly**” since the 2014 reforms and this track had now become “the norm” – “90% of my cases end up on the without notice track.” This increase was attributed, in part, to the without notice/urgent track being the most straightforward way of cases being “given some urgency” and “getting to a hearing” in a timely fashion.

Without notice applications are the norm even if they are not warranted, just to get into the system. Without notice takes precedence over all other applications and uses up valuable resources. (2424, Lawyer, FLAS Provider; Survey)

The without notice track has become the standard track. (2343, Lawyer, Lawyer for the Child; Survey)

Too many without notice applications are being made when there is not sufficient urgency, but it is because there are extensive delays brought about due to the flawed 2014 law reforms. (2509, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Most applications are made without notice, even if they do not meet the criteria, just to get their proceedings before the Court. (2415, Ministry of Justice/Family Court Staff Member; Survey)

Most matters end up on the urgent track which I would guess defeats the purpose of the three tracks. (2331, Lawyer; Survey)

There's been a marked upswing in people filing without notice/urgent applications to attempt to get timely hearings. (2412, PTS Provider/Facilitator; Survey)

The without notice track is genuinely necessary in probably 50% of without notice applications. Prior to 2014, the other 50% would have been on notice applications. In reality, the speed with which without notice applications appear in the Court is no faster, unless it is a domestic violence matter, than if it was on the standard track. (2225, Lawyer, FLAS Provider; Survey)

Many professionals were concerned that the hugely increased number of applications meant that the without notice/urgent track was “**overwhelmed**”, “overloaded”, “clogged”, “over-burdened”, “facing huge demand” and “not working.” **Delays** had resulted.

When they are filed without notice and then allocated I haven't seen much variation because judges move them to suit the case and it largely has no effect because of the huge delays in the Court. So even if it's on the without notice track and heading to a hearing, it still is delayed by months. (2173, Lawyer, FLAS Provider; Survey)

I understand that Court staff simply can't keep up with the without notice applications and really urgent cases are again having to wait for attention from the judiciary. (2315, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Without notice track - too many delays - it can take six weeks to get an initial Directions Conference and this is unacceptable if there is a party without contact. (2519, Lawyer, FLAS Provider; Survey)

The without notice track still has significant delays. In [city] at present we are being told that there is no time before [month] for Directions Conferences. This is a serious issue where there are safety concerns and where the child/ren are having limited or supervised contact with one parent. These cases need to come before the Court much faster than they are presently for the safety assessment. Given that they often take

weeks to get to Directions Conferences the hearing time can still be months away. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

The without notice/urgent track matters are not dealt with in the timeframes specified. No matter how much lawyers insist on this it practically cannot happen due to staffing issues. So, in reality, there is little gained by the track system in my experience. Often people forget what track it is on and never mention it again. (2303, Lawyer, Lawyer for the Child; Survey)

In order to get matters in front of the Court more quickly, I always give consideration to whether an application can be filed without notice, but will only file if I believe there are grounds. (2572, Lawyer, Lawyer for the Child; Survey)

Too many applications being filed without notice when really they should be on notice, but with the time for filing the notice of defence abridged. (2222, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Even the without notice track is delayed for parties as there is simply not enough Court time available, or hearing dates, to find any quick resolution for children. (2237, Lawyer, Lawyer for the Child; Survey)

A significant concern about the without notice/urgent track centred on its **overuse/misuse by lawyers** who “applied far too often and often without merit” as a means of enabling legal representation from the outset, accessing Legal Aid and “fast-tracking” cases. The track was said to be “frankly **abused** at times.”

Without notice is not working. Applications are being made without notice without strong grounds. (2380, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

The without notice track is being abused, but only because the whole system is flawed. (2292, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

The without notice track is abused and used as a means for lawyers to act and to have the matter in Court. (2570, Lawyer, Lawyer for the Child; Survey)

I have filed many without notice applications. This is really the only way into Court for people to have a lawyer. I believe that sometimes applications are filed on a without notice basis that do not reach the threshold just to get into Court with a lawyer for Legal Aid purposes. This is not my practice, but I believe it does occur. (2454, Lawyer, FLAS Provider; Survey)

Without Notice applications are abused as a way of enabling to get lawyers to act and to “fast track” matters, especially in the absence of the ability to abridge time and the already lengthy delays. (2278, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

There are too many applications that are now filed without notice just to be able to access Legal Aid. Many of these are borderline urgent. In fact, I believe well over 30% of the without notice applications filed are declined. (2174, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

These tracks would work a lot better if the rules laid out in the legislation were actually followed. Judges are often just ignoring the rules around tracks, and taking a more pragmatic view. The without notice track is horrendously overused even by lawyers who should know better. This is adding to delays and congestion in the Family Court. It is an abuse of process to use this track as a way to get a foot in the door. (2274, Lawyer; Survey)

The without notice track is used by lawyers who stand to make financial gains from their clients and often advise taking this route. A neutral body, such as Oranga Tamariki, should advise whether to make a without notice application as they can assess situations where there is suspected abuse or neglect. (2525, PTS Provider /Facilitator; Survey)

The Court is allowing the without notice/urgent track to be misused. (2269, FDR Mediator; Survey)

Too many without notice applications have to be made in order to be able to have a lawyer representing a party. (2279, Lawyer, Lawyer for the Child; Survey)

The without notice track often seems to be used as a way to get lawyers in and then keep them in once transferred to the standard track. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It is workable, but under extreme pressure. Lawyers overuse the ex parte process as a way to get matters before the Court and avoid the delay and inconvenience of proceeding on notice. (2536, Judge; Survey)

Without notice is massively overused, with some lawyers clearly making applications that they shouldn't so as to be able to access Legal Aid. In many cases this frustrates me, as FLAS would have been available and the client should have been directed to FDR and then helped to make an on notice application if that had failed. It is clear that some lawyers are mistreating this process. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Parties requiring the Court's urgent assistance who do not meet the without notice requirements are coming up with ways to try and circumvent the track system as their matters do not get dealt with promptly. This means the without notice track is being used more to get matters before a judge than what it was originally intended for. (2183, Lawyer, Lawyer for the Child; Survey)

Seven professionals were also concerned that lawyers were filing without notice applications **“as a shortcut to avoid FDR”** or to **“bypass FDR.”**

Too many lawyers use the without notice track to keep their clients out of the FDR system. Too many judges allow that tactic. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Survey)

The without notice track is being used by lawyers to bypass FDR. (2360, Psychologist; Survey)

The way to avoid the delays of the unrated FDR, and also to ensure that a party may be represented is to apply on the without notice/urgent track. This also gains the attention of an under-resourced Court, but may have an effect of increasing acrimony between the parties - because the time for response is often unreasonably foreshortened and more extreme allegations are made in order to justify a without notice application. (2475, Lawyer; Survey)

The **complex track** (n=12) means that parties are “in the biggest mess ever” and their case “has normally started from the without notice/urgent track.” Having a case classified as “complex” enabled one judge to manage it, provided greater flexibility, and was said to be “the most useful” track” and “working well.” Some professionals complained about the lack of judge time to really enable complex matters to progress as desired.

Complex cases usually work okay. The major benefit of having a case classified as complex is to have one judge case manage it. This is most useful for high conflict, serious safety or parental alienation cases. Unfortunately, it doesn't always work. In one case, recently, the hearing was effectively part heard, the case classified as complex, but the judge is now rostered in various parts of the country and under too much pressure to case manage it. The parties, and more particularly the children whom I represent, are left waiting weeks for decisions on very pressing matters affecting their relationship with their father and therefore having a significant impact on their best interests. Again, this is likely to be a resourcing issue - there simply are not enough resources for the judiciary to undertake the role in accordance with the legislative provisions. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

I do not have many cases on the complex track, but it does give more flexibility for judicial intervention like teleconferences. (2404, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The strategy of complex cases being able to be managed by one judge is very helpful, but that was always able to happen even before the reforms. (2303, Lawyer, Lawyer for the Child; Survey)

Fifteen professionals recommended the introduction of a new **“semi-urgent” or “in between” track** for cases that do not meet the without notice threshold, but are nevertheless urgent. The ability to **reduce or abridge time** was also suggested as a practical way forward.

You need two more tracks – complex, but not urgent; urgent, but not complex. (2544, Lawyer; Survey)

There needs to be an alternative to without notice when the case doesn't meet the threshold, but there are still concerns. (2422, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

There needs to be another half-way house in between standard and without notice. (2515, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

Sometimes an application doesn't warrant being without notice, but it is still fairly urgent. ... The reforms did away with applications to reduce/abridge time which is really unfortunate because there is certainly a need for them. (2564, Lawyer, Lawyer for the Child; Survey)

There is a gap between the simple/standard and without notice tracks. Many matters need speed, but do not necessarily qualify for a without notice application. The addition of without notice abridgement of time for a lot of matters would make sense. (2459, Lawyer, Lawyer for the Child, FLAS Provider, Citizens Advice Bureau Staff Member/Volunteer; Survey)

There desperately needs to be the option for the semi-urgent matters to reduce time (like the old system) and people need to be able to have lawyers from the very start. (2328, Lawyer, Lawyer for the Child; Survey)

The new system is missing the critically important urgent (but not to the level of without notice) step. If it does not meet the threshold for a without notice, you can generally advise it will be 4-5 months before the parties even see the inside of a Court room. Memorandums seeking more urgent directions are not considered and so parties are stuck. Lawyers either have to sit back or file without notice when it really does not meet the threshold, but it is the only way to ensure it is given some urgency. (2179, Lawyer for the Child, FLAS Provider; Survey)

Many cases require an urgent application to be made to the Court, but are not yet at the without notice threshold, which is a high threshold. Hence the huge number of without notice applications, the majority of which are not genuinely without notice cases. There needs to be an "urgent" track which is essentially the same as the without notice track, but does not require a without notice application to be made. Instead an "urgent" application could be made at a lawyer's discretion, with a lawyer signing a certificate confirming that the issues are urgent. Legal Aid needs to be available for all levels of COCA applications, right from the start - on notice, urgent and without notice; not just without notice. (2325, Lawyer; Survey)

There's not enough options. There needs to be a return of urgent track proceedings with time abridged for those applications which don't meet the without notice threshold, but are more urgent than simple or standard. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

I have a major issue with urgent and complex, but not without notice, cases. These need to be able to get the access required. They either wait for a critical incident or get overlooked and become extremely complex. (2553, Lawyer; Survey)

There needs to be a track which is between on notice and without notice where applications can be made which, while important, do not warrant interim order being made and the lawyer believes the client requires representation. (2458, Lawyer; Survey)

Two professionals said there should only be **two tracks** within the Family Court: without notice/urgent and standard. One also suggested that the **name** of the without notice track should be changed to the urgent track. Seven professionals commented that "**lawyers**

should be allowed to act on all tracks and at all stages” as **self-representing parties** are “struggling to understand the complicated system.”

Cutting out lawyers is, on the whole, very unhelpful. I have a number of clients who feel they cannot manage in Court on their own - they may be very vulnerable to the other side or struggle with comprehension/putting their point of view across. (2458, Lawyer; Survey)

It is ridiculous to have any track in Court where lawyers cannot act. This is creating a system of self-represented litigants who struggle to understand the complicated system. I have seen many solicitors file matters urgently, that are just not urgent, otherwise they cannot act and usually the Court would be assisted by their representation. If parties cannot sort their own problems out at mediation then professional assistance is usually required. (2280, Lawyer, Lawyer for the Child; Survey)

Self-representation/Litigants in Person – Parties Representing Themselves

Sixty-one per cent ($n=222$) of the professionals completing the survey commented on self-representation/litigants in person in relation to the making of parenting arrangements in the Family Court. The increasing numbers of parties representing themselves was noted by 35 professionals who said there were now **more litigants in person than previously** due to “the restrictions under s7A” and “the lack of access to justice”.

Worse than pre-2014 as there are more of them. (2204, Lawyer; FLAS Provider; Survey)

This has become more common in my experience. It causes far greater delay and entrenches disputes. (2395; Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The increase in self-represented litigants poses a huge challenge to all. More time-consuming; less focused on the real issues. (2549, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The growth in numbers of litigants in person is a consequence of the reforms and the impact on Legal Aid. It must have a consequent cost impact on the system. In other words, the saving on Legal Aid is matched by a more expensive process. (2489, Lawyer, Lawyer for the Child; Survey)

The reforms have resulted in a lot of self-representing litigants which is a waste of judicial resource. The judge has to adopt an extra role that was formerly undertaken by lawyers. (2561, Lawyer; Survey)

Nightmare – definite increase in litigants in person. Some appear to be pleased to represent themselves (and oblivious to the harm they do their own case); others clearly had no option and are stressed and confused by the system. (2342, Lawyer, Lawyer for the Child; Survey)

Some professionals explicitly recognised **parents' right to self-represent** and **20 sympathised with the challenges litigants in person faced** which could be “overwhelming”, “stressful”, “anxious” and “scary” at a difficult time in their lives.

I liken the 'no lawyer' requirement to 'no nurses' in a hospital with just the patients and doctors (judges) attempting to sort things out. The judges are compromised by having to provide legal advice to clients in the Court who do not know how to progress their cases. It is reportedly very stressful for some of the clients participating in the Court system without adequate help and there is no 'filter' on the information they provide to the Court when in an emotional state, which can ultimately compromise their legal position. Unrepresented clients do not always have the knowledge or ability to ensure that the 'right' information is provided to the Court. I worry that the Family Court is no longer a level playing field for some of our clients trying to progress their own cases. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

They are sometimes at a disadvantage as they are unsure what is needed and language and literacy is an issue. (2424, Lawyer, FLAS Provider; Survey)

This remains a mixed bag. Some parents do very well; others struggle and are confused. A proportion are unhelpful and vexatious. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

This can be dangerous and uncomfortable for a lot of parties. It is unfair on them to be forced to represent themselves and ultimately makes more work further down the track. (2258; Lawyer, FLAS Provider, Community Law Staff Member/Volunteer; Survey)

I'm not sure how people are supposed to make informed and rational decisions about their personal situation when they are grieving the end of a relationship and/or have drug/alcohol/mental health difficulties and/or been subjected to abuse. The clients I have seen are very anxious about having to attend the first Directions Conference on their own prior to lawyers being directed to be able to act. (2315, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Staff Member; Survey)

Vulnerable parties in an emotional state are expected to cope with the experience of Court processes, which for many is daunting if not frightening, without sufficient professional support. Not principled. (2452, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It is frequently unfair to the self-represented litigant, especially if the matter proceeds to hearing. Cross-examination, writing an effective affidavit, understanding the rules of evidence – these things take years of experience to do well. It is totally unfair to expect a self-represented litigant to do any of these to the same level as a reasonably competent lawyer. In the end it may be the child who loses and that is not acceptable. (2174; Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

It is one thing to give everyone the right to represent themselves; it is a very different thing to deny someone who clearly needs legal representation that help. (2270, FDR Mediator, Mediator (Private Practice); Survey)

However, most professionals were critical of the **detrimental impact that litigants in person were having on the Family Court** and described the situation as “a mess”, “a disaster”, “a pain”, “a minefield”, “a nightmare”, “a shambles”, “a total sham”, “an utter disaster”, “chaos”, “awful”, “abominable”, “hopeless”, “horrible”, “very unsatisfactory”, “very time-consuming”, “very problematic”, “very difficult”, “terrible”, “painful”, “ridiculous”, “the bane of my existence”, “clogging up the Courts”, “bogs the system down”, and “a huge problem of the new system”. Some said “they can be very hard work”, “totally unrealistic, if not irrational” and that “only a fool acts for themselves.”

The three issues the professionals primarily complained about were i) litigants in person’s **lack of knowledge/direction, unrealistic expectations and high emotions**; ii) the time-consuming nature of having litigants in person involved in a case and **the slowness, delays and poorer outcomes** that resulted; and iii) the **extra work and stress that self-representation created for the Family Court staff, judges and lawyers**.

Very time-consuming and they often have difficulty understanding the real issues. (2188, Lawyer, FLAS Provider; Survey)

Very difficult reading their often handwritten documents, which are often rambling and poorly expressed. Slows down hearings. (2377, Psychologist, Specialist Report Writer; Survey)

Usually this causes delay. Evidence is wrong, issues are not defined, time and money is wasted if one party is unrepresented. (2553, Lawyer; Survey)

Few can negotiate their way through the system alone without making a mess of their case. They don’t know how to filter their emotions from the documentation. (2366, Lawyer, Lawyer for the Child; Survey)

This is the cause of significant delay and lack of compliance in the Court. It has great impact on the functionality of the Court and timetabling. (2237, Lawyer, Lawyer for the Child; Survey)

This is increasingly a problem. Applications by self-represented litigants often fail to disclose relevant information, or disclose far too much irrelevant information, or both. It is much more difficult to deal with matters efficiently as Lawyer for the Child, e.g., to negotiate a settlement, because there is no sensible advice for parties about the reality of their positions. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

This is a nightmare. Obviously, people have a right to represent themselves and the professionals do their best to assist without overstepping the mark. But people who are stressed and do not have the faintest idea of what they are doing make the system slow and unnecessarily adversarial. I am concerned that the general requirement that parties self-represent puts particular pressure on Court staff and judges to assist these people to understand the process. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member; Survey)

They very often have no idea about evidence – information is irrelevant. It can be inflammatory and self-representing litigants are often at a stage in a relationship that is angry, vengeful and irrational. They waste an awful lot of Court time and my energy in trying to deal with them. (2279, Lawyer, Lawyer for the Child; Survey)

They do not know the system and process and at no time has their position been reality checked. They do not know the law and bring all of their emotion and issues to the Court. Sometimes issues are missed altogether because they do not think things are relevant. They take a lot of time – both with judges and with other counsel (especially Lawyer for the Child) trying to explain the process and what is happening. They do not know or understand the rules of evidence so the documentation filed is large and often not relevant. Hearings become difficult and at times lawyer to Assist needs to be appointed. (2505, Lawyer, Lawyer for the Child, Community Law Centre Staff Member; Survey)

They are overwhelmed. They cannot navigate the forms or the system and because they don't have advice they are often difficult to deal with as no lawyer has reality checked their position. Self-reps take up a lot of Court time and file applications about what they think are "their rights" rather than considering the child's rights and needs. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Self-represented clients do not understand the ethos of Family Court litigation or advocacy. In my view the increase in self-representation has led to more hostility between parents and made cases harder to resolve. I suspect self-represented clients are frightened and they therefore tend to over-egg their concerns about the other party and are slow to acknowledge any deficiencies on their part or to agree to compromise. (2592, Lawyer, Lawyer for the Child; Survey)

Not all self-represented litigants are difficult, but as a practitioner it can feel like you are being sucked into the personal issues in a way that is not present when dealing with another lawyer. Self-represented litigants drain resources and, quite frankly, suck the life blood out of a practitioner some days. (2554, Lawyer, FLAS Provider; Survey)

One of the most – if not the most – detrimental part of the changes. (2238, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

They make judges and Lawyer for the Child have to become babysitters to them. (2280, Lawyer, Lawyer for the Child; Survey)

Fine, but it makes the process slower and more complicated. The average person is not qualified to go to Court which is a complex process. Good idea on paper; poor idea in practice. A cost-cutting exercise is fine, but the news might be that it is now costing more – work out how much a judge costs per hour! (2346, FDR Mediator, Counsellor, PTS Provider/Facilitator; Survey)

Getting a law degree takes us quite some time. How is it fair to expect parents, who are already incredibly stressed, to suddenly just obtain that knowledge? I do not understand that. (2411, Lawyer, FLAS Provider; Interview)

Eight professionals were concerned about the **tolerance, latitude and overcompensation accorded to litigants in person within the Family Court** and the injustices that could result.

There are two legal systems operating; those with lawyers have to obey the rules ad those without don't. This is hopeless and not democratic. (2546, Lawyer, Lawyer for the Child; Survey)

Too often self-represented litigants are not required to comply with the law or procedure or are given unreasonable latitude. They cause additional work and stress for counsel. (2485; Lawyer; FLAS Provider; Survey)

Lots more of this happening which causes a lot of wasted time and sometimes gives self-represented parties a big advantage as the Court will let them file and give evidence and make submissions no lawyer would be allowed to. (2566, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Several professionals stated that it was a **“totally wrong message** to encourage this type of representation” and were concerned about the **financial impact on the other, represented party**.

It is very frustrating when acting for the other party because their costs are increased. (2342, Lawyer, Lawyer for the Child; Survey)

They cost the represented litigant dearly in terms of costs (lots of letters, affidavits with irrelevant material etc.) extending the proceedings (e.g., walking out of Court part-way through a judicial conference), no fear because it's not costing them money. Many seem obsessed with attempting to make the represented party pay. I've had opposing self-represented litigants that won't engage at all about the most basic communications around the children until proceedings are finished. I end up being used as a conduit and feel like a telephone switchboard. I have to – if I don't accept their communications I'll end up with a Law Society complaint. I haven't come across one self-represented litigant that was representing themselves because they couldn't afford a lawyer. They are trouble. (2495, Lawyer; Survey)

Lawyer for the Child and **Counsel to Assist** were acknowledged as being important in assisting litigants in person, but there was concern that “this is not Lawyer for the Child’s role and causes an appearance of bias” as well as adding to the cost.

This very rarely works. Lawyer for the Child often bridges the gap, which carries with it its own costs and also risk in terms of the proper boundaries of the role. (2338, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

If you are Lawyer for the Child you are regularly put in the position of being asked for legal advice, which you cannot give. (2179, Lawyer, Lawyer for the Child; Survey)

If you are Lawyer for the Child you may be the only lawyer involved which increases Lawyer for the Child time and costs – so costs are shifted, not removed. (2342, Lawyer, Lawyer for the Child; Survey)

Four suggestions were made **to assist litigants in person within the Family Court** by appointing officials to assist with filing the paperwork, allowing legal representation from the outset “as some of the cases would be resolved faster” and revisiting the Legal Aid threshold. One lawyer also mentioned “trying to develop unbundled services to help them.”

This is still proving very complicated for those wishing, for whatever reason, to represent themselves. Perhaps consideration should be given to providing Court-appointed officials to facilitate filing the paperwork. (2414, Counsellor; Survey)

People need access to high quality legal advice. (2471, Lawyer, Lawyer for the Child, FDR Mediator, FDR Staff Member; Survey)

Intimidating for clients and exacerbates power imbalances. Frustrating for judges, more work if/when counsel do become involved as pleadings are almost always insufficient and need to be re-drafted and re-filed, which leads to more delays. Also, self-represented parties have great difficulty separating the legal issues from everything else. Some begin the Court process with an information dump of everything that's happened during the course of their relationship and become frustrated when the Court won't address each issue. Receiving legal advice early in the piece helps clients understand what the Court can and, very importantly, cannot help with. Expectations are much easier to manage early in the piece. Many self-represented litigants expect that the Court process will somehow magically resolve all the communication and interpersonal difficulties between the separated parents (or caregivers). Early legal advice can help start the process on a more conciliatory and co-operative basis, where appropriate, focusing on the children's welfare and best interests – not on the grievances between the parents. (2246, Lawyer, Lawyer for the Child; Survey)

The Appointment and Role of Lawyer for the Child

Fifty-seven per cent (n=209) of the professionals completing the survey commented on the appointment and/or role of Lawyer for the Child in relation to the making of parenting arrangements in the Family Court.

Over half (n=113, 54%) of the professionals expressed **positive views** about the appointment and role of Lawyer for the Child and said this was “working well”, “essential”, “critical”, “vital”, “crucial”, “fine”, “very useful”, “very important”, “extremely important”, “very helpful”, “very valuable”, “invaluable”, “relevant”, “necessary”, “heavily relied upon”, “should happen more often”, “needs to be standard practice”, “is a role I enjoy”, “a great system which needs to be retained”, “children are entitled to representation”, “the child needs an advocate”, “often needed as parents’ lose sight of the child”, “a valued role”, “a pivotal and important role”, “the key backbone for the communication process” and “an undisputed success.”

It is still one of the most effective interventions available to the Court and children who are the subject of disputes. (2455; Lawyer, Lawyer for the Child, FDR Mediator; Mediator (Private Practice); Survey)

Lawyer for the Child provides an important function as to the child's views and information from independent sources. (2304, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

I do this work and I think it is essential to the Court. It has become even more important since the ‘reforms’ which is, of course, ironic. An effective Lawyer for the Child can mitigate the delays, prevent parties from losing hope, reduce the ability of those who are using the Court to punish the other parent or otherwise have an unjust case. (2288; Lawyer, Lawyer for the Child; Survey)

An absolutely crucial role in the proceedings. The Court heavily relies on hardworking Lawyers for the Child to gather information and provide it to the Court, and also in

getting parties to co-operate and reach agreement or at least narrow the issues for determination by the Court. (2564, Lawyer, Lawyer for the Child; Survey)

Four professionals described Lawyer for the Child as “**the saving grace**” of the Family Court as they “hold the system together” and “the Court would have ground to a halt if we did not have them.”

This appointment is the saving grace of the Family Court as children’s counsel bring a voice of reason and focus to parties at war. It’s always helpful to identify real issues as opposed to allegations without foundation. (2231, Lawyer, Lawyer for Child, FLAS Provider; FDR Mediator; Survey)

The appointment of Lawyer for the Child is the only ‘saving grace’ of many matters to ensure that all the necessary evidence is before the Court, to facilitate proper discussions between the parties, to ensure that the children’s views are known, to ensure that safe decisions are being made and to try and use other out-of-Court processes, such as Round Table Meetings, to get matters resolved/advanced in a timely way. (2278, Lawyer, Lawyer for Child, FLAS Provider, FDR Mediator; Survey)

However, 9% (n=18) of the professionals expressed **mixed or negative views**. For some professionals the helpfulness of Lawyer for the Child was “highly variable” and depended “on how proactive and skilled the lawyer is.” Several supported the role or concept of legal representation for children, while others were critical of Lawyer for the Child for being ill-equipped to undertake the role adequately; lacking expertise about children; failing to engage properly, or spend enough time, with children; pre-judging parties and not remaining impartial; sabotaging out-of-Court processes like FDR; overlapping with the work done by specialist report writers and social workers; providing unhelpful reports; and acting unresponsively or obstructively with colleagues or family members.

In my view the importance of the role is overstated. Too many Lawyer for the Child over-promise and under-deliver. (2592, Lawyer, Lawyer for the Child; Survey)

I am very disappointed with the Lawyer for the Child role. I get totally disillusioned when I see Lawyers for the Child who have been in the role for 20 years or so actively trying to cut children off from parents and whānau because they have prejudicially pre-judged a parent according to their own personal value system. I hate the fact that the Court continues to appoint these types to the role. I hate it when the role is performed by a person unable to communicate properly with people from all walks of life and abilities. I see disrespect, contempt, prejudice and behaviour that is in excess of their jurisdiction. The position seems to have more power attached to it than is healthy or good for it. I see less and less Lawyer for the Child actively promoting resolution and consent processes. I also regularly get the horrors at how ill-equipped some are to understand basic child age and stage, development and behaviour, and who do not understand the family as a dynamic interactional system. Very few Lawyers for the Child are actually up to the job in my opinion. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

When they do the role great; but too many are too lazy and completely fail to engage. They just read the emails, never respond and send in bills that others pay. (2544, Lawyer, Survey)

I am of the view that Lawyer for the Child are not experts in matters affecting children and therefore are not the best people to represent the child's views. (2525, PTS Provider/Facilitator; Survey)

Too restrictive. Too much emphasis on budget. Not enough time spent with children or parents. (2281, Counsellor; Survey)

They're used primarily as negotiators and convenors of Round Table Meetings. The reports they provide have very little value. (2165, Lawyer, FDR Mediator; Survey)

I have heard more often than not that they are very biased. Depending on who is the most dominant party gets assistance from Lawyer for the Child. (2409, FDR Mediator, Mediator (Private Practice), Counsellor; Survey)

Highly variable. Many seem to form predetermined views about one of the parties and stick with those despite significant evidence to the contrary. (2161, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

This works well if couples are lucky enough to have a Lawyer for the Child appointed who is impartial and truly works to discover and promote the best interests of the child(ren). (2373, Lawyer; FLAS Provider; Survey)

This is essential. A good, or even an adequate, Lawyer for the Child can resolve almost anything, but there are too many who do nothing, or very little, or not very much to help people resolve matters. There is no way to complain about those perfunctory practitioners and I despair that they get paid the same as their hardworking fellows, but do so little. Honestly, Lawyer for the Child appointments should be both mandatory and free. They are so important in moderating the situation and resolving matters. The Family Court at [town] has several very good or excellent Lawyers for the Child, but other Courts have some who are inadequate, unhelpful, and a disgrace. (2373, Lawyer; FLAS Provider; Survey)

The concept of Lawyer for the Child is great, except no one seems to have figured out how to deal with the obvious potential conflict of interests the poor lawyer must frequently face when "representing" a child who wants an arrangement the lawyer can clearly see is not actually in that child's best interests. (2270, FDR Mediator, Mediator (Private Practice); Survey)

Unfortunately, these appointments do not seem to happen very often in [city]. A large number of the judge-referrals for communication counselling are as a result of unhelpful or biased decisions made by Lawyer for the Child. I believe a good Lawyer for the Child should be mediating between parents, and working to enable early contact arrangements to be made so that children do not go for long periods of time without contact from an absent parent. My experience is that Lawyers for the Child seem to take sides and can be quite obstructive to mediated arrangements. People who request a different appointee are either denied or further discriminated against. (2388, Counsellor; Survey)

There are some fantastic Lawyer for the Child. Unfortunately, there are some who are unable (or unwilling) to engage with the children and this can reflect on the whole process. The skills required for this with some children are quite specialised and there

are some Lawyer for the Child who are unable to acknowledge this. (2167, FDR Mediator; Survey)

The role does not provide for an adequate assessment of the child's views - often the Lawyer for the Child meets with the child once, twice maximum, before a hearing but their views are heavily relied upon. (2171, Lawyer; Survey)

Some Lawyers for the Child are amazing and help get things resolved. Others are not that diligent and can end up making things worse because they take a while to respond, which holds things up a lot. (2433, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

It seems that depending on who you get, you get very different things. (2585, Lawyer, FLAS Provider; Survey)

Lawyer for the Child varies depending on the lawyer. Some are willing to work with the FDR system; others are more liable to sabotage any attempts at FDR. (2168, FDR Mediator; Survey)

When they are good, they are very good. When they are not, they are horrid. The bad ones are biased and never check their assumptions or update their perceptions. They don't see that they have become an issue - they will blame the party or a lawyer who challenges them, rather than resigning in favour of someone else so that they don't become an issue. I'm talking about the ones who genuinely are trouble; not the ones who are diligent and competent and expose one parent's unsuitability. I have never known a Lawyer for the Child to propose FDR, which bothers me. (2184, Lawyer, FLAS Provider; Survey)

Despite initial fears that the 2014 reforms would lead to fewer appointments of Lawyer for the Child, this had not materialised and 19 professionals commented that the situation was now "largely unchanged", "**the same as always**" or "hadn't changed a great deal."

Initially we all thought that appointments of Lawyer for the Child would decrease. However, the opposite is true as judges regularly appoint Lawyer for the Child. This is especially true when there are self-represented litigants. (2174, Lawyer for the Child, FLAS Provider; FDR Mediator; Survey)

There was a fear that Lawyer for the Child would be significantly less used by the Court, but I think appointments have continued at the same rate. (2423, Lawyer, FLAS Provider; Survey)

They're very valuable. I think the reforms thought there would be less appointments, this is not the case. In fact, almost every application ends with a Lawyer for the Child appointment. (2305, MOJ Staff Member; Survey)

However, what had changed since the reforms was an **expansion of Lawyer for the Child's role**. The work was also said to now be "**more complex**" and "**harder**."

Lawyer for the Child is being asked to undertake more tasks than the legislated brief and are expected to be the Court's helper, information gatherer, to resolve issues, and

assess home environments and safety. Often Lawyer for the Child is the only lawyer in the proceedings. (2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Lawyer for the Child appointments are more complex, because often the parties have 'defined' the issues without advice - and the role of reality checking has fallen more and more to judges or Lawyer for the Child. (2338, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

This has become harder, because by the time Lawyer for the Child are appointed, parties have assumed very entrenched positions. Meetings can't be held without Court direction, which takes time, and leaves families in a vacuum without any directions for unnecessarily lengthy periods. (2186, Lawyer, Lawyer for the Child; Survey)

I have never been busier, but the work has never been so unrewarding or complex. However, a lot of the concerns initially raised have not come to fruition i.e., problems representing views over best interests etc. (2279, Lawyer, Lawyer for the Child; Survey)

This expanded and more challenging role was attributed, in great part, to the **increasing numbers of self-representing litigants** in the Family Court. Thirty-three professionals commented on this and the expectation (by parties and the Court) that Lawyer for the Child would **undertake additional tasks** to "compensate for the lack of parties' lawyers." Self-representation meant that by the time Lawyer for the Child was appointed "the parties were well and truly polarised" and the role required "going far beyond that which the brief allows."

This is a large area of my work. We are now expected to case manage to a great degree, understandable as there is often no other lawyer involved. I will not bring an application as Lawyer for the Child, but sometimes with self-represented litigants it is a fine line between not giving advice (not my role) and ensuring the right issues, evidence and applications are before the Court (needed for the children's safety). Many doing this work are exhausted. We get poor pay compared to others involved, but carry the most responsibility. (2568, Lawyer, Lawyer for the Child; Survey)

There has been a massive increase in my workload to the point I am turning away Court appointments. The work is a lot more intensive and the expectations from the Court are greater due to the increase in self-represented litigants. (2461, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The role has become more complex and time consuming. Where there are self-represented litigants the Court is relying on Lawyer for the Child to ensure that all relevant evidence is before the Court. Although this is part of the role, it did not use to be onerous where competent lawyers were acting. Lawyer for the Child also inevitably has to take on more of a guidance through the process role for unrepresented litigants, and also more of a mediation rather than representation of child role. All of this has to be juggled. (2195, Lawyer, Lawyer for the Child; Survey)

It's largely the same as before except Lawyer for the Child now finds more cases have self-represented parties. So we may be the only lawyer on the matter. This can pose difficulties when Lawyer for the Child wants to reality check/push the parties on the position they are adopting, but that party has no lawyer to go back to and discuss

matters with/get legal advice from. That can be unsafe for Lawyer for the Child, and for the party being challenged. (2303, Lawyer, Lawyer for the Child; Survey)

Lawyer for the Child's job becomes difficult when you spend a lot of time trying to explain the process and the law, while not giving advice. Parties tend to drag a lot of things into the mix that are not relevant. More and more, there are accusations that you are acting for one party over another. Parties look to you to "fix" things and judges request that you provide a lot of information, but this is not your job. (2505, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

Lawyer for the Child's role has become even more important because there are situations where that lawyer is the only counsel involved in a case. The role of Lawyer for the Child has become challenging with the number of self-litigants to them for advice (which we cannot give them). I feel our role is difficult and we are the brunt of frustration and aggression at times. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The reforms had an enormous impact because people who are self-represented don't understand the Court process, so instead of just representing the children, you're having to explain the Court process to both parents, grandparents or caregivers that's involved. So, it's caused a bigger requirement in that way. It's quite an ethical minefield because you're representing the child or children and yet the people, quite understandably, need a bit of guidance on Court practices, which, strictly speaking, is not a Lawyer for the Child role. It's getting more and more blurred and then the resources for the Court are getting more and more strained. We go to workshops around the country and we're talking about strange parts of our role, like being asked to veto supervisors and things like that. That's not something we used to do. It's just that the Courts are getting down on resources and expectations are getting higher of Lawyer for the Child. So, our advocacy role has blown out. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Mixed opinions were expressed about the **timing of Lawyer for the Child appointments**. Most thought the timing was about right, but some thought they were appointed "too late in the piece", "too often" or were "sometimes not appointed when they should be if without notice application is turned down."

They are often appointed later than is helpful - often they could have negotiated settlement earlier. Sometimes by the time Lawyer for the Child is appointed, the parties are so polarised and have slagged each other off, so it's more difficult to broker settlement. (2223, Lawyer; Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

This can range from timely to untimely even in urgent cases. I have found that Lawyer for the Child are appropriately appointed in most cases. Sometimes when I expected a Lawyer for the Child would be appointed, there hasn't been one appointed. (2495, Lawyer; Survey)

The **role of Lawyer for the Child** was considered important despite fears it may have been eroded at the time of the 2014 reforms. Aspects of their role that were particularly valued included:

- Objective/neutral representation of children
- Ensuring children have a voice
- Ensuring protection of children
- Progressing cases
- Performing an assistance/negotiation/resolution role
- Assisting significantly in reaching (earlier) resolution
- Reducing delay
- Invaluable to the role of specialist report writers

It's extremely important and helpful. Lawyer for the Child is so important because they represent children from an objective standpoint. Usually parents think they know what is important or best, but can be blinded by their own issues. Lawyer for the Child ensures children's views are represented, but also their best interests and welfare, from an objective point of view. (2586, Lawyer, FLAS Provider; Survey)

They're often critical to resolution and a child-focused outcome. Appointment of a good Lawyer for the Child is often the factor that progresses a matter through to agreement. (2277, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

They can help offset delays in the Court process when they're proactive i.e., Round Table Meetings, and liaison regarding care/contact matters. (2550, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Very useful - helps guide progress, helps with advising clients, also facilitate resolution. (2454, Lawyer, FLAS Provider; Survey)

This remains an important role. It gives the lawyer appointed (often me) the chance to work on what should be the focus of the case which is, of course, what is in the best interests of the children. (2321, Lawyer, Lawyer for the Child; Survey)

Judith Collins was interviewed on TV when she was promulgating the reforms. She says, "Oh, we have Lawyer for the Child going up and saying, 'Who are you going to live with? Who do you want to live with?'" Well, totally wrong. A Lawyer for the Child would never ever in a million years say that to a child. She was so far off the mark, it was frightening. You wouldn't dream of doing it. Whether she had cloth in her ears or something, I don't know, but she was poorly misinformed if that was how she viewed Lawyer for the Child's role. (2518, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Interview)

The role of Lawyer for the Child in **Round Table Meetings** generated mixed opinions. Some regarded their pivotal role in these meetings as "very effective and helping to prevent matters from proceeding to hearings unnecessarily."

Getting families in a room together and convening Round Table Meeting by experienced Lawyer for the Child is nearly always useful. (2280, Lawyer; Lawyer for the Child; Survey)

However, others felt that Lawyer for the Child's role in Round Table Meetings was "not ideal" and compromised their ability to "concentrate on their role as the voice for the children."

Too often they are used as investigators and mediators, whereas they should be left to advocate for their clients. (2329, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

Aspects of the role that would benefit from **improvement** included "meeting with each child more than once", "better relationship building with children to help them engage and provide information" and facilitating their appointment "at mediation, not just reserved for Court."

The hourly rate paid to Lawyer for the Child was strongly criticised by 13 professionals as "very poor", "a sore point" and "a joke." For some, being "underpaid" compromised their practice and their ability to take on appointments, contributed to some leaving the role, was inconsistent with industry standards, and made them feel undervalued in the sector. The **pay rate** had not been increased for 20 years and was "in urgent need of review."

I feel the government abuses the skill of Lawyers for the Child by not paying them a fair pay rate, particularly when they have such a pivotal and onerous role in the proceedings and represent the most important people in the proceedings as well as case managing and often settling cases before they are heard. The role is key to the continued functioning of the Family Court, yet so badly underpaid with no pay increases in the last 20 years which is pathetic. (2510, Lawyer, Lawyer for the Child; Survey)

The rate has not changed in the time I have been employed. It is a wonder that we still have such skilled people doing this work as they are taking a huge hit in fees and in their personal safety with some of the children and families they represent. (2424, Lawyer, FLAS Provider; Survey)

Sometimes Lawyer for the Child is the only lawyer in a case, which the parties try to use for free legal advice and the Court/judges expect them to do all the 'legal' work involved. And it's all paid at a grossly underwhelming rate which no longer adequately remunerates the lawyer for the complexity and difficulty of the work. It is well out of step with what lawyers need to charge simply to pay their overheads, let alone actually make a living. (2328, Lawyer, Lawyer for the Child; Survey)

Proper remuneration remains a sore point. Lawyer for the Child is underpaid. The rates have remained constant for many years and are in urgent need of review. (2501, Lawyer, Lawyer for the Child, Mediator (Private Practice); Survey)

The pay is a joke! Someone managing a contract for the sale of a business is paid \$300-\$600 an hour. Someone managing a child through Court is paid sometimes \$157 an hour. (2308, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I commenced the role as Lawyer for the Child in 2003. I have not had a pay rise since, despite the cost of running a practice escalating and the 10-hours of CPD required. We must be the only profession in this country that has not had a pay rise in 20 years. (2177, Lawyer, Lawyer for Child, FLAS Provider; Survey)

In [region] we are experiencing a shortage of Lawyer for the Child. The role has expanded significantly from what it was when I started. I am aware that some of the contributing factors in some lawyers not continuing with Lawyer for the Child is that rate of pay (no increase for 20 years), the complexity of the work, the risks associated with some of the families that we are dealing with, the increase in complaints being made, and the unreal expectations around reporting times. Most lawyers who do Lawyer for the Child work do not do it for the money - they do it because they are passionate about the work. However, given how complex the role is now, an increase in the level of pay would at least make lawyer for child feel as if they are valued by the Ministry of Justice. (2508, Lawyer, Lawyer for the Child; Survey)

Our hourly rates have not been raised for years. Very often Lawyer for the Child is the case manager and most senior counsel in proceedings, but is paid substantially less than some semi junior inexperienced counsel representing a party. (2279, Lawyer, Lawyer for the Child; Survey)

This system works well, although the hourly rate is now so far behind the industry norm that the Ministry of Justice is at risk of losing many of these highly skilled and experience professionals. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

Remuneration rates are very poor and it is not possible to take on too much Legal Aid/ Lawyer for the Child. Private work (which pays over double) is needed to successfully run a practice. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

The imposition of **Cost Contribution Orders** (CCOs) on non-Legally Aided parties was considered, by eight professionals, to have a detrimental impact on the Lawyer for the Child role. These orders could be “unfair” and contributed to “the parties’ stress”, “exacerbated animosity between the parties” and had “the potential to deter people from agreeing to the Lawyer for the Child appointment.”

The prescriptive Cost Contribution Orders are very unfair and unreasonable e.g., why should a grandparent /parent justifiably concerned for welfare of child be required to pay? (2577, Lawyer, Lawyer for the Child; FDR Mediator, Mediator (Private Practice); Survey)

I feel like we are at risk from the new system because the litigants are required to contribute to our costs. The fear of recrimination/upsetting people when we just need to do our job is not good. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It is unfair when it comes to Cost Contributions Orders as one party may not have been represented and been responsible for a significant proportion of the Lawyer for the Child time. But this is not taken into account in making the contribution orders. (2515, Lawyer; Lawyer for the Child; FDR Mediator, Mediator (Private Practice); Survey)

Twelve professionals raised **training and professional development** issues for Lawyer for the Child as some were said to “lack some child interviewing skills”, needed “to understand their role better” and would benefit from more in-depth knowledge about “issues affecting children.” Improved initial training and ongoing opportunities for upskilling were recommended “so there is consistency across the board.”

There are difficulties with this process. Lawyers for the Child do not have training to do risk assessments for violence. (2360, Psychologist; Survey)

Their expertise, in particular in accurate listening, in understanding and training from a child perspective, and in understanding and training in all dynamics of abuse, (especially passive aggressive abuse including 'grooming'), is paramount in the outcomes for the child. (2401, Counsellor; Survey)

I would support more intense training for Lawyer for the Child. Given the complexity of the work, it is my view that a week of training is inadequate. (2508, Lawyer, Lawyer for the Child; Survey)

The role of Lawyer for the Child needs more training prior to first appointment and then more ongoing professional development. I often think that the Lawyer for the Child role is a case of "damned if do, damned if don't." Sometimes Lawyer for the Child seems to sit on the fence and does not justify the appointment. Perhaps that reflects insufficient resourcing. Perhaps it reflects a need for ongoing CPD. (2475, Lawyer; Survey)

The Appointment and Role of Specialist Report Writers

Fifty-two per cent ($n=190$) of the professionals completing the survey commented on the appointment and/or role of specialist report writers in relation to the making of parenting arrangements in the Family Court.

Just over a third of the professionals ($n=67$, 35%) expressed **positive views** about the appointment and role of specialist report writers and said this was "working well", "very important", "very good", "valuable", "vital", "essential", "a necessary tool", "of a high standard", "generally excellent", "fine", "useful", "helpful", "great", "good", "okay", "can be invaluable", "of assistance at times", "of huge assistance", "they are valued", "they have a legitimate role with the more intractable cases", "vital in complex cases", "we are needing them more and more", "must be maintained", "good report writers are excellent" and "they wield enormous influence." Specialist report writers were particularly commended for providing "an impartial, objective and clinical view" to the Family Court which "greatly assists in resolution." They also brought "significant insight" to "complex or intractable cases."

We cannot underestimate the value of these reports. (2268, Lawyer, FLAS Provider; Survey)

Usually very helpful especially from an evidence point of view. (2550, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

These reports are an essential part of many cases, providing vital information to the Court. (2325, Lawyer; Survey)

When reports are provided, they are generally on the whole extremely helpful and unbiased. They play a crucial role in moving matters along. I appreciate that s133 and s178 reports, in particular, are very expensive, but when conflict is so entrenched they can be incredibly decisive in resolving the matter. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Crucial to the process and provides an independent opinion which the Court can assess in making a decision. (2536, Judge; Survey)

Specialist report writers remain a very useful and informative addition to the Family Court. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Specialist report writers are in general amazing. It is sad that the cost means they are so infrequently used. In my experience parents often find these reports an eye opener. (2343, Lawyer, Lawyer for the Child; Survey)

Important information is provided by report writers which often has a significant impact on the outcome of a case. (2304, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Important and helpful in most cases. Greatly assists in resolution. (2229, Lawyer, FLAS Provider; Survey)

Critical to a good outcome for the children where the need arises. In most cases a good report will be the catalyst for resolution of the proceedings. (2277, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

From my perspective (as Lawyer for the Child) the reports produced by specialist report writers (in particular, psychological reports) are often the key to matters resolving in a timely and constructive way as they offer an impartial, objective and clinical view around the children the subject of the proceedings. The same applies to social work reports. (2508, Lawyer, Lawyer for the Child; Survey)

Nine professionals (5%) expressed **mixed or negative views** about specialist reports and criticised reports of poor quality; lack of understanding of contemporary child development or family dynamics; bias toward a particular parent; report writers' influence on judges or, conversely, their unwillingness to express an opinion; and the report's potentially devastating impact on families.

It depends on the writer. Some are better than others and are trained in areas that relate better to the Family Court issues. There should be some sort of review to determine the good from the poor writers. (2188, Lawyer, FLAS Provider; Survey)

Depending on the family - and the professional - they can be helpful. However, the usefulness of the report is outweighed by the long-term damage caused by written reports being relied upon to assist the Court in making decisions about a family. No matter what the outcome, families are left mostly irreparably damaged. Open Court cross-examination does nothing to assure parents that they can continue to co-operate as parents. It would be much more productive and less traumatic if we could have family consultants at the FDR stage being part of the mediation process and talking with the people (not at, or about, the people). (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

We have some antediluvian forensic psychologists who also seem to lack training in contemporary attachment theory, will not go near adult attachment theory and cannot understand the child's relationship with a parent, or the child's needs in the context of that parent-child relationship, let alone the impact of the parent-parent

relationship on the child. We have big problems with forensic psychologists pre-judging parents without undertaking the parenting assessments or psychological assessments necessary to inform the opinions of the expert. I am afraid I have little to no confidence in any but a handful of our expert report writers. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

This is difficult because report writers often 'steer' the decisions with judges loathed to go against their recommendations. The difficulty is the time delay in getting these reports so they are under-utilised. (2173, Lawyer, FLAS Provider; Survey)

I have found in recent times that often these reports do not assist greatly as the report writers have become (in general) gun shy of the Court process and are not willing to have a real opinion. (2237, Lawyer, Lawyer for the Child; Survey)

I do not know how the specialist report writers are appointed. I have been witness to excellent reports and some reports that have been incredibly dangerous for children. Report writers who are also working with children within a therapeutic relationship have a professional empathetic understanding of what 'child centred' actually means and can open up positive outcomes for children. Sadly, recently, I have read reports that have no connection with the child or the safety of that child with very dangerous outcomes for children that include suicidality. The importance of accurately hearing and believing children and young people is paramount for their ongoing safety. Letters after a name, no matter how many, are not evidence knowing. The power that these reports hold for the outcomes for children and their lives mean that the person that is the 'specialist report writer' needs skills beyond that of being 'a specialist.' (2401, Counsellor; Survey)

There are serious problems with the s133 report writers (usually psychologists) because unless they are clinical psychologists they tend to waffle, and are defensive under cross examination. These non-clinical psychologists need training in the role. (2546, Lawyer, Lawyer for the Child; Survey)

If the report writer takes a dislike to one party or feels sorry for the other party, undue influence can be wielded. (2475, Lawyer; Survey)

Some of the report writers are quite predictable in their thinking I've found and you would not want them appointed on certain of your cases. (2234, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Nine professionals (5%) had "not noticed a change" in **the availability of specialist reports since the 2014 reforms**. They said this was "largely unchanged", had "not changed significantly" and was "similar to how it was before the reforms." However, 40 others (21%) said that the **number of reports had decreased** and it was "getting harder to convince a judge to appoint" a specialist report writer.

It is now rarity to get a specialist report compared with pre- the reforms. (2572, Lawyer, Lawyer for the Child; Survey)

The Court is showing marked reluctance to order s133 reports because of the cost. (2589, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Fewer psychologists are doing this work. A good s133 report can be invaluable, but is harder to obtain. Most judges thankfully are still ordering them where needed despite the attempt in the legislation to limit them. (2279, Lawyer, Lawyer for the Child; Survey)

The use of specialists has decreased significantly, perhaps a little too much. I think s133 was over used when there were no psychological issues. However, there are cases now when some spending on a quality analysis by a s133 report would help settle a matter and save a hearing. (2568, Lawyer, Lawyer for the Child; Survey)

It's too difficult to get s133 reports which are usually very helpful and often provide a platform for resolution. The pendulum has swung too far against these reports. In difficult or medium difficult cases they are invaluable and should be ordered more frequently, as they were pre-reforms. (2231, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

This has become less a feature of family law contested matters than it used to be, which is directly relatable to cost and the availability of a report writer. This is an unfortunate trend as the reports were often crucial to finding a good solution for the children. (2489, Lawyer, Lawyer for the Child; Survey)

This appears to differ by jurisdiction. Locally, our judges will rarely direct s133 and have a very strict interpretation of s133, sometimes to the detriment of the children/party. In other areas, they seem very easy to obtain but, again, there can be significant delays. (2179, Lawyer, Lawyer for the Child; Survey)

There's pressure from the registry not to seek reports for resourcing reasons. Very different approaches from different judges in response to this. (2338, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Two lawyers agreed that while there were now fewer reports, this was not necessarily “a bad thing” as reports were still being ordered when the “legal basis” was met and, in the past, reports had been over-relied upon by those in the family justice system.

This has definitely decreased and it is very hard to get a s133 report now. This is not always a bad thing, as again, in the old system I think sometimes reports were done too quickly. Effectively counsel (and the judge?) just thought, let's get a report and let them do all the work and we'll just go with the recommendation! (2567, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Greatly reduced, but judges will direct if the legal basis is met. I think the standard is about right. (2423, Lawyer, FLAS Provider; Survey)

The **nationwide shortage of specialist report writers**, which had implications for the decreased number of reports being ordered and the delays experienced in obtaining them, was commented on by 57 professionals (30%). Report writers were “overworked” and we “need more of them.”

Seriously reduced capacity, the stupid change in the threshold which creates endless problems, an unsupported role at the Ministry of Justice level – and, yet, as cases

become more complex this is a vital role within the system. (2362, Counsellor, Psychologist, Specialist Report Writer; Survey)

There is a significant lack of availability of specialist report writers in the [city] area generally and it is leading to significant delays in reports being obtained or, in some cases, to reports not being ordered in circumstances where they may be helpful - simply because events will have overtaken the report by the time it is available. (2183, Lawyer, Lawyer for the Child; Survey)

They are a scarce, but valuable commodity - but the delays in having report writers available cause huge delays in decision-making for children. (2481, Lawyer, Lawyer for the Child; Survey)

We do not have enough specialist report writers. There is a significant delay in [city] - a 6-12 month delay. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Delay was the most frequently raised concern about specialist reports ($n=82$, 43%). Professionals mentioned a wait time of six, nine or twelve months which was unacceptable and detrimentally impacted upon resolution time frames.

The specialist reports are taking too long. There do not seem to be enough specialist report writers, particularly psychologists. If a s133 psychological report is directed it is taking three times as long, or even longer, for a report to be filed than prior to the reforms. (2344, Lawyer, FLAS Provider; Survey)

The delay in reports being made available almost outweighs their usefulness. (2366, Lawyer, Lawyer for the Child; Survey)

They are useful, but only if the reports can be obtained efficiently and then utilised immediately. (2169, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Judges are still directing the reports in [city], but the Court is (rightly) placing more of a burden on counsel to show why the report is essential. The main issue here is delay: 6-9 months to get a report. This leads to untold concerns and often drives complexity. (2361, Lawyer, Lawyer for the Child; Survey)

It is much harder to get a s133 report. In my experience people did not unnecessarily seek s133 reports as the cost and delay involved (and risk to each party of an unfavourable report) meant they were only requested if genuinely needed. It seems judges now challenge and dismiss the need for such reports more than they used to. (2303, Lawyer, Lawyer for the Child; Survey)

There is a huge delay. Often the choice is made to forgo these (often crucial) reports in favour of obtaining an order within a time frame that is appropriate to the child(ren). (2171, Lawyer; Survey)

The delays in processing reports are unsustainable in an age when the focus has to be on the resolution of the dispute. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

The delays meant that the **specialist report would often need updating** to be of value.

These reports are of assistance at times, however the delay in receiving them is a barrier to resolution. Generally, once the reports are in hand the matter can be resolved. Only a small number of matters actually end up at a hearing stage. If they do, then such reports are invaluable. The issue is that the delay between any initial report and the date of the hearing is such that the reports then need to be updated. This is obviously costly and further delays resolution. More funding is required. (2582, Lawyer, FLAS Provider; Survey)

There are so many delays with reports it is ridiculous. The delay in allocating hearings and the rules about when a matter is set down for hearing means that a report can become dated with the passage of time between the hearing date being allocated and the hearing. The inability of the Court to order updates before the hearing seems short-sighted. (2494, Lawyer, Lawyer for the Child; Survey)

The specialist report writers are over-utilised with the more complex cases we are now seeing. We cannot recruit and keep them, and by the time they have finished a report and the hearing is set we need an update due to the time taken to get to a hearing. We are needing them more and more. (2424, Lawyer, FLAS Provider; Survey)

The issue is with delay. Section 133 reports are a necessary tool. Not being able to get a report for up to 9-12 months (from the time of the direction of the report through to its receipt) is unacceptable. It creates subsequent problems, of course, with reports that are out-of-date and this is compounded when judges refuse to sanction an update. (2501, Lawyer, Lawyer for the Child, Mediator (Private Practice); Survey)

The shortage of report writers was attributed by two professionals to their reluctance “to go through the process of cross-examination.” Six others related it, in part, to the “**risk of complaint**” that report writers endured and which needed attention by the Ministry of Justice.

There is a shortage of good psychologists. They should be protected from complaints if they are undertaking Court-appointed work as this is a major barrier to them wanting to work in this area. (2170, Lawyer; Survey)

I think it is a shame that more people do not come forward to become report writers because of the risk of complaint. This is something the Ministry of Justice should be discussing further with psychologists. (2343, Lawyer, Lawyer for the Child; Survey)

Insufficient resource is made available to the report writer to allow adequate time to be invested in preparation of the report. This, together with complaints made against a writer, discourages them from applying to be recognised, or continuing to accept commissions. (2475, Lawyer; Survey)

In my view psychologists are under-utilised; the reason given is usually resourcing, but also delay, and the lack of psychologists as they can be resistant to doing the s133 reports due to the risk of complaint. This situation needs to be addressed in terms of process. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

The lack of addressing the issue of complaints is a major problem which is the Ministry of Justice's responsibility as well. (2362, Counsellor, Psychologist, Specialist Report Writer; Survey)

They're far too open to complaints about their service, meaning they are not making themselves available for the role. Now there's too few available and extraordinary waits for someone to become available to complete a report. This creates unacceptable delays for the children. (2459, Lawyer, Lawyer for the Child, FLAS Provider, Citizens Advice Bureau Staff Member/Volunteer; Survey)

Other issues raised by the professionals included specialist report writers being "under-resourced and overstretched", the timeliness of appointments - "they're appointed too late"; and variability in the quality of the reports - "mixed performance."

The appointment of specialist report writers is frequently too late in the Court process. There are difficulties with timing, focusing on the key issues in cases. The small number of specialist report writers means that we are under-resourced and overstretched. There is wide discrepancy in the quality of reports. (2360, Psychologist; Survey)

The standard of reports is variable and I'm not sure what to do about this - maybe study the layout of the best reports and have a recommended format? They could circulate the best reports anonymously from some regions to report writers in other regions for them to study? (2566, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Some hesitancy to appoint has been experienced. It's frustrating that if a report writer was appointed when first requested the case would have progressed more efficiently. It's frustrating when after nine months, the Court then decides, "yes, it is a good idea" and now we're probably looking at another nine months before we can move to the next stage. The appointments are often not timely (an admin problem), or there are no report writers available for months on end or none available in a particular region. (2495, Lawyer; Survey)

Eight professionals commented on **Cost Contribution Orders** in relation to specialist reports. Some said that judges could be "more reluctant to direct reports because of the contribution to costs issue", while others felt these made no difference.

Despite the additional costs to parties the appointment of a specialist report writer seems to be unaffected. However, most of my client base do not have to make payments because they are on Legal Aid, so perhaps lawyers with a larger private client base might have a different view. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Judges are perhaps more wary of appointing specialist report writers given the cost contributions parties need to make. (2214, Lawyer; Survey)

The cost is too high for the parents to pay (approximately \$2k-\$5k). I have no issue with the cost in itself (I believe psychologists should be paid well - their skills and contribution are very highly valued), but I take issue with the parents having to pay a third each. I believe this should be covered by the government in full. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Training was mentioned by four professionals who wanted specialist report writers to be “upskilled in the latest research.”

We need more specialist report writers so there is a variation. They should be required to do updating study as some writers are stuck in old concepts. We have to do continuing education and so should they. (2308, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Suggestions to **improve the role of specialist report writers** included having them available in FDR, having an “assessment focus” on parents (not just the child); utilising “family therapy appointments with a family therapist”; “more funding”; implementing “succession planning”; reviewing the selection criteria so other types of psychologists (e.g., educational psychologists) and social workers with specialist training can also undertake these appointments; looking to CAFCASS⁹ in England and Wales to ascertain whether their experience could provide useful lessons for New Zealand; and providing scope for parents to comment on and respond to draft reports, meet with the report writer before the hearing and know they have a legal right to record their interview with the report writer.

The appointment of specialist report writer would be helpful in mediation in some cases. Parents often can't afford to access this privately. (2383, FRD Mediator; Survey)

The criteria for selection needs to be reviewed as at present only clinical psychologists are used and many have been there a long time (aging population). Why not others e.g., educational psychologists? (2480, Mediator (Private Practice), PTS Facilitator; Survey)

Child and family psychologists and experienced social workers with specialist training in child and adolescent development are appropriate to attend to these matters. Currently appointments are psychologists only. I know the Family Court in [city] valued the reports from experienced social workers and there were a mix of both appointed there until about 10 years ago when a national decision was made that psychologists only should be appointed. (2364, FDR Mediator, Counsellor, Social Worker; Survey)

There needs to be scope for parents to comment on and respond to draft reports, and to meet with report writers long before the hearing. It needs to be made clear that a parent has the legal right to record their interview with report writer. (2184, Lawyer, FLAS Provider; Survey)

Families would be better assisted by a mandatory series of family therapy appointments with a family therapist who can work with the adult issues to adjust behaviours to keep the child safe and thrive inside its family with its unique set of issues. If the focus was really on the child, the professionals working with the family would be intervening only to such extent as was necessary to support the child's optimal functioning in its particular family environment. No expert report in the Family Court succeeds in that as by the time a defended matter gets to hearing, the report is out of date and routinely no recommendations have been followed by anyone and the child just has to find a way to survive. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

⁹ Children and Family Court Advisory and Support Service.

A big limitation is the assessment focus being on the child, rather than the parents as is possible under an s178 Oranga Tamariki Act report. (2279, Lawyer, Lawyer for the Child; Survey)

The ability of the Court to direct psychological assessments on a parent would be helpful because s133, at the present time, only allows psychological assessment in relation to the child and the child's circumstances. Whereas, if you can pick up on psychopathology in a parent at an earlier stage, it would give the Court a significant benefit in terms of determining outcomes in the best interests of the children. (2252 Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

Two Specialist Report Writers also made helpful suggestions about quality control and having the ability to offer their opinion earlier on in proceedings rather than always having to write a report.

I haven't noticed a change. Demand seems increased. Administration at the Family Court level has become more difficult as less staff attempt to manage the increased workloads, or new arrangements have been made that have not streamlined the process as expected (central management of files and payment of invoices). My local Family Court Coordinator used to review all reports, she doesn't have time now. I think this was a useful quality control measure. (2369, Psychologist, Specialist Report Writer; Survey)

I can see reports can slow the process down. As a report writer, it sometimes feels as if not having to write a report (which takes time) and just being present early on to offer opinion relevant to child's interests would be helpful and speed things up. ... Part of the problem is writing the psychologist's report. I do understand you need a written document, but if there could be some sort of a meeting or a hearing in which those reports, maybe, could be spoken to in some way. Maybe just having an early stage hearing, where the psychologist could speak and say some of the stuff that's really evident to them pretty much once they start. But then they have to go and find all this evidence, and fair enough, write it all up. Whereas if you could head it off at the pass somehow so that maybe it wouldn't need to go to a full report - somewhere you could have a sensible discussion, maybe with a judge present? I don't know - maybe just with Lawyer for the Child, each person's lawyer. It's hard to know. Some parties are extremely uncooperative and so they are going to want to go right to the limits. You can usually spot them pretty quickly and so maybe you take them through. But the other ones probably don't need to have the whole full-on kind of report and process. We could just make recommendations pretty quickly. Writing it - that's the slow part! In some instances, it may be just having a meeting - "this is what the psychologist thinks and this would be helpful for the child." It could perhaps sort of settle the case there, rather than going on and on. That would be good I think. (2377, Psychologist, Specialist Report Writer; Survey and Interview)

Twenty-two professionals (12%) discussed **s132 reports**. Delays were also a concern with these reports and they, too were criticised by some for being a "mixed bag" in terms of quality. However, s132 reports were also said to be "of a high standard", provided essential information about a child's safety, and sometimes were being sought by the Family Court when an s133 report was unlikely because of the shortage of report writers or delay. **Cultural reports** were also mentioned by two professionals and seen as going hand-in-hand with s132 social worker reports.

[City's] s132 reports are way better than [other city's] s132 reports. It often feels like the social workers there are too rushed to actually be able to look into things appropriately. (2206, Lawyer, FLAS Provider; Survey)

s132 writers are a mixed bag; some repeat what the interviewee says, but some do a sterling job and produce helpful reports. The writers of s133 reports generally seem to be better. (2373, Lawyer, FLAS Provider; Survey)

The value of social work reports does depend very much on the report writer, whether they are skilled in writing reports and whether they have absorbed the new vision by Oranga Tamariki. (2508, Lawyer, Lawyer for the Child; Survey)

s132 reports are taking longer since the reforms, but the wait is not as bad as for s133 reports. (2344, Lawyer, FLAS Provider; Survey)

The role of s132 (social worker) reporters has been greatly improved in [city] by the allocation of four specialist report writers to this role. This will bring consistency and reliability to the role and is a great development. (2546, Lawyer, Lawyer for the Child; Survey)

Cultural reports should be obtained in many cases together with s132 reports which would reduce the need for s133 psychological reports. (2225, Lawyer, FLAS Provider; Survey)

s132 social worker reports are often pretty useless and unhelpful, and there's many delays in getting them. (2454, Lawyer, FLAS Provider; Survey)

s132 reports are taking far too long, often ignore relevant information or the report writer makes recommendations which are outside the scope of the brief. (2462, Lawyer; Survey)

Social work reports are slow and often based solely on parties' self-reporting which is of little real value to the process. The inability for social workers to access criminal conviction information without third party authority also limits the information available. (2372, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

s132 reports may be being obtained more often as a measure to fill in the evidence gaps where the parties 'don't get it' and don't file the necessary evidence. (2303, Lawyer, Lawyer for the Child; Survey)

The Court is directing significant numbers of s132 reports - often because parties are unrepresented and the Court is therefore obligated to make what independent enquiry it can into safety issues. Oranga Tamariki is now so overworked and under so much pressure that staff retention and delay are at what I can only imagine is near an all-time low. However, when they are appointed and that evidence is available it can have a significant bearing on the outcome and, in my experience, is important for the Court to adequately assess the best interests of the child. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

Round Table Meetings Led by Lawyer for the Child

Fifty-nine per cent ($n=216$) of the professionals completing the survey commented on how Round Table Meetings led by Lawyer for the Child are working in relation to the making of parenting arrangements in the Family Court. The majority of these (177, 82%) were **positive** about these meetings saying that they “work well”, “work exceptionally well”, “generally assist in solving interim issues”, “are a great way of assisting clients to reach agreement”, “a practical means of resolving issues”, “are often the best way to resolve matters”, “are the best and sometimes the only option”, “are a primary forum for resolving matters”, “are a very useful tool” and “a crucial aspect of the system”, as well as being “useful”, “good”, “great”, “fine”, “helpful”, “okay”, “effective”, “fantastic”, “excellent”, “productive”, “pragmatic”, “positive”, “have a place”, “successful”, “solve lots”, “very good”, “very important”, “very helpful”, “very valuable”, “very useful”, “very effective”, “usually efficient”, “often necessary”, “beneficial”, “vital” and “essential.”

Round Table Meetings were said to be **particularly helpful for several reasons**: “keeping some momentum on files”, “getting the parties together and talking”, “better than countless emails and letters about an issue”, “narrowing the issues”, “assisting clients to reach agreement”, “resolving interim arrangements”, “resolving final decisions or clarifying a way forward”, providing “a much quicker means of resolution than waiting for Settlement Conferences” and “often lead to resolution.” Two lawyers also commented that Round Table Meetings work better when parties were “prepped beforehand” and “an agenda” had been drawn up.

These are a pragmatic way of resolving low level disputes between parents reasonably quickly. (2492, Lawyer, Lawyer for the Child; Survey)

These do a lot to mitigate the worst aspects of the reforms. In my experience, they usually lead to moving things along and gaining agreements. (2288, Lawyer, Lawyer for the Child; Survey)

They are relied upon to assist the management of cases through the Court. (2232, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

We do them as it's often necessary to ensure continuity of relationships with each parent and also to try and resolve matters without further (delayed) Court interventions. (2461, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

A crucial method of assisting parties to reach an agreement. They are often a good way of progressing/resolving issues without the need to take up Court time. (2306, Lawyer, Lawyer for the Child; Survey)

An invaluable way of getting people talking to each other in a safe environment. A lot of matters are resolved this way without the need for a hearing. (2188, Lawyer, FLAS Provider; Survey)

Twenty-nine professionals commented that Round Table Meetings were “**happening all the time**” and being “directed a lot more frequently.”

Frequent, effective coal face work that holds so much together. (2481, Lawyer, Lawyer for the Child; Survey)

We do them more now because of the lack of Court time due to the changes. (2291, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

They happen often and have filled the gap caused by the inability of the Court to provide timely judicial Settlement Conferences. (2338, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Nine professionals provided **mixed** responses commenting that Round Table Meetings were “sometimes useful, sometimes not”, “vary enormously in practice and outcome and can be quite superficial.”

Sometimes these meetings may produce good results. Sometimes the parties are so conflicted that only the authority of a judge has any chance of producing a result. (2475, Lawyer; Survey)

Depends on the Lawyer for the Child involved. Some are really good, others substandard. (2445, Lawyer, FLAS Provider; Survey)

Can be helpful if held at the right time, parties are prepared and counsel are on board. (2424, Lawyer, FLAS Provider; Survey)

Can be good/bad/indifferent. Depends on the lawyer. (2592, Lawyer, Lawyer for the Child; Survey)

I have some reservations about these – lawyers’ knowledge of the psychological impact of parental conflict can often be quite limited. Some lawyers can be quite child-focused, others less so. (2426, Counsellor; Survey)

Some of those professionals with reservations about Round Table Meetings, as well as those who were very positive about them, noted the importance of the **training and skill** of the Lawyer for the Child conducting them ($n=16$). Some Lawyer for the Child were said to “need more training” particularly in mediation, negotiation, alternative dispute resolution and chairmanship skills.

They work well if Lawyer for the Child has the appropriate skills/training, for example, mediation training. (2338, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I do not agree with this as a process due to no requirement for Lawyer for the Child to have mediation skills and it impacting on their ability to advocate for the children. (2496, Lawyer, FLAS Provider; Survey)

Five professionals spoke **negatively** about Round Table Meetings. Their comments primarily related to clients’ lack of preparedness for these meeting, lawyers’ using the meetings as “just another way to rip couples off”, clients feeling “bullied into agreeing to something”, and FDR being preferable.

Parents often feel they are outnumbered by this process and there is still an adversarial element. This is duplicating the FDR system. (2168, FDR Mediator; Survey)

I think that FDR mediators often do a better job because they are not lawyers. Too many clients talk about being bullied into “agreeing” to something that they don’t

agree with because the lawyers outnumber the clients at the Round Table Meetings - and the lawyers feel pressure to come up with an answer without checking that their answer is workable for the particular parents and children. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Survey)

Round Table Meetings were criticised by 10 professionals for **being used more often than FDR or for bypassing or duplicating FDR.**

This is sometimes used to bypass mediation Occasionally we are asked to be involved, which is great and shows a really inclusive practice on the part of the lawyer. (2167, FDR Mediator, Survey)

They are often used in lieu of FDR. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

If this is happening why isn't the matter with FDR? (2294, Lawyer, FDR Mediator, Mediator (Private Practice); Survey)

Round Table Meetings have their place, but I would much prefer for a referral to be made to FDR instead. I think this is an example of trying to make the old system fit into the new system and a mistrust of the FDR process when it was first implemented. Many of the issues addressed at Round Table Meetings could be dealt with in FDR. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Mediation may be a better process sometimes. So, the Court should refer the proceedings to FDR rather than Round Table Meetings provided the parties and lawyers and Lawyer for the Child can attend. (2577, Lawyer, Lawyer for the Child; FDR Mediator, Mediator (Private Practice); Survey)

In contrast, four professionals said that **Round Table Meetings were more effective than FDR and preferred by clients.**

These are useful and I would say 50%, or maybe more, of my cases resolve this way. My clients prefer these to FDR because there are others to brainstorm with, they feel safer, they get a reality check, and it keeps cases progressing. (2173, Lawyer, FLAS Provider; Survey)

Many more professionals ($n=22$), however, expressed a strong preference for the pre-2014 **counsel-led mediation and EIP processes.** Some considered that Round Table Meetings had “effectively replaced” these since the reforms, while others considered they were “not as good as the counsel-led mediations that we used to have.”

The EIP procedure was better where mediations were conducted by trained mediators and Lawyer for the Child was present with parties and their lawyers. (2577, Lawyer, Lawyer for the Child; FDR Mediator, Mediator (Private Practice); Survey)

They're good, but unfortunately are a poor second to counsel-led mediation. (2563, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Round Table Meetings are very effective, used more often than FDR and are a quick way of resolving things. Feels essentially like a “back door” way of getting back to the old mediation model which, in my view, worked very well. (2216, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

These have been effective and remain the closest to the lawyer-led mediation concept of the past. (2589, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

The Court-directed lawyer-led mediations were a much more successful option. (2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I do more and more of these, and am often directed by judges to convene. The previous exercise of having Counsel to Assist appointed to convene a mediation was far preferable. My role can be compromised by running the meeting. (2279, Lawyer, Lawyer for the Child; Survey)

Excellent, but still not as good as the old-style mediation conferences where Lawyer for the Child was able to advocate for their clients (the kids) and not try to be a neutral mediator and a judge. (2373, Lawyer, FLAS Provider; Survey)

The most frequently expressed concern about Round Table Meetings ($n=29$) was the **challenging dual role these meetings presented for Lawyer for the Child**. In particular, it was considered problematic having the lawyer appointed to represent the child in the proceedings also running the meeting as a neutral chairperson.

Helpful, but sometimes places Lawyer for the Child in a difficult position as they are required to both run the meeting and advocate for the child. The better structure is a mediation where Lawyer for the Child is appointed. (2277, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

They have a place, but are hampered by the idea that the lawyers convening these meetings have a dual role and may end up doing both badly. The Roundtable needs to be run by an experienced family mediator working with lawyers and parties. (2346, FDR Mediator, Counsellor, PTS Provider/Facilitator; Survey)

This continues and has effectively replaced the counsel-led mediations that were in place pre-reform. However, Lawyer for the Child is entitled to hold a position in respect of the proceedings and is therefore not in a ‘neutral’ role when leading these meetings, unlike the counsel who previously led the counsel-led mediations pre-reform. (2499, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The problem with a Lawyer for the Child-led meeting is that this person takes on the role of child advocate and facilitator/mediator. This is less likely to be successful than the use of a mediator in the facilitator role. (2364, FDR Mediator, Counsellor, Social Worker; Survey)

Although these are a good way of resolving matters it places Lawyer for the Child in a conflict situation of having to be a mediator and advocating for the children. (2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

These are so difficult. Lawyer for the Child is expected to convene a meeting in some sort of neutral role, but then be able to adopt a position on certain issues and challenge a parent about their position if necessary. It seems unfair to the parties to be in that position, and it is impossible for Lawyer for the Child to fulfil all roles properly. The previous (pre-reform) counsel-led mediations were by far preferable. A lawyer, trained in mediation, would convene the meeting and each party would have their lawyer there with them, and Lawyer for the Child would be there as an equal participant. That forum was far safer and more robust. It was better than FDR in that counsel could attend thereby helping the process to work better once people were in the Court system (although FDR has its place for some parties who do not need to enter the Court system at all). (2303, Lawyer, Lawyer for the Child; Survey)

These are widely utilised. However, Lawyer for the Child is always in a difficult position given their role as chair and also advocating for the child. However, given the significant wait time to get matters into Court, and to hearing etc., they have to be used and generally result in agreements, even if only interim. (2179, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Always necessary, generally helpful. At the very least, they cut off the interminable conflict between parties at the pass when they and the professional are in the room together. Usually, at least, interim orders can be made. They are a crucial aspect of the system and one that lawyers have made work. However, I also believe the old EIP mediations with an independent mediator as well as Lawyer for the Child were incredibly helpful. Lawyer for the Child could just act in their Lawyer for the Child role, not also as mediator. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Round Table Meetings were said to work best when **both parties were legally represented** (n=7) - "they are most effective if they occur when the parties are represented", they "have their lawyers to give advice" and the parties can see "that compromise is needed."

These can be helpful for resolution, but ONLY if parties are represented by counsel. As a Lawyer for the Child I am very reluctant to hold those with unrepresented parties unless there is only minimal conflict. (2237, Lawyer, Lawyer for the Child; Survey)

Conversely, **self-represented parties** made Round Table Meetings more difficult (n=9).

I am happy to do these to speed the process up, but they are very hard to do with self-litigants as they get no advice to enable achieving a settlement. (2316, Lawyer, Lawyer for the Child; Survey)

The role changes when there are self-representing parents. There is no-one to moderate clients so it is often harder to reach lasting outcomes. (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

They are good and certainly help to get parties talking. Having the lawyers present with the parties provides them with guidance and frees up Court time. If the parties don't have lawyers it is worse and often results in an agreement that is changed or disagreed with afterwards. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

These are a useful tool, however they often place Lawyer for the Child in a position of conflict. It would be more beneficial if we were able to access to Counsel to Assist as per the prior system to convene mediations at short notice. This avoids placing Lawyer for the Child in a conflict position and provides a more neutral, objective forum for discussion. It is my view that Round Table Meetings led by Lawyer for the Child, where one or both of the parties are self-litigants, are inappropriate and expose Lawyer for the Child to significant risk of a complaint being made. (2508, Lawyer, Lawyer for the Child; Survey)

The **funding of Round Table Meetings** was raised by 17 professionals. The fixed fee had been “removed from the post-reform Legal Aid schedule” but this had now been “largely resolved” with the ability of judges to direct Lawyer for the Child to convene a Round Table Meeting in appropriate cases. There was a preference, however, for this becoming part of “the **standard brief** rather than requiring judicial direction” for **Legal Aid** purposes.

The Round Table Meeting fixed fee was removed from the post-reform Legal Aid schedule so I expect it was anticipated that there would not be a need for a Round Table Meeting because a s46F referral to FDR could be made instead. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Legal Aid says these are called “counsel-led settlement conferences” now and you have to get the judge to direct that your attendance would be useful before Legal Aid will pay for you to be there. (2204, Lawyer, FLAS Provider; Survey)

After some gymnastics with Legal Aid, this seems to be largely resolved (i.e., remuneration for counsel). (2361, Lawyer, Lawyer for the Child; Survey)

Helpful, especially where conference dates are so far away from the initial application. However, for Legal Aid purposes it needs to be directed that counsel can act where applications are filed on notice. (2586, Lawyer, FLAS Provider; Survey)

This does work and should be a standard part of the brief, not specifically directed. (2502, MOJ Staff Member; Survey)

These are very helpful in many instances. We have to remember to get a direction from the judge for them to be held if we want to be paid by Legal Aid. Lately it seems that payment will be made as long as it can be shown that it was sought by Lawyer for the Child. (2225, Lawyer, FLAS Provider; Survey)

It’s ridiculous you have to get judicial direction in order to get Legal Aid funding. (2231, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

These are excellent and should be retained. It would assist if it could be part of the brief. I have had to delay meetings until I get Court direction to enable parties to have Legal Aid extended. think this a waste of everybody’s time and could be part of the standard Lawyer for the Child brief. (2175, Lawyer, Lawyer for the Child, FLAS; Provider, FDR Mediator, Mediator (Private Practice); Survey)

Judicial Conferences and Hearings

Fifty-two per cent ($n=190$) of the professionals completing the survey commented on how judicial conferences and hearings are working in relation to the making of parenting arrangements in the Family Court. Many ($n=81$, 43%) were **positive** saying that these “work well”, “work fine”, “continue to happen”, “are usually good”, “useful”, “okay”, “fine”, “great”, “good”, “excellent”, “not too bad”, “helpful”, “necessary”, “essential” and “well run.”

Usually good in progressing a matter in some way. (2550, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

They're important to ensure cases stay on track and that issues are identified and dealt with as expeditiously as possible. (2536, Judge; Survey)

These are, of course, useful and hearings are sometimes necessary to get a resolution. It is important that the conferences leading up to them define the issues and give clear directions so that the hearing is of good use. (2321, Lawyer, Lawyer for the Child; Survey)

Fourteen professionals commented that judicial conferences and hearings “are used in the **same way as prior to the reforms**” and there was “no major difference” evident.

Whatever they might now be called they basically continue as they always did, edging cases towards resolution in one way or another. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

They operate in the same way as they always have. Useful. (2590, Lawyer, Lawyer for the Child; Survey)

The reforms haven't changed the impact of these. Who the judge is still has a significant impact on how efficiently and robustly proceedings are determined. (2304, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

They're generally helpful to make clients and counsel progress matters - it is good for parties to be eyeballed by a judge! A hearing, in my view, is a last resort. Counsel should attempt conciliation as we always have. However, some parties just need a hearing. Hearing times are few and far between, but this has always been the case. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Ten professionals complimented **judges** for making “good use” of judicial conferences and hearings, “moving the parties closer to resolution”, “working hard” and being “amazing”, “thoughtful” and “thorough.”

Our local judges are extremely professional, thorough and compassionate. They do an excellent job, but the whole system is not adequately resourced, so there is only so much they can do. (2462, Lawyer; Survey)

Our local judge works hard and keeps the system running. (2200, Lawyer; Survey)

The conferences themselves are fine, but that's mainly because of the pragmatic and sensible attitude of our judges. (2328, Lawyer, Lawyer for the Child; Survey)

No issues here, the judges continue to be careful and quite thorough. (2201, Lawyer, FLAS Provider; Survey)

Judicial settlement conferences should be used more often. The clients have the opportunity to speak with a judge directly and to have their say in a safe and confidential environment. It often helps clients to reassess their position if a judge imparts some judicial wisdom as to a likely outcome. The client has the opportunity to be heard. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Judges have worked hard to maintain good outcomes despite difficulties with the legislation. (2213, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

There should be greater use made of judicial settlement conferences or judicial mediations. Judges have authority to impress on parties the desirability of coming to an agreement which might not otherwise be available to them. A judge should not be limited in calling a conference, or a number of conferences, to assist the parties to move to their own resolution. (2475, Lawyer; Survey)

However, several professionals expressed concerns about some judges at conferences and hearings regarding their lack of preparation, inefficiency, "mood" and "limited skills" to, for example, "mediate an agreement" at a Settlement Conference. "Time pressures" and insufficient resources were recognised as accounting for some of these issues.

Judges are generally well-motivated, but are often not familiar with the facts (generally because of the time pressure/information void). Judges, too, can over-promise and under-deliver e.g., promise of "speedy action" by the system when we know that that is not possible. (2592, Lawyer, Lawyer for the Child; Survey)

They're run efficiently by some judges and not by others. There's a severe lack of availability of hearing time and significant delays in hearing time being allocated, even for one-day hearings. Also, significant delays in receiving judge's minutes, orders, directions and judgments post-judicial conferences/hearings. (2183, Lawyer, Lawyer for the Child; Survey)

The judiciary do not follow the tracks. More often than not they have numerous Direction Conferences. Issues Conferences are very rarely used because the reality is they are the same as a Directions Conference. Hearings require more time because the cases stay in the system longer, thus often increasing the issues. (2502, MOJ Staff Member; Survey)

Depending on the judge and the judge's mood they can be very helpful or very unhelpful to resolving the issues. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Can be useful depending on the judge. Many judges do not seem to be interested in conducting Settlement Conferences. Judges need to be more robust and give the

parties the benefit of their judicial perspective. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The most frequently mentioned concern ($n=83$) was that the allocation of dates for judicial conferences and hearings was “**too slow**”, leading to “**lengthy waiting times**” and “**huge delays**.” This was said to be noticeably worse since the 2014 reforms. There was also criticism that the **time allocated was insufficient** (particularly for hearings) and “totally outside of children’s timeframes.”

We have to wait too long for Directions Conferences. There is not enough list time allocated. (2481, Lawyer, Lawyer for the Child; Survey)

They are delayed. Justice delayed is justice denied. So much for making decisions in a child’s time frame. (2563, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The wait time for hearings has increased. Judges seem to have an impossible number of matters to deal with. (2277, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

These are frequently too late in the process. The hearings are delayed and the information before the Court is often outdated when hearings are finally held. (2360, Psychologist; Survey)

Hearings are now far too long away and the rules regarding time restrictions on cross-examination are ridiculous and artificial. By the time the hearing comes around the affidavits are well out-of-date so the client incurs more expense filing updated affidavits. (2572, Lawyer, Lawyer for the Child; Survey)

Hearings are a fact of the Court! I have found that judges are putting pressure to reduce hearing times (one day ideally) and use submission-based hearings. There is some risk with this as clients don’t feel heard when evidence is cut off or where they can’t give evidence in person. (2173, Lawyer, FLAS Provider; Survey)

We continue to experience significant delays in hearings being allocated. The same applies to judicial settlement conferences. If we were able to have Counsel to Assist to convene mediations we would settle more matters and avoid the need for hearings. Judicial Conferences are useful, but there are often delays in them being allocated. My preference (as Lawyer for the Child) is that we have them when we need them, rather than judicial conferences being set down as a matter of course. There is limited Court time available and the time should be utilised as effectively as possible. The standard reporting time for Lawyer for the Child should be increased to enable us to do more effective work. Then once the issues are identified it could be determined whether we actually need a judicial conference or whether we can resolve matters in a more collaborative way. (2508, Lawyer, Lawyer for the Child; Survey)

There are delays which are concerning. If something requires urgent Court time, the Court will generally do everything possible to allocate urgent judicial conferences or short cause hearings. (2564, Lawyer, Lawyer for the Child; Survey)

The first Directions Conference is too far out in time - often two months after a judge has made interim orders. I think there should be a conference within two weeks. The respondent should be given a very early opportunity to come before the Court which

made orders which affect their parenting relationship or, from the children's point of view, affects the children's relationship with their other parent. (2576, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

Sometimes there can be quite a delay in allocating judicial conferences or hearings - three months for a judicial conference and even longer for a hearing, which also depends on the duration. If a hearing is longer than one day we usually have to make a special request to be resourced sufficiently for such a long hearing and this can take some months since the judges' sitting rosters are arranged months in advance. Having to take judgment writing into account too impacts on available Court time. (2415, MOJ Staff Member; Survey)

There can be a 4-5 month wait to get a Directions Conference. It would be helpful if a mechanism existed in the smaller centres where directions for s132 reports etc., could be sought by agreement by way of memo. This does not appear to happen in smaller centres which means that you wait months for the Directions Conference, then have to wait months for the report. It could all be done by the time the Directions Conference arrived. Hearings are okay. Most things resolve well prior. More pre-hearing conferences have proven helpful with judges quite open about the difficulties each party may face. (2179, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Judicial conferences prolong the situation without getting to decisions that can take effect in a hearing. Often there are many preceding conferences before a hearing, which have detrimental effects for the children and parents. (2525, PTS Provider/Facilitator; Survey)

Judicial conferences are too far out at times - reflecting the demands on the administration of the Family Court. Hearings are also too far out, again reflecting the demands on the Court. However, in part, this is not necessarily a direct result of the 2014 changes, but of underfunding/lack of resourcing of the Family Court by the Ministry of Justice/Government. Also, in [city], we are still experiencing the brunt of centralisation of fixtures (a misplaced judge-led initiative) and of filing of applications - a Ministry initiative. Both have been problematic. (2501, Lawyer, Lawyer for the Child, Mediator (Private Practice); Survey)

Waste of time the conferences. Settlement Conferences - you are lucky to get an hour of time. The last one I attended the judge clearly hadn't read the file recently. Hearings happen about once a year and are a great way to delay a case - ask for a hearing and it won't happen for eight months. (2165, Lawyer, FDR Mediator; Survey)

Eleven professionals commented that **self-represented litigants** could find Court events "difficult" and that their presence inevitably meant judicial conferences and hearings were slowed down and took longer.

These take longer because the judge has to explain everything. There is also an expectation by parties that the judges are going to sort things then and there and that does not happen at a judicial conference as it is often only an administrative process. Hearings are really difficult because it is difficult for someone who is self-represented to question people in a constructive way - often judges end up questioning the parties which is not always that helpful. (2505, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

These are useful when lawyers are there I feel, but self-represented parties slow them down. (2457, Lawyer, Lawyer for the Child; Survey)

If self-represented people are involved in judicial conferences they invariably take much longer than the time allocated. (2344, Lawyer, FLAS Provider; Survey)

The main issue with these is when there are unrepresented litigants - irrelevant or incomplete evidence, delays while processes are explained. All conferences and hearings with unrepresented litigants take significantly longer. (2195, Lawyer, Lawyer for the Child; Survey)

Self-litigants don't understand what they are there for. Judges have to break issues and points of law into mouth-sized pieces. (2223, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

These usually are okay as long as the parties are represented by counsel. (2561, Lawyer; Survey)

Nine professionals considered that there are “too many conferences” and “**too many Court events** to get to a hearing” now.

Too many of them for no good reason - should be more counsel driven. (2221, Lawyer, FLAS Provider; Survey)

These were easier and worked better in the old system. The smorgasbord of conferences now creates confusion. (2568, Lawyer, Lawyer for the Child; Survey)

There are too many conferences. Judges need to get on with hearing cases, not preliminaries. (2170, Lawyer; Survey)

Hearings are ridiculously delayed. The judge's time is taken up with multiple conferences that mean nothing and get nowhere. Many prehearing conferences are held because hearing time is so limited. (2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Making greater use of **teleconferences and telephone meetings** was suggested by seven professionals.

These could be improved by allowing more judicial conferences to be held by phone. In my view there is a need for early intervention by a judge. (2451, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

There should be provision for telephone judicial conferences being held as a matter of course. (2509, Lawyer, Lawyer for the Child, FLAS, FDR Mediator, Mediator (Private Practice); Survey)

Some judicial conferences could be by teleconference as waiting three hours for ten minutes is so inefficient. (2349, Lawyer, Lawyer for the Child; Survey)

Judicial conferences could be dealt with as telephone conferences - more effective and would save \$\$\$. (2501, Lawyer, Lawyer for the Child, Mediator (Private Practice); Survey)

A lot of judicial conferences could be done by phone or much quicker. Some days there are dozens of lawyers at Court for five minutes before a judge to get directions all parties are agreed on. These conferences are a waste of resources and Legal Aid costs. (2294, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

The practice of listing numerous matters at the same time and working through them alphabetically while all counsel and parties wait is unhelpful and a waste of time. (2423, Lawyer, FLAS Provider; Survey)

Other more **general concerns** related to judicial conferences being “no longer meaningful”, “unnecessarily problematic” and “dependent on the calibre of the presiding judge.” Some professionals felt that separating the conferences into the different types now available was “confusing”, “arbitrary and needless” and “a waste of time.”

We don't have judicial conferences any more. The different types of conferences seem somewhat arbitrary and needless. There seems little point in having different types of conferences. Hearings do not appear to have been overly impacted by the changes in practice. The time limits are often not enforced or even referred to. (2306, Lawyer, Lawyer for the Child; Survey)

There is no need to label “Directions” and “Issues” Conferences or to prescribe what these things should have to consider. Every case is different. (2315, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Separating matters into Issues Conferences, Complex Case Management Conferences and Directions Conference is a waste of time. Why not just have our judicial conferences like we used to? Having said that, I think Issues Conferences are under-utilised because it seems that the registry tends to put in Directions Conferences instead, which sometimes leaves the Court confused about “where to go” in terms of setting a next event. It also seems to be assumed that lawyers are permitted to attend Directions Conferences even though there are no applicable criteria under s7A. Sometimes I haven't had a s7A direction and the client has had to attend Court by themselves, but the judge has permitted the other person a lawyer. I'm not sure whether anyone takes s7A seriously unless you are trying to get a Legal Aid grant and have to prove a right to appear. There are still significant delays in getting hearings. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Judicial conferences are better than Directions Conferences and I don't know why this change was made. Decisions cannot be made at Directions Conferences. There is a long form that is supposed to be completed and filed five days ahead of the Directions Conference which is largely ignored now, which is good. We produce shorter memoranda which is easier for the lawyers and for the judge. Hearings are not usually held to the strict timetabling that the forms on the Ministry of Justice website say should be followed. Since 2014 I have had only one hearing where those limited times were used. (2225, Lawyer, FLAS Provider; Survey)

Judicial conferences are just that - no orders unless by consent and only directions. Hearings can be different if they are limited as the rules provide. My experience is that not all of the evidence is available to the Court and can result in a decision which is made without a proper examination of all the evidence. (2196, Lawyer, FLAS Provider; Survey)

Three professionals were also critical of the Family Court's use of **back-up dates**.

The issue I have is the use of the back-up system that is geared around optimising Court time, but with no regard for the users including Court staff, counsel and the parties. It is not a user-friendly process. (2468, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Back-ups are unrealistic. In a small jurisdiction the same counsel are often given numerous fixtures on one day, with a primary and back-ups, which makes it impossible to prepare for. (2372, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

Judicial conferences are working well, but there is so much backlog with the new system that wasn't there before that it's hard to get Court time quickly. The Court has also started backing up every hearing, which means often getting no more than 2-3 days' notice of a hearing. This isn't working well for two reasons. Firstly, it's stressful and hard on lawyers when assigned to both the primary and back-up fixture that both need to be prepared for. Secondly, if you prepare for a back-up fixture and it doesn't go ahead then affidavits and reports become outdated, meaning you have to do them all again by the primary fixture. (2216, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Applications, Filing, Affidavits and Forms

Fifty-eight per cent ($n=211$) of the professionals completing the survey commented on how applications, filing, affidavits and forms are working in relation to the making of parenting arrangements in the Family Court. The majority (192, 91%) commented on **the forms**, with just 10 professionals expressing **positive or mixed** views about them, saying they are "fine", "work well now that we are used to them", provide "essential evidence", "have become better" or "seem okay now."

No issue with these, except they seem to use a lot of pages and unnecessary paper. (2468, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Some lawyers have struggled with the Ministry of Justice Court forms. After four years, they are now workable for me and you can make them quite concise. If I need to annex an "old format affidavit" in addition to the Court forms for Care of Children Act applications, I will do this and have not had a problem. (2534, Lawyer, FLAS Provider; Survey)

Improve the forms, don't scrap them, allow them to be edited, and encourage their use. With a bit of tweaking they would be great. I hate getting applications or defences that ignore the form and just append a statement at the end. (2184, Lawyer, FLAS Provider; Survey)

However, most of the professionals ($n=188$) regarded the forms as **one of the worst aspects of the reforms** and described them in **very negative** terms as “complex”, “complicated”, “too long”, “difficult to follow”, “unhelpful”, “hated”, “don’t enable a straightforward chronology of events”, “create an excessive amount of paper”, “a backward step”, “a mess”, “hopeless”, “clumsy”, “a nightmare”, “a disgrace”, “a shambles”, “a disaster”, “an unmitigated disaster”, “unreasonable”, “appalling”, “the bane of our lives”, “terrible”, “horrible”, “useless”, “stupid”, “silly”, “dumb”, “clunky”, “frustrating”, “impossible”, “onerous”, “dreadful”, “diabolical”, “difficult”, “confusing”, “galling”, “wretched”, “inadequate”, “shocking”, “atrocious”, “rubbish”, “utter rubbish”, “ridiculous”, “convoluted”, “rambling”, “of no practical use”, “unrealistic”, “not well liked”, “unwieldy”, “cyclical”, “badly organised”, “repetitive”, “duplicitous”, “hard to read”, “difficult to navigate”, “cumbersome”, “awful”, “painful”, “a bit of a pain”, “horrific”, “long-winded”, “not chronological or on point”, “not fit for purpose”, “hopelessly rigid”, “still not ideal”, “hard to manage”, “a significant waste of resources”, “create evidential chaos”, “are very user-unfriendly”, “a nonsense”, “hated with a passion”, “heaven forbid!”, “cannot be reliably typed on”, “time-consuming to complete”, “an absurd waste of time/paper”, “a waste of time”, “unbelievable”, “totally useless”, “such a waste of trees”, “need to be scrapped”, “need urgent amendment”, “need to be revised and simplified”, “need improvement” and “must go.”

They are the worst thing about the whole process. The forms are terrible and useless. Some idiot bureaucrat has designed them and they don’t work at all. (2291, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

The forms are the biggest backward step and create lots of paper. (2349, Lawyer, Lawyer for the Child; Survey)

Applications, filing and affidavits are vital to Court proceedings. The COCA forms are diabolical to work with. The New Zealand Family Court was very efficient prior to the 2014 changes. The documents were simple and easy to read and work with. It was a far less stressful, costly and much more efficient process prior to the 2014 changes. (2172, Lawyer, FLAS Provider; Survey)

The applications and forms are time-consuming, confusing, overly wordy, environmentally unfriendly and one of the very worst features of the new system. Way too much paperwork. (2510, Lawyer, Lawyer for the Child; Survey)

The new forms are cyclical, difficult to work through, hard to access in terms of practical completion (formatting issues) and time-consuming. They make it difficult for the client’s voice to be heard. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The new forms are badly organised, repetitive, hard to read and don’t enable a straightforward chronology of events and detail around relevant key facts and information to be recorded. (2508, Lawyer, Lawyer for the Child; Survey)

The forms should be consigned to a pre-school for the children to scribble on. (2554, Lawyer, FLAS Provider; Survey)

Everyone hates the forms, including me. They are cumbersome and duplicitous. A single affidavit setting out the deponent’s narrative account which provides the

grounds for the application is a far better and superior way of conducting Family Court business. The old applications prepared by lawyers worked absolutely fine as they set out the application and the grounds and the evidence filed then supported the application. (2304, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

The forms create even more evidential chaos than currently prevailed. The forms do not enable a narrative story to be told in chronological sequence. They encourage the inclusion of spurious allegations and material not strictly relevant. They are also difficult to use and will not allow copying, pasting etc. They are time-wasting and inefficient. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

The forms cannot reliably be typed on. They double up and cause too many problems, so we have to handwrite them. Lawyers have got around the COCA documents by doing an affidavit and attaching it as an exhibit. (2177, Lawyer, Lawyer for Child, FLAS Provider; Survey)

Appalling - too long-winded - no ability to be shortened. Sometimes the space is not enough and it's hard to make changes which require text to go onto the next page. It's hard to find the information you need and feels duplicated in parts. (2555, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The forms are terrible! They are not user-friendly at all. All local lawyers have, with the judge's approval, taken to filing old style affidavits attached to the new forms. When paginated bundles are required, they are ridiculously long with no real need. It is very difficult to locate the information required in them. They need to be amended urgently. (2179, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The forms are appalling, time-consuming, difficult to read, difficult to deal with in hearings and difficult to file. Lawyers should be able to file their own application forms, with standard affidavit evidence (in the pre-reform format). The forms are the bane of our lives. (2315, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

The forms are an absurd waste of time/paper. They are cumbersome, they don't permit headings, they take too long to complete, and in hearings they are extremely difficult to manage/ amend. They don't permit formatting and underlining, and during a hearing the additional costs to reproduce them in booklets is outrageous. (2186, Lawyer, Lawyer for the Child; Survey)

I would be amazed if anyone had anything good to say about the forms. The front page does not even make it clear which parent has filed the form. (2343, Lawyer, Lawyer for the Child; Survey)

The forms are a shambles. Repetitive and not designed to allow a sensible narrative. When completed by parties it is almost impossible to know where to look to find relevant information. When completed by lawyers this often involves an annexure sheet, which is better, but the volume of paper is expensive, daunting for parties, and it is too easy for a busy judge/lawyer to miss crucial details. (2338, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Incredible waste of paper and judges' time sifting through the forms looking for the relevant bits that used to be simply listed in the affidavit. (2523, Lawyer, Lawyer for the Child; Survey)

The forms are a disgrace. We need to revert to properly set out applications, with proper evidential rules. Very often as Lawyer for the Child I receive applications and it takes a couple of reads to actually understand what is sought and why. The Collins' reforms totally dumbed down the Family Court procedures. Undertaking a hearing and cross-examining is made so much harder due to the way "evidence" is now set out and blurred. (2279, Lawyer, Lawyer for the Child; Survey)

The forms are particularly convoluted and hard to manage. Professionals need to have a Word form that works well with all versions of Word. The COCA form provided at the start of this process does not work with Word 2016. The PDF forms are particularly hard to manage and waste an awful lot of paper. (2290, Legal Executive; Survey)

To circumvent the issues with the forms, many lawyers mentioned that they have, with judges' approval, reverted to **"filing old-style affidavits attached to the new forms."**

This has become a joke. The amount of paper required in the online forms is excessive and often unhelpful. I usually draft affidavits in the normal way and attach them as an exhibit to the forms. (2215, Lawyer, FLAS Provider; Survey)

The new forms are a nightmare and should be scrapped immediately. Too long, too repetitive, too many glitches with the documents themselves. Lawyers are much better at preparing their own documents and often the judges tell us to just attach our own onto the back of the Ministry of Justice forms. (2271: Lawyer; Lawyer for Child; FLAS

The forms we use are not helpful to the process. The structure is hard to follow and often counsel are using the form and attaching old style memorandum or affidavits to the forms. The forms may be helpful for the public, however I believe counsel should be able to use their standard documents which outlined evidence and issues much clearer. (2214, Lawyer; Survey)

The forms are unnecessarily repetitive and I know a lot of lawyers simply write "please see additional pages" and write their own affidavit. (2258, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

The forms are awful, I think we all agree on that. Too long, too repetitive, too disjointed. An affidavit needs to be able to tell the relevant story in a coherent and chronological way. The forms require too much jumping around. At least, please, please put the date on the front page of the form. Conference forms contain irrelevant information, are too long and too time-consuming. We often get a direction from the judge to file a memo "in the old format." (2568, Lawyer, Lawyer for the Child; Survey)

The COCA forms are ridiculous. They should be done away with and a simpler form produced. Almost no one uses the form fully, they type up the evidence and annex it to the form. (2170, Lawyer; Survey)

The COCA forms are a nightmare. In [city], as a matter of course, counsel ignore the forms and just attach what is essentially an affidavit in the old form to the back. I

believe the Court prefer this. However other registries will reject this, such as the [region] where I previously practiced. I use the Family Law Section Word Generator, which is not perfect, but usable. The PDF forms are terrible and I refuse to use them. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

The COCA application forms are clunky and dreadful. Local practice is for us to write “see attached” in all the boxes and just attach an affidavit like we did in the old system. (2216, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Many professionals commented that **the forms should be optional for lawyers** to use. Lawyers should instead be able to “prepare Court documents as they were trained to do” and “attach extra pages setting out all the evidence like they always did.”

It is insulting to require lawyers to use such forms, which are not user-friendly nor easy to provide the required information in. They result in excessive costs and paper wastage when bundles need to be prepared. They were never fit for purpose. (2515, Lawyer; Lawyer for the Child; FDR Mediator, Mediator (Private Practice); Survey)

The terrible new mandatory forms are unhelpful and should be either scrapped or become optional for lawyers, who all have their own much better forms: ask any judge which he or she prefers! (2373, Lawyer, FLAS Provider; Survey)

Remove the forms and let us go back to what we used to do. The forms are an entire waste of paper and we simply attach our old affidavits to the back. They are time-wasting, paper-guzzling annoying papers and should be accepted for self-representing litigants only. We should be able to do what we always did. I hate the forms with a passion, as do all my colleagues. (2308, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It is ridiculous that lawyers have to use these frustrating forms as they are repetitive and mean it is not easy to access the relevant information. Whilst I understand that the Ministry of Justice would want to make the process accessible, to make lawyers use it too is silly. (2316, Lawyer, Lawyer for the Child; Survey)

The forms are dumb. Lawyers hardly ever write in the boxes. They just attach extra pages setting out all the evidence like they always did. If lawyers are expected to address each of the boxes that they tick then they should make sure that information is provided somewhere in the evidence. The layout of the forms means that if you wrote in the boxes, there is no logical way to “tell a story” in a coherent format. This results in repetition of the same information in each box, or some important information is overlooked because it does not neatly fit into a box. I appreciate that the form layout is of great assistance to elicit necessary information from lay applicants and should remain (if in a tweaked format) for them, BUT NOT FOR LAWYERS. (2303, Lawyer, Lawyer for the Child; Survey)

They’re hopelessly rigid and complex. Lawyers should be able to produce and file their own forms from the Family Court Rules. It is cumbersome to have to use compulsory poorly formatted forms. (2462, Lawyer; Survey)

The forms are terrible and mean the Court is given far too much paper. Lawyers should be able to prepare Court documents as they were trained to do. (2236, Lawyer; Survey)

Shocking. The COCA packs are unbearable. Inadequate paragraphing. No ability to proofread the document using spell check, so you're reliant on the user. Difficult to respond to as often the paragraphs are illegible. The packs have to be regenerated from the beginning if there is a change in what applications are needed. This is time-consuming in urgent situations. It is better to just attach your own word document, but then you're left with entire parts of the COCA pack redundant. Part of our legal training is to draft applications and prepare evidence in support of the case. COCA packs are not helpful to young practitioners in training and not conducive to the fundamental basics of preparing pleadings. (2259, Lawyer, FLAS Provider; Survey)

Forms should be provided as a template, but counsel should be empowered to cut to the heart of the matter by getting rid of unnecessary paper. Judges should also have discretion to accept or refuse additional affidavits without requiring an application for leave to file. (2475, Lawyer; Survey)

The forms are ridiculous. We are trained in what information the Court wishes to have. Filling in the forms (which make no logical sense) just takes further time and effort. They are impossible to refer to during hearings and could easily be removed. (2411, Lawyer, FLAS Provider; Survey)

The forms are dreadful – don't get me started! Difficult to use, type and save. I use the front page and revert to the old affidavit form as it is much more user-friendly and our local judges prefer them. (2327, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

It is galling having to use the repetitive and "dumbed down" new forms which are clearly set up for self-litigants. I would prefer to be able to use our own affidavits and application forms, which are able to be used for everything else other than COCA matters (DV proceedings, for example). The Directions Conference form is ridiculously long. (2325, Lawyer; Survey)

Forty-nine professionals commented on the use of the forms by **lay people and self-representing litigants**. While some considered that the forms provided them with useful guidance and should really only be used by lay people and self-representing litigants (not lawyers), others were concerned about the challenges they faced with understanding, accessing and completing the forms and fulfilling the filing procedures – “self-represented people struggle with, and are overwhelmed by, them.” The forms were also said to be “onerous for them to negotiate” and often contain “unnecessary and irrelevant material” or “inflammatory accusations and hearsay.”

The COCA forms should still be available for lay people to use as they set out exactly what information is required. (2264, Lawyer, FLAS Provider; Survey)

The forms are awful. For people representing themselves they provide a guide on what information is relevant to put before the Court, but lawyers ought to be able to use a standard affidavit. (2499, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The forms are terrible and need to be done away with. They are extremely unhelpful for everyone concerned. I accept if a litigant is self-represented they could be a guide for them, but they should not be a requirement. (2517, Lawyer; Survey)

Asking unrepresented people to file their own affidavits is ridiculous. Many of them cannot write sufficiently well and therefore the documents are difficult for everyone involved to read. Unrepresented parties do not know the key points that need to be conveyed to the Court in their documents. The forms that are required for COCA are ridiculously repetitive and if I was a judge it would drive me nuts, especially for without notice applications. We used to be limited to five pages of text for without notice applications except in exceptional circumstances. That is the way it should be now. (2225, Lawyer, FLAS Provider; Survey)

Expecting ordinary people to successfully complete the required forms is unreasonable. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Survey)

I realise the standard forms were supposed to be so lay people could use them, but I have seen lawyers get them wrong regularly, so how are lay people supposed to use them? (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

The forms are terrible! They are confusing for self-represented litigants, and awful for lawyers to complete (especially the PDF forms). It would be much better going back to the old style forms with a "checklist" for self-represented litigants to ensure they cover off all the information the Court requires. (2519, Lawyer, FLAS Provider; Survey)

They're very complex for self-represented parents. They often contain nothing more than a string of allegations unsupported by evidence, but demand a defensive response from the other parent otherwise they can be accepted as fact. Hence, escalating costs and the risk of injustice when parties can no longer proceed due to financial or emotional hardship. (2480, Mediator (Private Practice), PTS Facilitator; Survey)

Unprepared litigants-in-person complete forms and affidavits with highly inflammatory material that then stays on the Court file and can be a barrier to resolution between the parties. Damage is done. (2590, Lawyer, Lawyer for the Child; Survey)

They're challenging for self-litigants and I'm concerned they jeopardise their cases by not knowing what to include in their affidavits. Self-represented clients often don't know which form to use - they file "evidence" in memorandum form, for example. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Self-represented litigants do not necessarily understand Court deadlines and the need for compliance. (2174, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Get rid of the very silly Court forms. Lawyers do not need them and the self-represented will tell judges all the wrong stuff whatever form you use. Keep it simple stupid. (2443, Lawyer; Survey)

The forms are atrocious and just have to be gotten rid of. I lose the will to live each time I have to deal with them. How on earth is a self-represented person supposed to deal with them? (2549, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Fifteen professionals commented on **filing** which was said to be “unnecessarily complex.” This was not just “because of the 2014 changes, but also the result of other initiatives” like centralisation. The most frequent complaint concerned documents that were filed on time “**not actually making it to the Court file.**”

Applications getting lost, even though there’s a stamped acknowledgement and a filing fee paid. (2495, Lawyer; Survey)

The forms are hopeless. Centralised filing in [city] is still dysfunctional despite much money being spent (they’ve probably spent more than they have actually “saved”). There needs to be an electronic filing system implemented without delay and remote access to a Court file if you are on record - much like LINZ. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Difficulties in dealing with the [city] Family Courts because of their centralised system. (2540, Lawyer; Survey)

Having to file most things over the counter is time-consuming, and documents filed that way seem more likely to not be on the Court file than ones sent electronically for some reason. (2550, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Suggestions to improve filing included reconsidering the need for original affidavits to be filed as a hard copy, reconsidering the timing rule for filing memos, the registry being “stricter on accepting documents that do not comply”, allowing applications for a reduction of time, installing a “drop-box” near a Court counter for documents, improving the forms generator, and introducing an electronic filing and management system.

We should be able to file affidavits by email. If the Court can serve us by email then it would assist if we can do the same. (2226, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Filing of documents by email has been a great boon. We need to get conformity with whether or not originals of memoranda are required. (2290, Legal Executive; Survey)

The forms are impossible! Filing electronically is great. This should be an acceptable method of filing ALL Court documents. Original affidavits are still required to be filed as a hard copy which seems ridiculous now that without notice filing is accepted electronically. (2564, Lawyer, Lawyer for the Child; Survey)

Electronic filing of without notice applications works well and moves should be made to an electronic filing and management system. (2493, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

The 2/3 day rule of filing memos means the judge doesn’t see all the memos, which I am sure is singularly unhelpful to the judge. Sometimes it simply is not possible to file in that time as things change. (2349, Lawyer, Lawyer for the Child; Survey)

The lack of ability to apply for a reduction of time to filing a defence means there is no longer a hybrid category of proceeding as there once was. (2236, Lawyer; Survey)

It is sometimes difficult filing over the counter at [city] as there is no separate Family counter and you have to wait for the staff to advise self-represented clients. A drop box for Family Court documents has been promised, but has not been actioned. (2374, Lawyer, FLAS Provider; Survey)

Once it is in writing you cannot take back the effect it has had on the person reading the pleading. In over 20 years of practice I don't see a benefit. Pleadings are an archaic and blunt instrument that ought to be shelved in a museum. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

Filing some documents is hard because of the restrictions under s7A. Sometimes I never know if what I've prepared has been filed (and I never get informed by the client about a s7A direction) or if the client never filed it. The forms generator is unwieldy because sometimes you generate what you think you need, then the client adds an issue you weren't previously aware of (e.g., a guardianship dispute) and you need to create another form. The generator gives you the option of creating other types of applications, but the Court won't accept interlocutory applications e.g., substituted service on the generated form. Some of the forms are not compliant with the Family Court rules and have an incorrectly stated section reference. The generated forms can be HUGE running to many pages and require repetition of evidence. The generated forms don't text wrap so when you get to the end of the page you just run out of space and have to start a new page. This makes it harder to go back and add in further information. Also, the amount of space allocated to some areas is too short and to other areas is too long. If you don't use the space the form isn't able to be made shorter. Our old forms were shorter, easier to amend and easier to read. I would like to be able to have my own forms and leave the computer-generated forms to self-represented litigants who need the explanatory notes about what to write. The notice of response form is odd because replying to an affidavit doesn't divide evenly into "what I agree with" and "what I disagree with." An affidavit in reply is a more flexible document than that and needs to be able to address allegations clearly to comply with rules of evidence. There also needs to be space to add the respondent's own issues and counter-claims. It is not uncommon for lawyers to ignore the format of the forms and write "see attached" and then attach a clearly set out Word document in the "old style" affidavits. This collates the information far more succinctly. I do like rule r416Q because it is helpful to be able to tell clients we can't file affidavits at random times (necessitating an affidavit in reply) just because a situation has cropped up that according to the client the "judge must know about right now." It has controlled the flow of affidavit evidence and kept evidence more relevant. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Two professionals criticised **lawyers' ability to draft affidavits** and one lawyer suggested **professional development training** on affidavits would be useful.

Too many lawyers lack the skill to draft affidavits in a focused and relevant way and leave it to their clients to write rambling novellas. (2512, Lawyer; Survey)

I cannot believe how BADLY affidavits are written by lawyers. I spend a lot of time with clients with their drafts, detailing them more clearly, taking out ambiguity, adding lots

of missed detail. Most look like they are written by someone from intermediate school. I am not exaggerating. Sloppy, uncaring, unprofessional lawyers charge terrible prices and use fear to hook people in. (2299, PTS Facilitator; Survey)

It would be good for lawyers - even experienced lawyers - to have some some CPD on what should go into affidavits as too often things are missing that should be there, or things are there that should not be. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

e-Duty to Allow Judges to Make Decisions on Urgent Applications

e-Duty is an online portal that allows judges to immediately review and make decisions on urgent applications to the Family Court.

Fifty-four per cent ($n=198$) of the professionals completing the survey commented on how e-Duty is working in relation to the making of parenting arrangements in the Family Court. The majority of these (157, 79%) were **positive or very positive about e-Duty**, saying that it “works well”, “works fine”, “works okay”, “works efficiently”, “is very useful”, “brilliant”, “excellent”, “fine”, “great”, “very good”, “mostly good”, “good”, “sensible”, “important”, “an amazing process”, “a great service”, “a great idea”, “an improvement”, “a fantastic resource”, “a very helpful and efficient service”, and “a good and progressive innovation”.

Very good service and standard of performance for the most part. (2292, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

This is useful where there is a genuinely urgent application. (2360, Psychologist; Survey)

This works well. On rare cases where knowledge of the file is needed there is the ability to refer to a local judge. (2402, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

This usually seems to work well, probably due to the calibre of the judges involved. (2561, Lawyer; Survey)

This is useful and fairer because you have all judges considering matters and not judges in one particular region. (2433, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

This is an amazing process and I am so impressed on the whole with the decisions' judges come out with on this platform. It serves a real need. If only judges had more resourcing and time to give slightly more information about their decisions than just a couple of lines – but this has certainly improved in the past few years. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

It's great as we wouldn't always have a judge available to make a decision. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Nine professionals specifically commented on the **rapid turnaround of urgent applications** resulting in quick decisions via the e-Duty platform – “fast and efficient”, “processed quickly”, “swift outcome”, “speedily given”, “the turnaround is quick.”

It's good to know an application filed by 3pm will be dealt with today. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

A well-crafted succinct application can be dealt with speedily by a judge anywhere in the country. (2475, Lawyer; Survey)

Only nine professionals (5%) **did not think e-Duty was working well**, saying they were “uneasy about it”, that it was “problematic”, “random”, “very risky”, “not always the best”, “a necessary evil”, or that “due to misuse it is not working well.”

e-Duty is problematic. The practical operation of it at times causes issues that would not arise if the application was dealt with by a local judge and with the actual file at hand. (2501, Lawyer, Lawyer for the Child, Mediator (Private Practice); Survey)

Random. Don't like the fact that the judge has so little knowledge of the file. (2592, Lawyer, Lawyer for the Child; Survey)

Probably a necessary evil – better if done by a judge in the region. (2574, Lawyer, Lawyer for the Child; Survey)

Problematic when there is a history not apparent on the new application. (2546, Lawyer, Lawyer for the Child; Survey)

This process is not always the best and most Courts have found a way to manage the matters that should not go to judges on e-Duty. (2316, Lawyer, Lawyer for the Child; Survey)

Risky, but probably necessary. Asking Court staff to precis the history and prior proceedings has led to matters being missed or misunderstood or inaccurately reported. It may also bring into account the objectivity of the decision maker. (2570, Lawyer, Lawyer for the Child; Survey)

Eighty-one (51.6%) of the 157 professionals who made positive comments about e-Duty, and 32 others who made general comments and did not indicate how well they thought e-Duty was working, also raised **issues and concerns about e-Duty**, some of which were noted above by those who felt it was not working well.

The most frequently raised issue (by 26 respondents) concerned the **high volume of applications** that were, at times, “overloading” the e-Duty platform – it was “sometimes overwhelmed”, “clogged with applications”, and involved “high use of a limited resource.”

I have had a number of urgent matters that have had to wait until the next day because there has been such volume on the platform. (2496, Lawyer, FLAS Provider; Survey)

At times too many applications are filed in one day and not all can be dealt with. (2193, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The volume of applications, because of the reforms, is considerable and so this process requires a large volume of judicial time. (2489, Lawyer, Lawyer for the Child; Survey)

The e-Duty judges are swamped – the processes around applications needs to change. (2315, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

The large number of without notice applications means it is difficult for Court staff to process what is needed {e.g., appointing Lawyer for the Child, s131A report direction etc}. There needs to be better consideration of the impact of orders with the Court time delays e.g., why not order supervised contact through an approved provider if Lawyer for the Child considers this and states in their report that it is in the child's best interests. (2577, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

Overuse of e-Duty because too many without notice applications are being made without proper grounds. (2380, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The numbers may mean that each application is not getting the time it needs for proper consideration. (2306, Lawyer, Lawyer for the Child; Survey)

Just lately, especially on a Friday, the e-Duty platform has been full and applications are held over to the next day. (2290, Legal Executive; Survey)

I have been unable to get the results of without notice applications because the judges have filled their quote for the day. Not good enough! (2176, Lawyer, Citizens Advice Bureau Staff Member/Volunteer; Survey)

It creates immense pressure for judges and, at times, the volume is so great it takes multiple judges' multiple days to get through one day's filing. (2183, Lawyer, Lawyer for the Child; Survey)

It is hard at peak times not to action without notice applications if CAP has been reached. (2502, MOJ Staff Member; Survey)

My major concern is that frequently the platform is at capacity and urgent applications have to wait until the next day to be considered. I have heard of an instance where an application had to wait for two days. (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, Citizens Advice Bureau Staff Member/Volunteer; Survey)

Our registries are not good at getting applications loaded on time. It can take hours after you have filed to hear that it's been loaded but, even worse, you might file by midday only to be told later (usually about 2.30pm) that it won't be looked at until tomorrow by a judge. (2204, Lawyer, FLAS Provider; Survey)

It is extremely busy. We have recently had anecdotal reporting of people filing without notice applications and the auditor advising that the capacity of e-Duty filing for that day has been reached. This has the potential to put children at risk. (2508, Lawyer, Lawyer for the Child; Survey)

An enormous burden and unsustainable at current volumes. (2185, Judge; Survey)

Six lawyers reported being particularly irked when an urgent application filed prior to the registry's daily cut-off time, was **held over for review by a judge the following day** due to overloading of the e-Duty platform.

You have to get your applications in by about 1pm if you want them dealt with the same day. (2549, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

We have been told that all applications will be dealt with on the day if they are filed by 2pm, but that is not the case and on occasions clients have had to await a Protection Order till the next day because the platform is overloaded. (2186, Lawyer, Lawyer for the Child; Survey)

Generally fast, but still some delays. Usually we are told that if we file on the e-platform by 2pm we will have a decision that day, but sometimes it's not until the following day. This can have significant detrimental impact for those cases involving very serious safety issues. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

The local experience has been that urgent applications are not being reviewed because the quota for that day had been reached even when the application has been filed within the cut-off time. This is not acceptable where there are issues of domestic violence. In my opinion it is a matter of time before an application is not seen, because of the quota, and a client will suffer the consequence. This will not only be tragic for the client, but will also surely result in a huge level of criticism for the Court. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Two professionals were critical that the volume of applications meant that e-Duty was **utilising too much judicial resource** and therefore limited hearing time in the local Court.

The reforms have created a huge increase in this work, so too much judicial resource is used here. (2590, Lawyer, Lawyer for the Child; Survey)

A fantastic resource, but it takes judges out of Courtrooms and limits hearing time. (2169, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

The second most frequently raised issue (by 24 respondents) concerned the **inconsistency and variability of the decisions being made on the e-Duty platform**. Professionals mentioned "some rogue decisions" and said that "sometimes decisions are surprising", "out-of-touch", "the occasional weird decision", and "some pretty embarrassing decisions."

There is a difference in how these are dealt with in different jurisdictions, which can be confusing at times. (2208, Lawyer, FLAS Provider, Citizens Advice; Survey)

Can be a pretty random outcome depending on who the judge is. (2549, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

This seems to work although there is a lack of consistency of decisions, and due to the number and pressure sometimes errors occur. Overall, a good system. (2354, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

It reveals the great inconsistencies around the country in the interpretation of legal thresholds being met or not. This makes it very difficult to advise clients. (2246, Lawyer, Lawyer for the Child; Survey)

In our experience some applications are not fully considered and the minutes coming back reflect this – inconsistent directions. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Some major mistakes happen at this point, sometimes leading to a case becoming more complex and entrenched. (2362, Counsellor, Psychologist, Specialist Report Writer; Survey)

There is a rather obvious inconsistency between judges, particularly in North vs South Island judges, in terms of whether an order is granted. Occasionally, some really strange decisions are made. (2179, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Fifteen respondents were critical of **judges' lack of accessibility to case files** which could result in poor knowledge of the history of a case.

The e-Duty judge does not have the historical file available to them so decisions are made in a vacuum. E-bench is good for files with no history. (2563, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Unhelpful when there is a complex history and file is needed as background. (2586, Lawyer, FLAS Provider; Survey)

I worry they are making decisions in a vacuum without access to the rest of the background or prior file. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

If the system can be amended so the e-Duty judge has access to the whole file that would be of great assistance. (2411, Lawyer, FLAS Provider; Survey)

One issue is new without notice applications on existing files. You can have an out-of-town judge make a random decision. Our registry tries to triage those applications to a local judge if they are available and that process seems to work well. (2489, Lawyer, Lawyer for the Child; Survey)

With judges across the country rostered onto the e-Duty platform there was criticism by eleven professionals that **urgent applications were no longer being dealt with by a local judge**. They considered that e-Duty judges' lack of familiarity with local cases, particularly where there was a history of Family Court involvement, was problematic.

A big disadvantage is the out-of-town judges dealing with families that have a history of Family Court involvement and this isn't known or matched up on the e-Duty platform. (2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The difficulty with the nationwide system is that the judge dealing with the application has no local knowledge. (2179, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Pre-reforms it worked really well where local judges dealt with urgent applications and could ensure a matter was set down before them if short-notice hearings were required. (2279, Lawyer, Lawyer for the Child; Survey)

The without notice applications should be looked at by the judges who sit in the Court of filing. (2488, Lawyer; Survey)

Judges may not be familiar with local cases that can require local knowledge. (2424, Lawyer, FLAS Provider; Survey)

Not knowing the judge makes it harder to predict the outcome of an application. I have had some strong applications turned down (to the surprise of the registrar) and seem some very weak applications succeed. I believe this may be because judges are being expected to process too many urgent applications in a short period of time. (2566, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Concern that judges are making decisions on cases with no intimate knowledge of the situation which local judges might have. (2579; Lawyer, Lawyer for the Child, FLAS Provider; Survey)

One respondent, however, flipped this concern and noted that e-Duty also meant the judges were unfamiliar with the lawyers' filing the urgent applications.

Because the judges don't know the lawyers making the applications the outcomes are sometimes wrong i.e., applications are granted that shouldn't be. They are granted because the lawyer has misled the Court as to the urgency and facts. (2288, Lawyer, Lawyer for the Child; Survey)

Five people expressed sympathy for **the judges** due to their "heavy workload" on e-Duty - "I feel sorry for the judges", "they must be very overworked some days." One mediator queried whether judges should be specifically trained for their e-Duty role – "there is a need for this as assessing risk is always paramount."

The nature of the **information, affidavits and exhibits** associated with urgent applications was raised by five professionals who were concerned about the suitability of the e-Duty platform for detailed applications and the fact that necessary information did not sometimes reach the judge.

An application which requires a detailed affidavit or a plethora of exhibits (for example, to detail instances of abuse) may become too unwieldy to send by email. (2475; Lawyer; Survey)

Stuff that is filed too wordy reaches capacity on the platform too soon. (2424, Lawyer, FLAS Provider; Survey)

Potential issues arise with huge affidavits. Often we ask the registry to send other information from a previous or active file to the judge as this could be highly relevant to determining the without notice application, but it doesn't always get sent. (2519, Lawyer, FLAS Provider; Survey)

Without notice applications should not be refused because the documents were scanned in the wrong order. (2585, Lawyer, FLAS Provider; Survey)

The correct information is often not in the applications. (2505, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

I do have a concern that the correspondence sent by counsel doesn't get seen by the judge. I have been on the other side of cases where counsel has included important information (e.g., the involvement of counsel for the respondent) only in their email to the Court and the judge is not being notified of this type of information. (2342; Lawyer, Lawyer for the Child; Survey)

Four other professionals were, however, concerned **whether judges actually read the applications properly.**

My concern is that duty judges cannot possibly read the material that is filed in without notice applications. Some are 50 pages in length instead of the five pages that used to be allowed. If you can't make your case in five pages you shouldn't be a lawyer in the Family Court. (2225, Lawyer, FLAS Provider; Survey)

It would appear the judiciary skim read affidavits. (2416, Ministry of Justice/Court Staff Member; Survey)

Two professionals recommended **greater matching of applications by the same parties filed on the same day.**

Generally, a good system. Would be improved by having some system to match up documents filed on the same day by the same parties and/or linking them to current proceedings across the country. (2582, Lawyer, FLAS Provider; Survey)

Sometimes misses the fact there are already proceedings filed and can cause confusion when more than one without notice application is filed on the same day by different parties. System seems to be constantly improving though. (2277, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

One lawyer wanted a greater ability for the **respondent to file an urgent response.**

There should be a pick wick option/ability where there are current proceedings i.e., the option for the respondent to file an urgent response and a decision made on the papers. (2255, Lawyer, FLAS Provider; Survey)

One professional recommended **more resourcing for e-Duty** and another suggested a **move to a paperless system.**

The Court should allow more documents to be filed by email rather than having to file the original copies of everything so as to move closer to a paperless system. (2264, Lawyer, FLAS Provider; Survey)

Caseflow Management

Forty-nine per cent ($n=179$) of the professionals completing the survey commented on how case management is working in relation to the making of parenting arrangements in the Family Court. Nearly a quarter of these professionals ($n=43$, 24%) made a **positive response** about case management and said it “works very well”, “works well”, “works okay”, and is “generally good”, “generally excellent”, “fantastically efficient”, “working superbly”, “pretty efficient”, “very good”, “good”, “usually good”, “reasonably good”, “okay”, “effective” and “fine”. Some specifically attributed this to the competence of the Court staff.

We have excellent Court staff in the Family registry at [city] now and they manage the caseflow very well. [2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey]

We are so lucky to have an approachable and efficient registry staff, so our caseflow management is generally good. (2354, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

[City] is working superbly thanks to court registry staff going above and beyond and working ridiculous hours. (2238, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Generally good – the court registrars work very hard. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Others qualified their positive response about caseflow management by noting that it depended on the staffing of a particular Court, or worked well in one Court but not another.

Good in [city], but files I have based in other Courts are not nearly so well case-managed. (2257, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

At [city] Court this is very good. [Another city] not so great. (2564, Lawyer, Lawyer for the Child; Survey)

It’s okay if we have the same case manager, but they keep leaving due to stress. (2308, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Works well when the staff are trained, but there are issues currently with staff changes. (2478, Lawyer; Survey)

This is dependent on the quality of the staff managing it. Overall in my areas we are well served and this keeps it going as well as it can given the limitations on resources. (2321, Lawyer, Lawyer for the Child; Survey)

Over three-quarters of the 179 professionals ($n=136$, 76%) commented that **caseflow management was not working well** and described it as “appalling”, “struggling”, “diabolical”, “poor”, “very poor”, “poorly administered”, “variable”, “tiresome”, “suffering”, “a joke”, “terrible”, “hopeless”, “rubbish”, “pointless”, “random, hit and miss – generally miss”, “non-existent”, “mainly problematic”, “hopeless”, “a disaster”, “difficult”, “deteriorating daily”, “problematic”, “inconsistent”, “awful”, “challenging”, “too rigid” and “not so great”. The most frequently mentioned concern by 40 professionals in relation to the inadequacies of Case Management related to **lack of timeliness and delays** - for example,

with processing on-notice applications, report writer referrals and availability of reports, referrals to counselling, receiving minutes back and getting Court orders issued. Other factors raised concerned the inability to reach a case officer directly; lost files, files not being at the Court, or registrars not taking ownership of a file; centralisation; unrealistic time frames; the inefficiency of a registry; understaffing; inadequate training; inexperienced staff; increased registry workloads and lack of resourcing.

What caseflow? Delays are disgraceful and harming children – more judges needed. (2574, Lawyer, Lawyer for the Child; Survey)

Too many files to the number of staff. There are always delays on the standard track files. Some lawyers consistently miss Court deadlines with no repercussions, which holds up the matter in the Court. Matters settling at the last minute wastes precious hearing time. (2519, Lawyer, FLAS Provider; Survey)

There are blocks and holes in this. Frequently report writers write directly to the Court asking for information or direction from the Court and there is no response. The dates for specialist reports are too short with the cases being very complex. (2360, Psychologist; Survey)

The decision to do away with dedicated case officers who were familiar with the files they were responsible for has been problematic. (2515, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

Specific time frames under the Act/Rules are often unable to be complied with for practical reasons. (2306, Lawyer, Lawyer for the Child; Survey)

Sometimes there are grey areas around processes as not everything is covered on our knowledge base and we did not receive adequate training before the changes were made. There does not seem to be a national standard for all processes, but a lot of different local ones. It is a case of trial and error sometimes, or of having to get clarification from Judges. (2415, MOJ Staff Member; Survey)

Some Registries are terrifically competent and a pleasure to deal with; others are hopeless – especially those where you are never able to talk to the actual case manager or where no one is assigned to a specific case. (2174, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Registry staff are swamped. The registry reviews which used to work well and keep files moving have gone by the wayside, which is a shame. (2489, Lawyer, Lawyer for the Child; Survey)

Reflects the lack of Judges and resources. (2544, Lawyer; Survey)

Court administrators are too often behind in their work or inundated or simply don't keep track of files. (2222, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Our registry is an awesome bunch of committed people, but they struggle with the workload and this has an impact on caseflow management. (2496, Lawyer, FLAS Provider; Survey)

The stupid sinking lid means staff shortages, overwork of those who remain, and cases slipping into unmonitored holes. (2372, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

Many files have changed case managers multiple times in a short period. There seems little point in knowing the case manager if you can't actually communicate with them. (2331, Lawyer; Survey)

It does not work well in the [city] Courts. Too many files and no accountability with the registry. High turnover of staff with minimal training means that the systems for case management do not operate effectively or efficiently. (2536, Judge; Survey)

Major issues. [city] registry is severely understaffed and high turnover means constant shifting of files and progress/monitoring. Other issues include consistency of practices across the different regions. (2582, Lawyer, FLAS Provider; Survey)

Local Courts are completely swamped, overworked and, as a result, impossibly slow. (2178, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I am primarily in [city] Court which is an administrative shambles, so there is little in the way of caseflow management because nothing gets past the registry staff – it just sits on the floor or on desks. (2292, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

Huge pressure on overworked staff – delays are common. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Deteriorating daily! Local Judges are now recording in conference minutes how poorly the file is being managed/maintained. We cannot rely on documents being placed on the file, on directions being actioned (e.g., s132 reports), on case management reviews being dealt with on the day or even week they are scheduled, on proceedings being served – even on proceedings being entered into CMR promptly. And the rot is spreading. Previously the [city] Court was very well served by its registrars, however their move away from a separate Family Court reception has coincided with a very significant decrease in their caseflow management. (2246, Lawyer, Lawyer for the Child; Survey)

Five professionals attributed some of the case management inadequacies to the challenges faced by **self-representing litigants** in the Family Court.

It is difficult for self-representing litigants to know how to progress their case through the CMR process. Registrars are reportedly having to provide a lot more advice to self-representing litigants which is not part of their role and takes up their (already) compromised time. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

All of the Courts I deal with are struggling with a backlog and I am aware that the case officers find dealing with self-representing litigants very challenging. (2316, Lawyer, Lawyer for the Child; Survey)

Suggestions to **improve case management** included “counsel complying with timetabling”, having “case officers who know the case and keep it moving within the system”, returning

“to the Family Court Co-ordinator role to manage cases through the Court”, implementing an “experienced family team in each registry”, and having “a portal (like in parts of Australia) so that lawyers can access all the Court documents filed for their client”.

The success of caseflow management is dependent on the Court Registries having full family teams. It is also dependent on the Ministry of Justice ceasing the practice whereby they rotate their registrars between the civil and criminal jurisdictions. The ideal would be a full experienced family team in each registry. (2508, Lawyer, Lawyer for the Child; Survey)

Cost Contribution Orders

Cost Contribution Orders (CCOs) were introduced in the 2014 reforms under s135A of the Care of Children Act 2004 to require people to pay part of the cost of Lawyer for the Child, lawyer to assist the Court and specialist report writers when appointed by the Family Court in their particular case. Each party is required to pay an equal one-third share of these costs, with the government paying the remaining third. The Court may, however, decline to make a Cost Contribution Order if it is satisfied that imposing such an order would cause serious hardship to the party or to a child of the party. Prior to the reforms the cost of Lawyer for the Child, lawyer to assist the Court and specialist report writers was funded by the government, although in certain circumstances the Court could order a party or parties to contribute, which rarely occurred.

Forty-six per cent ($n=168$) of the professionals completing the survey commented on how CCOs are working in relation to the making of parenting arrangements in the Family Court. Just one-fifth of these professionals ($n=35$, 21%) made **positive responses** about CCOs and said they were “good”, “fine”, “helpful”, “excellent”, “working well”, “generally working okay”, “generally appropriate”, “usually reasonable”, “okay sometimes”, “done fairly” or “should be maintained.” Some who agreed with CCOs also said there were other factors that were important to consider – e.g., the competence of the Lawyer for the Child and specialist report writer, the parties’ efforts to settle their parenting dispute or any unreasonable or vexatious behaviour creating delay and obstructing their ex-partner or the Court.

This is one element which seems to work okay. (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, Citizen’s Advice Bureau; Survey)

Mostly fine as the judges are taking a sensible approach. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

A good stick to wave at self-litigants early in the piece. (2223, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

It is a good tool for the Court to have to keep some litigants in hand. (2532, FDR Mediator; Survey)

I like the idea in principle and the judges have been very fair in how they apply the rules. (2439, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

A good idea for those people who like to ‘use’ the system to get at the other party. (2188, Lawyer, FLAS Provider; Survey)

I sometimes think that some litigants, particularly if they are being obstructive/vexatious, may change their behaviour if they are required to contribute to the cost. (2377, Psychologist, Specialist Report Writer; Survey)

Should be made where a party has deliberately been obstructive or confrontational and not accepted decisions of the Court against that one party. (2329, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

I think the Ministry of Justice would be better off making costs orders against parties who failed to comply with directions, were unreasonable, or created delays. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

Fair enough if the Lawyer for the Child has done their job. (2544, Lawyer; Survey)

Agree, but where parents make an effort to settle they should be exempt. (2574, Lawyer, Lawyer for the Child; Survey)

Usually the judges seem to be fair, but every so often a private client gets lumped with a CCO when the legally aided party was the problem and doesn't have to pay. (2519, Lawyer, FLAS Provider; Survey)

Where parties delay or obstruct assessments and proceedings there is a need for these parties to meet the costs. (2360, Psychologist; Survey)

A good idea in theory, but not with incompetent Lawyers for Children or s133 report writers. (2184, Lawyer, FLAS Provider; Survey)

Over half of the 168 professionals ($n=98$, 58%) **did not consider that CCOs were working well** and described them as “wrong”, “a travesty”, “a barrier”, “a shock”, “a waste of time”, “irrelevant”, “ineffective”, “very unfair”, “arbitrary”, “bureaucratic”, “very stressful for parents”, “unjust in some cases”, “unreasonable”, “discriminatory”, “onerous”, “inconsistent”, “tricky”, “tough on parties”, “a waste of judicial time”, “punitive and counterproductive”, “time-consuming”, “unhelpful”, “stupid”, “problematic”, “a pain in the neck”, “a bit of a joke”, “complicated”, “pointless”, “a safety risk”, “they add to the conflict” and “a burden and a worry for parties who are already under enormous stress.”

In light of the issues involved in family law cases, apportioning costs is fraught with difficulty. (2361, Lawyer, Lawyer for the Child; Survey)

Thirty-five professionals noted that **CCOs were “rare”, “very rare”, “seldom made”, “not used very often” or “few and far between.”** This was either because clients were primarily legally aided and therefore “exempt” or because judges were reluctant to impose such orders on parties.

Most of my clients escape CCOs by being legally aided. (2374, Lawyer, FLAS Provider; Survey)

As most of my clients are legally aided, common sense prevailed and none are awarded against Legal Aid clients. (2327, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

These are very rarely ordered in my experience so again this is an increase in administrative process for little financial gain. It's a loss leader. (2489, Lawyer, Lawyer for the Child; Survey)

In virtually all cases I am involved with no CCO has been ordered. Judges appear loathe to make them as the vast majority of people are not abusing the system. I don't consider the risk of a CCO being made influences parties' decision-making. (2304, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

I have only had one case where the client has brought this to my attention as he was asked by the Court to file submissions. I don't agree with the parties having to make these cost contributions. It's like penalising them for seeking the assistance of the Family Court. (2534, Lawyer, FLAS Provider; Survey)

Hardly ever used by the Court as the Court will find whatever ways they can to avoid these orders. (2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Most of the cases I see the judge dismisses CCOs quite routinely. (2303, Lawyer, Lawyer for the Child; Survey)

A silly waste of everyone's time and energy, which the Courts sensibly and appropriately routinely ignore. (2373, Lawyer, FLAS Provider; Survey)

Where CCOs were made, concern was expressed by 26 professionals about the **lengthy delay in issuing the CCO to the parties**. These were often sent out months, or sometimes years, after the proceedings had ended and could create confusion for the parties. It was thought best for CCOs to be dealt with automatically by the judge familiar with the case at the conclusion of the final Court event.

We are trying to deal with these at the last appearance of the matter because, otherwise, the letters appear in the client's mail box months later. (2496, Lawyer, FLAS Provider; Survey)

Too many delays in making decisions on CCOs. Should be dealt with at the conclusion of the hearing/proceedings. (2241, Lawyer, FLAS Provider; Survey)

Sometimes the CCO doesn't come out until 6-12 months after the case is closed. (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, Citizens Advice Bureau Staff Member/Volunteer; Survey)

This is just more unpaid work for the lawyers down the track helping people deal with a letter they receive 6 months after everything is finished! (2203, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The admin of these seems quite slow and by that stage clients often just pay their share and don't want to file anything further as they are exhausted. (2457, Lawyer, Lawyer for the Child; Survey)

These orders often seem to be made quite some time after the matter has been completed and I'm not certain that people understand what they are receiving e.g.,

when they need to file a submission/budget about why an order should or should not be made. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Concern regarding **the impact of CCOs on clients** was raised in two primary ways – firstly, in relation to **which particular clients potentially fell within the ambit of a CCO** ($n=26$). CCOs are not awarded against Legal Aid clients, but professionals questioned the fairness of imposing them i) on private clients who sat just above the Legal Aid threshold or were middle income earners, ii) on grandparents caring for their grandchildren, and iii) on clients whose ex-partners were the ones engaging in unreasonable, vexatious or obstructive conduct.

This is a very unfair system. Automatic exemption for payment by those who are legally aided is not a problem. It is very unfair for those who don't qualify for Legal Aid or choose to self-represent, but who have made a necessary application or appropriately responded to one and have acted responsibly. (2195, Lawyer, Lawyer for the Child; Survey)

They impact significantly on middle NZ who do not earn much, but too much to qualify for Legal Aid. (2169, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Unjust in some cases. A large portion of people who fall outside the Legal Aid criteria often have little choice but to be involved in proceedings. Grandparents and other family members who often take protective steps, and are already assuming the financial burden of caring for a child that is not their own, are then further burdened with a CCO. (2259, Lawyer, FLAS Provider; Survey)

There should be exemptions for grandparents/caregivers who have been placed in a position where they apply for Orders to keep children safe. I often see grandparents seeing what Oranga Tamariki should be doing and bearing huge costs in the process. (2529, Lawyer; Survey)

Unfair for there to be an automatic sharing of costs when sometimes the conduct of one party leads to greater costs. (2494, Lawyer, Lawyer for the Child; Survey)

Every so often a private client gets lumped with a CCO when the legally aided party was the problem and doesn't have to pay. (2519, Lawyer, FLAS Provider; Survey)

Ineffective and unfair at times, particularly where one party is legally aided and the other not. Effectively means an aided person is immune from any financial consequence of poor decision-making. (2455, Lawyer, Lawyer for the Child, FDR Mediator; Mediator (Private Practice); Survey)

Creates inequity between the parties where one is legally aided and the other isn't. A legally aided party can often behave with impunity. (2277, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

Secondly, the impact on clients was raised in relation to **client affordability** ($n=14$). CCOs were considered “a big financial burden for many parties”, “most litigants can't afford these”, and “non-legally aided parties are already often financially stretched.”

We have many clients who are just over the threshold for Legal Aid and struggling to pay their legal bills, who then become potentially liable for a CCO. Clients that are legally aided can delay resolution knowing that non-legally aided clients could be compromised and may elect to withdraw from the Court process. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Tough on parties where proceedings are taken without merit. In a small province where we live many people just miss out on Legal Aid, but have very modest incomes and struggle to pay for their own lawyer let alone additional costs. (2372, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

Even if the contribution is very little, it can be financially very difficult for some clients. Private clients are not necessarily wealthy just because they are above the Legal Aid threshold. (2225, Lawyer, FLAS Provider; Survey)

Nine professionals also expressed concern about the impact of CCOs on **clients' perceptions about the use of Lawyer for the Child and specialists** within the Family Court.

If a specialist is needed in order to ensure sound decisions for children and representation of their views, then this should not be jeopardised by parties being concerned about the costs of this. (2493, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

They do not encourage support for the Lawyer for the Child role or the use of specialist report writers. (2325, Lawyer; Survey)

Shocking – get rid of these since the parties do not get to say who Lawyer for the Child or the psychologist is to be. The judge appoints when they see reason to do so. So if the judge sees the need why should parties be asked to pay for reports for the Court's benefit? (2445, Lawyer, FLAS Provider; Survey)

I feel very uncomfortable about parties potentially being asked to contribute to the cost of my reports, as it may affect their expectations. It does not impact my decision-making processes, but it seems a little like asking someone to pay for their own execution. Parties are not expected to contribute to psychological assessments in other Court settings such as pre-sentence reports or intellectual functioning assessments for criminal liability. (2369, Psychologist, Specialist Report Writer; Survey)

Problematic. No ability for parties to know what costs are being incurred. No ability for parties to have input into whether these costs are reasonable. Not enough time being given to parties to file submissions in response. (2342, Lawyer, Lawyer for the Child; Survey)

This undoes all the work that was done in getting agreements in place. (2424, Lawyer, FLAS Provider; Survey)

I have seen folks get antsy with report writers for whom they are paying. I think some parents feel they have a sense of entitlement to regard the report writers and Lawyer for Child as 'their contractor' given they are paying towards their costs. (2495, Lawyer; Survey)

Access to justice issues were specifically raised by seven professionals who considered that CCOs are “a barrier” to seeking the Court’s help, “a fear tactic to scare people away” and “dissuade people from fully using the Court.”

Yet another barrier to access to justice and part of an effort to privatise the system. (2227, Lawyer, Lawyer for the Child; Survey)

CCOs should only be reserved for vexatious litigants etc. Too often people who do not have the means and were involved in proceedings for the benefit of their children or grandchildren are then hit with a bill. So much for access to justice. (2279, Lawyer, Lawyer for the Child; Survey)

The higher the income, the more contribution for the same service – is this fair? (2305, MOJ Staff Member; Survey)

Given that clients have no choice in the appointment of Lawyer for the Child/s133 report writer, I do not think they are just. (2592, Lawyer, Lawyer for the Child; Survey)

Unfair to those having to fund themselves against a legally aided client. Reduces access to justice to worthy litigants. (2231, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

The **cost-effectiveness of CCOs** was raised by 13 respondents who questioned “the costs in administration and collection”, the amount of “judge/registry time” that CCOs took up, or the amount of money that was actually being recovered from the parties.

It would be interesting to know what the rate of recovery is against the cost of administering this. (2338, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I would love someone to OIA the Ministry of Justice as to how much has actually been recovered from CCOs. (2185, Judge; Survey)

Very rarely enforced because the Family Court does not have enough staff to enforce. (2443, Lawyer; Survey)

It would be interesting to see actually how much revenue is obtained in this way. (2303, Lawyer, Lawyer for the Child; Survey)

I suspect this provision has not added much at all to the coffers. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

They add time to judicial resources which is more expensive than the costs that are ordered anyway. (2433, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Recommendations included “scrapping” CCOs ($n=2$), “reassessing” them, managing them centrally “through a national process, not individually Court by Court” ($n=2$), or increasing the filing fee for Care of Children Act applications instead.

The default should be that parties do NOT have to contribute to the cost of Lawyer for the Child and specialist report writers unless a judge orders them to on the basis that they have been obstructive or unreasonable. (2325, Lawyer; Survey)

These should be the exception, rather than the rule. CCOs should only be ordered as a punishment for wasting the Court's time, or increasing the costs of another party unreasonably. (2462, Lawyer; Survey)

Need reassessing. In some instances they produce unfair results i.e., a legally aided person escapes the order, but a private paying party gets hit, no matter how meritorious their position. (2501, Lawyer, Lawyer for the Child, Mediator (Private Practice); Survey)

I think the Courts could look at making the filing fee for a Care of Children Act application a little higher – say \$400 instead – to try and cover some of the costs, with the ability to seek an exemption if they are struggling. (2543, Lawyer, FLAS Provider; Survey)

Ways in Which the Family Court is Working Well

Two hundred and ten (58%) of the professionals completing the survey commented on the ways in which **the Family Court is working well, if any**. Most of these professionals (166, 79%) provided positive responses, while 44 (21%) were **negative** saying that the Family Court was “not working”, “not working well”, “underfunded”, “too slow and cumbersome”, “has unwelcoming mentalities”, “has gone backwards”, “has deteriorated significantly since the reforms”, “has had a bad rap across the board since the reforms”, “there were very few positive changes” and they were “struggling to think of any” positive attributes of the Court.

To be honest, I have never once heard a positive story about the Family Court. Now I stop and think about it, they have all been bad. (2270, FDR Mediator, Mediator (Private Practice); Survey)

It is hard to think of any compared with pre-2012 (Auckland Centralisation) and the Collins' debacle for reforms. [City] Family Court was a highly efficient Court previously, with excellent and specialist staff. The Family Court is now unapproachable, management change as often as staff do, and the system is just not efficient. It is more that we have become used to working within the mess, rather than the mess working better. (2279, Lawyer, Lawyer for the Child; Survey)

It was not totally broken before the reforms, yet it was allegedly 'fixed' to improve it. I have yet to see anything positive about the reforms. (2174, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

It isn't! Delays, funding issues, lack of judges, hearing time, and self-reps. An absolute mess; a travesty. (2239, Lawyer, FLAS Provider, Community Law Centre Staff/Volunteer; Survey)

It is trying hard to redefine itself, but it is well-behind where it was in 2013 when the services were all working. (2346, FDR Mediator, Counsellor, PTS Provider/Facilitator; Survey)

I describe the system to my clients as totally broken and to be avoided at all costs. (2495, Lawyer; Survey)

The Family Court is not currently working well. The reforms should be abolished and additional judicial resourcing made available to clear the backlog of cases. (2315, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff/Volunteer; Survey)

There are so many things that could be done to make the clumsy system we have better, that it is difficult to see what is working well. The whole system has not come to a grinding halt because lawyers and judges are 'fudging' the rules and making the best of what they can – often not in line with what the official rules say. (2505, Lawyer, Lawyer for the Child Community Law Centre Staff/Volunteer; Survey)

It has deteriorated significantly since the reforms. It used to be a Court in which I was proud as it delivered assistance to all. Counsel-led mediations were an excellent tool. Now the Court is a joke, with delays, inequities in access, and only dealing with 'urgent' matters which mostly fail to disclose the full story. This results in unhelpful decisions which may have to be reversed or sorted out by Lawyer for the Child. It is second rate 'justice', without the previous therapeutic overview which counselling used to provide. On notice applications languish as do PPPR applications and relationship property applications. (2231, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Turning to the 166 professionals who commented on **aspects of the Family Court that were working well**, the most frequent positive comment was directed to **the people, staff, professionals and practitioners working within the Family Court generally** (141 responses to this effect in total). Where specific professionals were mentioned, it was judges who received the most praise (54 responses), followed by lawyers, counsel or the family bar (27 responses), Court, registry and administrative staff (23 responses) and specialist report writers/psychologists (2 responses).

We have such hardworking Judges, fab registry staff who really care about what they do, and an excellent family law bar – all working together and sometimes despite the system! (2489, Lawyer, Lawyer for the Child; Survey)

Those in the Court are dedicated to the safety of the kids. I do not doubt this. Generally, the decisions made are good. (2568, Lawyer, Lawyer for the Child; Survey)

The service providers have all banded together to think of ways outside the box to make things work better. The dysfunction in the system has led to better working relationships. Lawyer for the Child is working well. (2216, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The registry staff are working hard – against their impossible workloads. (2178, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The Judges remain very dedicated, knowledgeable and hard working. (2342, Lawyer, Lawyer for the Child; Survey)

The Judges and lawyers are making the system work. (2277, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

The Family Court works well because people who work in it understand that the 2014 reforms are a disaster and we all do everything in our power to work around them for the benefit of the users. (2215, Lawyer, FLAS Provider; Survey)

The Family Bar in [region] is working very well with like-minded lawyers for the most part who want to achieve the best result they can for their clients, while not forgetting that it is the children who are the most important. (2225, Lawyer, FLAS Provider; Survey)

The people who work in the system are trying to make a broken system work as well as they can. We all work longer hours and for free at times because we want to help people. It is really sad that the government didn't recognise this when they made the changes. (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff/Volunteer; Citizens Advice Bureau Staff Member/Volunteer; Survey)

Great staff at Court doing their best. Great lawyers working very hard under stressful conditions. We just suck up the problems with Legal Aid and the Family Court because we are passionate about what we do. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Court staff, Judges and practitioners have united to make the best of a bad situation. (2223, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff/Volunteer; Survey)

The Family Court's role in attending to **urgent/without notice applications** was the second most frequently mentioned aspect that was said to be working well ($n=23$), followed by the Court's **decision-making ability** in achieving resolutions and outcomes for families ($n=16$), the appointment and role of **Lawyer for the Child** ($n=11$), the availability of **hearings and time in front of a judge** ($n=11$), the Court being a **good avenue or forum for families to turn to** ($n=7$), the availability of **settlement conferences** ($n=7$), **counselling** (particularly communication counselling) ($n=5$), **e-Duty** ($n=4$), **out-of-Court processes** like PTS and FDR ($n=4$), **specialist reports** ($n=4$), **access to justice** ($n=3$) and **centralised fixtures** in Auckland ($n=2$).

The Family Court is still a good avenue to deal with parenting disputes that are not suitable for, or able to be resolved at, mediation. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

Ultimately it does resolve disputes when needed. (2208, Lawyer, FLAS Provider, Citizens Advice Bureau Staff Member/Volunteer; Survey)

The Court still provides a means for those cases that simply cannot be resolved to have decisions made. (2455, Lawyer, Lawyer for the Child, FDR Mediator; Mediator (Private Practice); Survey)

The Court can deal with the hard issues and make decisions. (2205, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Settlement conferences are helpful to resolve issues. (2344, Lawyer, FLAS Provider; Survey)

The specialist reports provide essential information to the Court to assist decision-making. (2360, Psychologist; Survey)

Urgent applications are responded to very quickly. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Things can be dealt with urgently in the first instance. Lawyer for the Child is a great tool for children and parents. (2229, Lawyer, FLAS Provider; Survey)

I like e-Duty. (2305, MOJ Staff Member; Survey)

I think a dedicated Family Court is essential to ensure the unique considerations of family cases are not overlooked. The Family Court is less adversarial than the criminal District Court system. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

A number of **other features of the Family Court** were also identified by one professional each as working well: the Court's genuine wish to help; its fine ideals; healing and prevention of harm to children; parties being able to file their own applications; Directions Conferences; Round Table Meetings chaired by Lawyer for the Child; the addition of submissions-only hearings; the funding for supervised contact; ethical practice; helping parties to look at the interests of their children; assisting vulnerable people and cases involving violence, drugs and unsafe families; the categorisation of proceedings as complex when necessary; and the right decisions being made in the end.

Ways in Which the Family Court Could Be Improved

Around three-quarters of the 364 professionals completing the survey commented on how the Family Court could be improved in relation to the making of parenting arrangements. A diverse range of suggestions was made which varied from overarching or general statements to very specific and detailed recommendations. The suggested improvements have been grouped into the following thematic issues set out below: the 2014 reforms; legal representation/access to justice; judges; case management; delay; Family Court staffing; forms; funding and resources; counselling; FDR; EIP; specialist report writers; Lawyer for the Child; training, supervision, peer support and networking; Legal Aid; Family Court tracks; triage; lawyers; self-represented litigants; legislation/rules; and other suggestions.

The 2014 Reforms

Many general statements were made regarding **professionals' dissatisfaction with the 2014 reforms** which were described as "a disaster" that had "not worked", "had not achieved what they were intended to achieve", "had not had a positive impact on resolving family disputes", were "a far cry from how it used to be", were "no longer serving the people" and had led to "a broken system."

Fifty-seven professionals suggested that **the reforms should be wound back and/or the Family Court and family justice system overhauled**: "the whole system needs overhauling", "get rid of the reforms", "undo the reforms", "scrap the current reforms", "abolish the reforms", "roll back the reforms", "revert back to the old system", "revert back to the pre-

2014 systems”, “reverse the reforms”, “return to the old system”, “Judith Collins’ reforms need to be thrown out”, “the procedures should reflect what worked well in the past”, “the old system was definitely preferable to the new one”, “the Family Court system needs to be reviewed”, “start again from scratch”, “repeal the alleged ‘reforms’ quickly”, “put back the situation before the reforms as it was working better”, “rebuild it from the ground up”, “reorganise the way the Family Court functions”, “it’s a mess and it needs fixing”, “it needs to be fixed and it wasn’t that broken in the first place”, “a new system is needed”, “not to be run like a business – it’s a service”, “it needs a complete overhaul”, “overdue for fixing”, “revisit the reforms”, “go back to the system before the reforms”, “go back to the way it was pre-2014”, “go back to the old system”, “get rid of the changes”, “ditch the reforms and reinstate the old system”, “change the reforms”, “reform it properly”, “return to the good old days” and “please reform the reforms.”

The reforms have been a disaster and have certainly not achieved what was set out in terms of making the Family Court more user-friendly. (2572, Lawyer, Lawyer for the Child; Survey)

Hopeless changes and not cost efficient. Completely frustrated. (2333, Lawyer, Lawyer for the Child; Survey)

It has been very disappointing to see a system that was working well before the reforms disintegrate. People do not have good access to justice and that must be affecting families and children. (2285, Lawyer, Lawyer for the Child; Survey)

Until those involved with family justice services recognise that the in-Court processes are the last port of call - and that there are many out-of-Court options in place, several mandated (attempted self-resolution, parenting plans and other resources, PTS, PFM and FDR Mediation) and others that could be re-instituted (such as counselling) - then the Family Court will remain a tangled mess at the bottom of the cliff. Let’s climb back to the top, put in some decent fences and assess and deflect parties to appropriate solutions instead of waving them by like a flock of sheep to the cliff face. (2364, FDR Mediator, Counsellor, Social Worker; Survey)

I think that the people who work in the system are trying to make a broken system work as well as they can. We all work longer hours and for free at times because we want to help people. It is really sad that the government didn’t recognise this when they made the changes. (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, Citizens Advice Bureau Staff Member/Volunteer; Survey)

The reforms have resulted in inefficient use of resources. The Family Court is not currently working well. The reforms should be abolished. Please return to pre-reform processes!!! (2315, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Staff Member/Volunteer; Survey)

We need to revert to the pre-2014 system - it wasn't broken so why fix it? (2227, Lawyer, Lawyer for the Child; Survey)

We need proper reform not simply undoing the previous government’s reforms. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

The systems is failing its clients, the public. Resourcing is a huge issue. [City] is falling apart at the seams. Time frames are out of hand. The impact on children's and families' lives is significant. The changes have ground the Family Court to a halt. (2569, Lawyer; Survey)

The Family Court needs to revert to its original purpose to assist families at times of separation and family dysfunction, and get away from the emphasis on numbers of users/results which by their very nature does not enable a focus on the issues affecting the Court users. (2536, Judge; Survey)

It used to be a great place to work when everyone in it knew their role and how to work together. Local Courts had great staff who knew the people in their communities. The whole system was stuffed by reforms which were not sound. (2196, Lawyer, FLAS Provider; Survey)

If it wasn't a monopoly it would struggle to obtain business as currently configured. (2544, Lawyer; Survey)

The fiscally driven nature of the 2014 reforms was also criticised.

I think the previous system could have been tweaked rather than overhauled! I believe it was a money saving exercise and has back-fired. Probably costing more emotionally. (2394, Counsellor; Survey)

I actually feel the Family Court has gone backwards with the new system and has lost its way in a search for greater efficiency. I feel it's become more impersonal with less support for families requiring its assistance. The more formulaic approach does not fit well with family law and the specialised nature of this Court. Having worked in this Court for over 25 years, and also as Lawyer for the Child for over 20 years, I think the changes brought about in 2014 were a significant step backwards for our Court and a clear move away from New Zealand's previous achievements and reputation in the field of family law. The changes made did not enhance, but detracted from, what we had and were a cynical move to drastically cut costs in the guise of making people's access to this Court more user-friendly and efficient. The problems we have today were predicted, but the warnings ignored by our then government; it will be interesting to see if Labour is any different. The Family Court is not working well, but groaning under the pressure of the volume of cases it has to deal with and ultimately not serving the families and the particularly the children requiring its services. (2510, Lawyer, Lawyer for the Child; Survey)

Six professionals suggested **consulting directly with those working in the family justice system to ascertain how best to fix it.**

Return to the old system and actually listen to those who work in the system as to how they see it working, not asking those in rarefied air to make decisions that only work on what their stats say. (2291, lawyer, FLAS Provider, Community Law Staff Member/Volunteer; Survey)

I do think the Family Court is necessary, but if it is going to be overhauled again, then professionals working at the coal face need to have input, instead of being ignored. It cannot be politically motivated. (2394, Counsellor; Survey)

It was not totally broken before the reforms, yet it was allegedly “fixed” to improve it. I have yet to see anything positive about the reforms. Revisit the reforms, keep any that are positive (after input from judges, lawyers and Court staff) and throw out the rest. (2174, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Where do I start? Get rid of the reforms in their entirety, and return to the old system. Consult with the people who are actually in the system and should be listened to, as we actually have some really good ideas. The reforms were an unmitigated disaster. Someone needs to listen and action the practitioners’ concerns rather than pay lip service. It needs fixing, as we as practitioners are not going to make it work any longer - remember the story about the child with his finger in the dyke? (2239, Lawyer, FLAS Provider, Community Law Staff member/Volunteer; Survey)

Needs to be reviewed by people who are involved in the process, not just by people looking primarily at the bottom line. (2306, Lawyer, Lawyer for the Child; Survey)

Needs to be brought into the 21st century completely - not just piecemeal reforms. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Legal Representation/Access to Justice

The suggestion most frequently made by the family justice professionals ($n=65$) concerned the “repeal of s7A to enable clients to receive appropriate legal advice.” This was expressed in a variety of ways: “allow lawyers to act”, “allow counsel to be involved from the start”, “wind back the reforms to allow lawyers from the start”, “parties need counsel right from the start no matter what the circumstances”, “get good lawyers acting for parties at the earliest opportunity so we can help settle matters early on”, “revert back to the original system of representation for all matters”, “allow people to instruct a lawyer when they need to go to the Family Court”, “parties need to be able to be represented at all stages”, “bring back the ability for lawyers to be involved at an earlier stage”, “let lawyers act at the commencement of proceedings”, “lawyers should be able to act on on notice applications”, “people should be able to have a lawyer to assist them in the Court with on notice applications”, “change the legislation so that people can be represented right from the start”, “allow lawyers to draft affidavits again”, “let lawyers help clients”, “allow lawyers to act on standard track applications from the beginning” and “parties who are in crisis want to be represented by a lawyer.”

Allow simple, on notice applications to be filed by lawyers on behalf of clients without the necessity of FLAS or FDR and PTS obstacles. (2172, Lawyer, FLAS Provider; Survey)

The current regime of limited involvement of lawyers (Care of Children) appears to be clogging up the system. A return to the involvement of lawyers at the outset should have the effect of enabling the parties to focus on the cogent issues. (2561, Lawyer; Survey)

Throw out the requirement that parties cannot access counsel or the Court for on notice applications. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Parties able to have lawyers at Court from the outset in non-urgent matters. (2193, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The restrictions on lawyers being involved should be removed as I believe that a number of cases would settle at an earlier stage if lawyers were involved earlier. (2344, Lawyer, FLAS Provider; Survey)

The removal of lawyers from the equation appears to have been nothing more than a money-go-round with significant strain on the Family Court and judicial resources, and involved simply shifting the cost from the Legal Aid system to the Court system. (2559, Lawyer; Survey)

Having lawyers able to file on notice COCA applications and appear for clients at all stages of the family justice system - they generally assist matters to be resolved speedily. (2325, Lawyer; Survey)

Get lawyers involved in the early stages before the case gets out of control. (2176, Lawyer, Citizens Advice Bureau Staff Member/Volunteer; Survey)
Allow/encourage lawyer participation – it is a COURT! (2592, Lawyer, Lawyer for the Child; Survey)

Bring back the ability for lawyers to apply on notice with reduction to time. (2374; Lawyer, FLAS Provider; Survey)

The public needs access to lawyers; a represented client is far more helpful to the Court process and the presiding judge, than no lawyer at all. The public feel more confident, informed and supported with a lawyer to represent them. (2320, Lawyer, Lawyer for the Child; Survey)

Removing lawyers from the early stages of the Family Court has proved very distressing for many of the clients I engage with. (2379, Community Law Centre Staff member/Volunteer, PTS Provider; Survey)

We need to get back to a point where parties can be allowed to have lawyer to act in proceedings on notice and not just have to file without notice applications to get there or waste time going to FDR when that is inappropriate or the prospect of success is negligible at best. (2537, Lawyer; Survey)

Lawyers are essential in this process – they can isolate issues and negotiate with one another where the parties struggle to do so. (2203, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Allow lawyers to act prior to proceedings - this should not just be available to people who can afford it. (2329, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

Let family lawyers do what they are trained to do and experienced in - representing clients! Don't shut them out of the system. (2325, Lawyer; Survey)

Judges

The second most frequent suggestion (n=60) was to “appoint more judges” so as to increase hearing and sitting time within the Family Court and to “reduce the backlog” that had built up. Family justice professionals wanted “more judges”, “more Judges with boots on the

ground i.e., Court time”, “lift the cap on judges”, “more judges available to hear matters more quickly”, “more judges as the backlog is ridiculous”, “there is a lack of judicial resource”, “we need judge time so we can get to hearing fast”, “improve judicial resourcing”, “more judge time”, “more hearing time”, “more adequate and available judicial resources – the Ministry of Justice’s definition of ‘adequate’ and ‘what is needed’ are woefully different.”

We need more judicial resources for matters which do go to hearing. I find that there can be waits of up to 12 months for hearing time. By this time issues have often completely changed which creates additional work. There also needs to be consideration to how urgent issues that are not about safety are dealt with. For example, there could be a dispute between parents about school holidays a week or two prior to the holidays. Sometimes this requires urgent judicial intervention, but there is usually no way of getting time before a judge within a week or two so these issues can be left to the parties to sort sometimes creating further issues and resentment down the track. It would be great if there was a way to get semi-urgent matters heard with both parties having a say and getting rapid decisions. Often these situations seem to end up with an urgent application that gets placed on notice. (2208, Lawyer, FLAS Provider; Citizen’s Advice Staff Member/Volunteer; Survey)

Greater diversity is needed on the bench so that other cultural viewpoints are brought to the decision-making process. (2536, Judge; Survey)

Case Management

Improving case management was suggested by 49 professionals - “having a registry that functions”, “re-organising the way the Family Court functions”, “better case flow management”; “fewer events”, “more submissions by email being accepted”, “get on with hearing cases, not directions/case management/pre-hearing conferences”, “a case management system akin to the High Court is much better”, “revert back to the Family Court application process as it was before the changes.”

Court lists are inaccurate, fixtures are brought on without adequate notice, matters have as many as four back-up dates, counsel are double-or treble-booked in adjacent Courts without consultation, counsel are told to “get an agent” on files they are personally managing. The Family Court is a total dog’s breakfast. I used to be proud of this Court and after 30 plus years view the decline in service with sadness, dismay and resignation. (2231, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Eight professionals suggested that “administration and case management had gone down the tubes since centralisation” and that “**centralised fixtures**” should be “scrapped” - “centralised fixtures are not working particularly when filing documents that never reach the file”; “remove centralised fixtures and let hearings be held in local Courts.”

Removing the requirement for parties to attend PTS and FDR was suggested by six professionals.

Remove the requirement that FDR and PTS be done before applying because this has led to a spike in without notice applications. (2546, Lawyer, Lawyer for the Child; Survey)

Allow parties to make on notice applications without requiring them to attend FDR, but allow people the alternative option to attend mediation if they believe it would help to resolve a dispute. (2264; Lawyer, FLAS Provider; Survey)

Allow simple on notice applications to be filed by lawyers on behalf of clients without the necessity of FLAS or FDR and PTS obstacles. (2172, Lawyer, FLAS Provider; Survey)

Numerous **other ways of achieving improved case management** were also suggested by one or two professionals each.

File Progress: “Better practice management systems within the Court to ensure that files are proceeding.”

Hearing time: “Better allocation of hearing time and management of time frames on cases.”

Process Management: “Basic process management in registries - files shouldn’t be lost, reports should be requested when directed, non-compliant applications should be rejected, etc. More telephone conferences.”

Directions Conferences: “Have Directions Conferences allocated more promptly after an application is filed.”

Settlement Conferences: “More time should be allocated to settlement conferences which should be compulsory prior to hearing”; “more access to settlement conferences which could be run by specialist lawyers to help move proceedings on quicker.”

Registrars: “Return the registrars to Family Court receptions, with direct dial phone numbers.”

Flexibility and Focus: “More flexibility in processes, with less focus on what process to use, and more on what will work in the particular case. More focus on outcomes, rather than costs.”

Electronic Filing System: “An electronic filing system which could easily be coupled with capability to a remote access Court file/document management system - this would free up human resources to attend to other matters.”

Audiovisual conferences: “Much time is wasted by counsel travelling to Court and waiting in Court for their matter to be called, with much money being wasted by a private client or by the Ministry of Justice if on Legal Aid.”

Telephone Conferences: “More telephone conferences which can be quicker and much less costly for litigants”; “telephone conferences so that attendance at Court for conferences is not mandatory.”

Reduced Time Applications: “Have a system for reduced time applications which actually get allocated urgent Court time.”

Registry: “Give the registry control of individual matters again.”

Typing and Distribution: “Prompt typing and distribution of orally recorded minutes and judgments.”

More Short Hearings: “Be more prepared to hold short hearings e.g., one hour to make fast decisions. It provides focus, resolution and breaks the power imbalance”; “Judges having the ability to have matters brought on for short hearings for interim solutions. Otherwise children can go for months either not seeing their other parent or having supervised contact for a long time. If short hearings are set down then issues of contact could be sorted earlier and it will also mean the parties are not so polarised.”

Completing on the Papers: “Allow certain administrative things to be completed on the papers to free up Court time for hearings.”

Back-up System: “Get rid of the back-up system.”

Early Court Hearings: “Within days of an urgent application being made.”

Communication: “No mail communication, all communications to be by email - to parties as well as counsel;” “Counsel need to be able to have direct communication with the registry by email and phone.”

Duty Judge E-platform: “There should be a duty judge e-platform for requests for adjournments, re-scheduling and vacations of fixtures.”

Document Filing: “Filing of documents electronically from lawyers to the Court only (rather than risking loss of documents when hand delivered to the Court);” “Email filing should be acceptable in all Courts.”

Bundles of Pleadings: “More efficient systems such as filing of bundles of pleadings for all hearings. Bundles allow for quick easy reference during the hearing and make it easier for a judge to prepare a case.”

Delay

Forty-four professionals suggested that “**reducing delay**” in the Family Court, “speeding things up” and enabling “faster access to justice” was necessary as this was an issue that “must be resolved.” Delays were said to have “worsened since the reforms” and there was a “high volume of work and cases not being progressed in a timely way.” Faster processing of files and “specific time frames for concluding a dispute” were needed as “all cases should be able to be finally determined within an 18 month period.” The “delays are unacceptable from client perspectives” so “more registrars and judges are needed” and “cases need to get to hearing quicker.” Having “more honest and realistic time frames and expectations” and “provision for abridgment of time made in the law” were also suggested.

Have a quick response. Once in the Court the matter just meanders along. Try to stop this at the outset. (2294, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

There used to be more available Court time and cases of an urgent nature were often called in Court a lot earlier for their first call. Cases are now losing momentum and issues are not being addressed when they should be addressed. The protracted nature

of proceedings leads to relationships being further damaged in the meantime and alienation issues increasing. Children are suffering from exposure to parental conflict and adult issues because their parents are not getting the advice at the most appropriate and important times. (2259, Lawyer, FLAS Provider; Survey)

There needs to be more Court staff and Judges available to hear matters more quickly. This allows people and children to move on with their lives. If the system is too slow then a status quo forms quickly after separation and it is hard to change this. (2280, Lawyer, Lawyer for the Child Survey)

The Family Court time frames do not meet children's needs - it may need more staff or more efficient systems. (2369, Psychologist, Specialist Report Writer; Survey)

Get some efficiencies happening. Having two parents off work sitting around the Court waiting rooms half the day with two lawyers is really expensive. With better administration a matter could be vacated or adjourned as requested a week in advance. (2495, Lawyer; Survey)

Staff have to send minutes/orders out in a timely way. Referrals then have to be given to the correct staff member to be actioned urgently. Staff have to ensure documents that are filed with the Court are on the file. This is pretty basic, but often not done at [City] Court. This results in increased costs and delays for the parties and makes the whole system less efficient as more directions conferences than necessary are held. I do accept that lawyers can be at fault with delays, but the Court ending delays seem an easy fix. (2503, Lawyer, Lawyer for the Child; Survey)

Generally, the system itself is okay, it is just the endless delays/things not being dealt with because of the workload. Ultimately makes the system unjust for the clients - especially those where an interim order has been made and they then often cannot have contact with the child for some months. (2458, Lawyer; Survey)

Family Court Staffing

Thirty-six professionals suggested that **more staff** were needed in the Family Court and that "adequate staffing levels" needed to be achieved as the Court is "under-resourced, staff are over-worked and some staff are not being managed properly." This would "help to speed the process up" and enable the Family Court to "perform the task it is charged with."

"More **case managers**" were needed "particularly in Courts that have a high caseload" and "case officers need lower caseloads." The "return of dedicated case managers" was also recommended. "More **registrars** are needed to deal with the work load" and they need "better work conditions."

Hire more staff and reintroduce case managers with proper oversight and team management. (2328, Lawyer, Lawyer for the Child; Survey)

Get rid of some of the bean-counters and change managers. In [Region] we used to have really efficient Courts, officers who knew their cases etc. They then changed it to the "everyone is responsible" model, which meant that no-one was responsible. Service plummeted, as did staff morale. We're back to case managers again and things

have improved. (2223, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Better resourcing of staff and in particular FCCs. The workload on FCCs is now so ridiculous that they physically cannot get through their work. This means delays in sending out s132 and s133 referrals, delay in appointing Lawyer for the Child etc. The underfunding of staff could be improved and this would make a huge difference. I do not agree with Ministry-speak that the staff need to be trained better as our staff are excellent, but time-poor. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Court staff are constantly being asked for advice as there are not enough Family Court lawyers, however this is not their job. I believe the Community Law offices should be able to give more initial advice. (2290, Legal Executive; Survey)

Seven professionals suggested that consideration be given to the **appointment of Associate Judges** (n=6) or **Senior Registrars** (n=1).

More Judges are needed to deal with "box work" etc. Whoever came up with the name "box work?" Perhaps we should look to appoint Associate Judges who can do the smaller hearings, the box work and the without notice applications. (2201, Lawyer, FLAS Provider; Survey)

Reinstating **counselling coordinators** was recommended, along with "retaining experienced staff" and increasing the number of "**bailiffs** being able to do service in the areas they are familiar with."

Forms

The forms introduced at the time of the 2014 reforms were criticised by 31 professionals who said "they have to go, they are complicated and a waste of time", "get rid of the crazy new forms", "abolish all the pointless and repetitious forms we're asked to use", "go back to the way it was before the reforms perhaps with some tweaking around forms for litigants in person", and introduce new "simpler forms" with "less rigid prescription and more freestyle documents."

Get rid of the unwieldy horrible COCA forms and allow lawyers to use simple application forms as before. (2172, Lawyer, FLAS Provider; Survey)

Ban the stupid the forms. Let lawyers be lawyers and draft documents. (2178, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Allow lawyers to use their expertise when drafting applications and evidence - do not restrict them by requiring use of the forms used by self-representing litigants. (2195; Lawyer, Lawyer for the Child; Survey)

Stop using forms. Let us file applications and affidavits that are succinct and to the point. (2225, Lawyer, FLAS Provider; Survey)

The forms developed to coincide with the reforms have made it much harder to effectively tell a client's story and convey relevant information. They should be revised/discarded. (2338, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Funding and Resources

More funding and resources for the Family Court were suggested by 29 professionals - "greater financial resourcing", "have better Court resources", "more funding, so there are more judges, registrars, psychologists and physical Court spaces available", "better funding as it should be treated with the respect it deserves as a specialist Court", "the Family Court needs proper resources and adequate funding" and a "genuine commitment and financial support for resourcing improvements." It was also suggested that the "filing fee be removed", "pay rates increased", "access to justice improved for all and not just rich people", "more resources and programmes to assist parties to change rather than just evaluations" and "more funding and time for pre-trial meetings such as settlement conferences."

Funding should be spent at the front end, rather than such ridiculous amounts of money spent on reviews and administration changes by Head Office and the designing of less than helpful forms and so on. Funding priorities are skewed. (2193, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Counselling

The fourth most frequent suggestion made by the family justice professionals ($n=44$) was a call for **reinstatement of the pre-reform counselling sessions** – "bring back counselling at the beginning", "return counselling", "bring back relationship counsellors to assist parties to negotiate agreement as before", "reinstate relationship counselling for people who are considering separating (but are not yet separated)", "reinstate the s9 and s10 counselling options", "permit counselling on repeated occasions, up to say three requests", "affordable counselling is needed", "reinstate Family Court counsellors", "bring back s9 counselling or similar" and "reinstate the funded six hours of counselling for persons in a relationship."

The Family Court is struggling to manage the numbers and complexity of cases, many of which could be dealt with in counselling with the oversight of the Court as before the 2014 changes. The reintroduction of a free counselling services would allow and encourage couples to make decisions on their own, within the confines of good parenting and ethical legal practice, but without the overly emphasised imposition of judicial/legal strictures early on. (2347, Counsellor; Survey)

Please bring back the free counselling for parties. So often unresolved relationship issues mean people can't move to focus on the children's needs. (2568, Lawyer, Lawyer for the Child; Survey)

Reinstate no-cost, early intervention for couples who are experiencing relationship difficulties, or contemplating separation. This could save a lot of money in the long-term, as well as provide an opportunity for individualised arrangements to be reached that take into account people's differences (Treaty of Waitangi). Long-term evaluation of the old s9 counselling proved that it was effective, and kept couples out of litigation. Enable judges to refer couples to specialist communication counselling when this is

needed. Unfortunately, this is the ambulance at the bottom of the cliff. We need to reinstate the barriers at the top of the cliff. (2388, Counsellor; Survey)

The system where there were six free sessions for couples/families who were having difficulties was a well-functioning system and many families benefited. I believe the decision to reform was to “save money”, but I wonder if it is ultimately a greater saving to save families. (2399, Therapist, Not currently working in family justice sector; Survey)

Bring back the Court counselling service. That was great and got so many matters sorted at an early stage in a positive way. (2532, FDR Mediator; Survey)

Four professionals also raised the issue of introducing **counselling for children** and another suggested that therapy for children needed to be provided.

When are the Courts going to fund therapy for children? There is clearly a need for this and it should be available for parents and children. (2320, Lawyer, Lawyer for the Child; Survey)

FDR

Suggestions relating to FDR were made by 23 professionals and included strengthening “mediation services”; providing “better funding of FDR” and giving parents “less opportunity to simply avoid mediation.” The referral of “more” or “suitable” or “non-urgent cases” to FDR was recommended as “some cases suitable for FDR are still ending up in the Family Court.” Four professionals thought it would be desirable to bring the FDR system “under the umbrella of the Family Court” as it is “too independent of the Family Court.” Developing “better links between the Family Court and mediators could improve/streamline the service” as there is a “need to accept FDR and stop working against it.” Some thought Family Court Judges needed to “be more aware of the FDR system” and that there should be “better communication” between local Family Courts and FDR providers as this “is a real challenge.” Mediation rooms needed “to be user-friendly” and the timing of FDR needed consideration as “it is counter intuitive to expect broken families to engage immediately in FDR and often ignorant of the inherent power imbalances between couples.” Finally, children’s lack of voice in FDR was noted by two professionals as child-inclusive practices were “still being developed and they will improve, but it would have been good to have more robust and detailed guidelines as well as training around this right from the start.”

EIP

Eighteen professionals mentioned the previous EIP system/counsel-led mediations which were said to have been “far more effective and efficient”, “worked fairly well (but could be costly)” or “were working brilliantly before” the reforms. All suggested that EIP be “brought back”, “reintroduced” or “put it back to how it was” to “allow more timely disposition/advancement of matters” on the “direction of a judge.”

Specialist Report Writers

Eleven professionals made suggestions about specialist report writers including “better resourcing”; overcoming the “shortage of s133 (and s178) report writers”; having “more specialist report writers available as they are under-resourced and the delays are not their

fault”; obtaining “s133 reports quicker”; removing the “delays in allocation of report writers and receipt of reports” as it “is getting really difficult to resolve matters when waiting for these”; enabling “judges to direct psychological or psychiatric reports in relation to parents”; and improving the quality of s132 reports as “the data is often just self-reporting from the parties and hasn’t been triangulated.”

There was also thought to be “a need for changes in the specialist report writing role so that there is a more uniform approach” and for “a change in the HPCA Act for psychologists in the Family Court so that there is one process for hearing complaints and they are not facing two sets of complaints that take years to be heard.” Other suggestions related to reducing the gap between the time the specialist report is filed and the matter is heard, and making the role more attractive to more psychologists.

Reduce the gap between s133/178 reports being filed to the matter being heard. Often this is well over a year and much of the information in psych reports becomes either out-of-date or less current. This delay also often heightens conflict and strain on the children. (2477, Psychologist; Survey)

The actual adversarial nature of the Family Court is in contrast to the stated intent of the Family Court and deters psychologists from the work. There are not enough (possibly any) psychologists who have the opportunity to train at the Ministry for Children, because the Ministry does not value psychologists. Working at the Ministry is an excellent training ground for Family Court work for a psychologist. Pay rates are starting to lag behind the private sector again; a further disincentive for psychologists. (2369, Psychologist, Specialist Report Writer; Survey)

Lawyer for the Child

Six professionals provided suggestions to improve the role of Lawyer for the Child including “a transparent system for Lawyer for the Child to be appointed, so new appointments are shared roughly fairly across local counsel”; “better support i.e., peer support systems”; “more Lawyer for the Child with diverse backgrounds (male, Māori, Polynesian) to represent the area in which they work”; and “not relying on Lawyer for the Child as ‘lead counsel’ as this procedurally flawed and should not continue.” It was also suggested that the pay rates for Lawyer for the Child should be increased as “they are grossly underpaid” and that consideration should be given to “appointing family coordinators rather than Lawyer for the Child who will be trained social workers and represent the views of the child with the training to back it up around family dynamics and child development.”

Training, Supervision, Peer Support and Networking

Ten professionals suggested the Family Court would benefit from more opportunities for training, supervision, peer support and networking. Training was specifically recommended for “registry”, “all Court staff”, “registrars on exercising their powers under the rules” and “judges on general law, statutory interpretation, what without prejudice means, rules on the termination of retainer, privilege, and domestic violence.” It was thought that training would help with “retaining experienced staff” and with “getting judges and lawyers on board with a better model using specialists rather than assuming one discipline knows how other disciplines work.”

The Family Court has incredible power over children's lives and seemingly very little training on 'what it is to be a child' or in specific areas such as child development, attachment, trauma and its effects, yet is making decisions for these vulnerable children often without hearing them accurately. (2401, Counsellor; Survey)

More interactions as there are none - no meetings, no networking, no updates as to Court processes, no sharing our experiences, no opportunities to ask questions. Prior to 2014 we had monthly meetings as counsellors at the [City] Court where there were speakers from other areas of the Court. We shared our experiences as a learning tool and it was excelling. (2403, Counsellor; Survey)

Legal Aid

Reintroducing Legal Aid for "for on notice applications" and "increasing Legal Aid rates" were suggested by 11 professionals.

Legal Aid should be reintroduced for on notice applications. This results in better quality applications for judges and identification of issues, it supports vulnerable people in a vulnerable time and it leads to better outcomes for children. (2423, Lawyer, FLAS Provider; Survey)

Increase access to Legal Aid. Increase hourly rates for legal aid offered to lawyers and reduce the red tape. (2462, Lawyer; Survey)

Align Legal Aid funding with what lawyers actually need to do. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Improve Legal Aid payment rates, which have not changed since 1990 in reality. (2175, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Mediator (Private Practice); Survey)

The Family Court Tracks

The Family Court tracks were said to be "confusing" and 16 professionals suggested that steps were needed to deal with the "overloading of without notice applications" in particular as these had "surged" since the reforms. "Applications that clearly do not meet the threshold for without notice" should be "rejected outright."

Too many non-urgent cases go to Court and clog it up. (2498, FDR Mediator, Counsellor; Survey)

Be tougher on people trying to use the without notice track to circumvent the mandatory requirements. Focus more on prioritising cases where an order has been made on an urgent basis and put it to proof promptly (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Take away the restrictions into Court, which would relieve the pressure of the Without Notice application surge. (2354, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

The misuse of the without notice pathway needs to be stopped. (2360, Psychologist; Survey)

The without notice track should only be for the most obviously dangerous circumstances and supported by evidence, not just allegations often stemming from the heat of the moment. (2480, Mediator (Private Practice), PTS Facilitator; Survey)

The legislation needs to change so that without notice applications are rare. Then FDR and PTS would work as they should do. (2576, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

Five of these professionals recommended that consideration be given to introducing “an ‘urgent’ track alongside the without notice track.”

Have an urgent track for short notice without making a without notice application. (2515, Lawyer; Lawyer for the Child; FDR Mediator, Mediator (Private Practice); Survey)

There desperately needs to be a track between standard and without notice to ensure that urgency is given to those situations that warrant it, but do not meet the without notice threshold. (2179, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

There needs to be a way to deal with the cases which are urgent, but just under what I think the without notice threshold should be, so that you can go on notice but with time shortened and get a conference before a Judge with lawyers present in short order. (2457, Lawyer, Lawyer for the Child; Survey)

There are many parenting applications which are urgent, but not urgent enough to be without notice. Help needs to be available to those parents. When one parent makes a without notice domestic violence application and no parenting application, it takes too long to get to Court and organise contact. Children do not see one parent for too long a period. (2483, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Triage

Introducing an effective **triage system** was suggested by four professionals “when applications are filed.”

There needs to be a more effective triage of cases at first call where a judge has time to meet with the parties, ascertain what the issues are and what is required - in effect a settlement conference in order to ascertain at an early stage those cases that should be before the Court and those that should not. (2455, Lawyer, Lawyer for the Child, FDR Mediator; Mediator (Private Practice); Survey)

Therapeutic and Support Services

Thirteen professionals suggested that **more therapeutic or support services** were needed to assist family members utilising the Family Court – “we need family therapy and family support services”, “more mental health support”, “specialist programmes running alongside the Family Court”, “more accessible specialist staff”, “more involvement of clinical

psychologists”, “more parenting and counselling programmes”, “a change to COCA so feedback on counselling progress can be made to the Court”, “a less adversarial approach” and “funding for families, children, parents needing psychological therapy.” Judges also needed to be able “to direct therapeutic intervention.”

Any child in a shaky or broken adult relationship is vulnerable. Their emotional, psychological and physical health and safety should be paramount. Rather than the Family Court working as a legal processing silo, the walls need to come down to allow children and their families to access counsellors and psychotherapists who have specific training in supporting emotional and psychological health, which is known to be the foundation of positive relationships. (2401, Counsellor; Survey)

Supporting parties when they are first encountering difficulties could salvage some relationships, with associated social, emotional and financial savings. Early intervention should be the priority. When parties must separate, support to enable them to do this with a degree of dignity before processing through an essentially adversarial system hardens attitudes and feeds acrimony. (2414, Counsellor; Survey)

We need some mechanism for psychologists to be involved in family therapy, especially in cases where children resist contact with parents. We have 46G counselling but this needs to be extended to cover children and have psychologists on the list. (2586, Lawyer, FLAS Provider; Survey)

Lawyers

Ways to better respect and improve the role that lawyers play in the Family Court were suggested by nine professionals. These included mentoring, accreditation, a collaborative approach, direct email and telephone communication with registry staff, utilising the skills lawyers were trained to undertake and valuing lawyers for the challenging work they perform.

Respect lawyers who work in the Family Court, as at the moment all aspects of the Family Court and Ministry of Justice makes lawyers’ lives a misery. (2231, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Accreditation of family lawyers. Some lawyers are plainly not suited for this kind of work. They make matters worse and should be forced out of the area. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Get rid of having to have a direction that lawyers can act just takes up time filing memos to get that direction when needed just for funding purposes. Lawyers time is being taken up by admin purposes and on legal aid get paid minimal work anyway that need the funding that do have to be doing legal work and not admin. (2311, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Lawyers should be able to practice the legal skills they were trained for i.e., presenting applications appropriately. Mentoring of younger Family Court lawyers should be encouraged. (2279, Lawyer, Lawyer for the Child; Survey)

A collaborative approach is urgently needed. Collaborative law is currently only available for private paying clients, but this needs to become mainstream and funded

by Legal Aid. (2451, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

As an experienced family lawyer, I have never felt so under-valued for the role I perform in society. Family lawyers are often values-driven, people-centred lawyers. They want to do their best for people. The reforms have sent out a signal that what we do doesn't need to be done - people do not need us – we're greedy lawyers milking the system. The reality is that there are no other groups within the legal profession who deal with such human complexity, emotional load and low remuneration. I do not blame people for seeking work in other areas. If I didn't believe so much in what I did, I'd be off too! (2361, Lawyer, Lawyer for the Child; Survey)

Self-represented Litigants

Eight professionals suggested that self-representation “should be an option, not a requirement”, that Legal Aid thresholds should be “raised to reduce the number of self-represented litigants”, that “tighter controls on them” should be introduced and “some of the changes that created more self-representation should be reversed.”

Self-represented litigants should not be encouraged. An efficient system requires people who understand the law and are also able to look at different ways for resolution. It is very difficult to settle a case by consent with a self-represented litigant. (2280, Lawyer, Lawyer for the Child; Survey)

Increased self-represented litigants clog up the Court system with unnecessary paperwork and Lawyer for the Child has to 'manage' them a lot more to assist the Court. (2452, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Self-represented parties in my experience find the Family Court process/Court system baffling and the thought of having to appear themselves in standard track cases daunting. This is even though there is a wealth of information out there through Parenting through Separation courses and the Ministry of Justice website. We have given countless consultation type appointments through FLAS and private advice consultations on the current family law and Court processes. Documents filed by self-represented parties, (which are picked up by lawyers later because the Court has granted leave to have a lawyer act for them) contain irrelevant information or even worse, relevant information is left out, or the information is structured in a way that is not evidence. (2534, Lawyer, FLAS Provider; Survey)

Legislation/Rules

Amendments to legislation and rules were suggested by four professionals. One wanted the Care of Children Act and rules “restored to their earlier state”, but other specific recommendations included reforming the rules “to allow all parties to have counsel if they choose at the commencement of proceedings”; paying more attention “to the voices of children” in the legislation and “to the rules of evidence to ensure that relevant evidence is before the Court”; and introducing “rules establishing pre-trial obligations as they do in UK.”

Other Suggestions

A wide range of other suggestions were made by just one or two professionals each.

FLAS: “Overhaul with better funding” or “abandon it.”

Culture: “Culturally appropriate programmes need to be in place”, as does “greater diversity on the bench so that other cultural viewpoints are brought to the decision-making process.”

Judges: “Judges need to be more fearless and robust in dismissing meritless applications summarily. Judges also need to use their powers to hold people in contempt of Court or refer people to the Police who perjure themselves or lie when giving evidence. Parties would then feel less inclined to believe there are no consequences if they lie in their evidence.”

Penalties: “Penalise parents who alienate their children or put up barriers to the children being involved with family members without substantiated safety risks.”

Enforcement: “Orders should be enforced and people held to account.”

Section 46G: “Utilise s46F more often so that Court time is not taken up with settlement conferences.”

Section 139A: “Get rid of s139A - it prevents parties from reaching agreements because they are worried about the two-year rule. Utilise s140 instead.”

Interlocutory Applications: “Expect a higher quality of evidence and in particular deal swiftly with interlocutory applications. Sometimes it takes so long to deal with an interlocutory you might as well have just had the substantive hearing.”

Reduction in Time: “If an order is made reducing the time to file a defence actually refer the matter back to the judge in Chambers for an interim order to be made if no defence is filed. It is not uncommon to have a shortened time, no defence, a Court date ages away and then the party turns up at the Court event and seeks more time to file. What is even the point of a reduction in time?”

Cost Contribution Orders: “Get rid of the Cost Contribution Orders.”

Social Workers: “Involve a social worker to build a relationship with children involved in Family Court proceedings and get a social worker to do an assessment and gain good information for proceedings.”

Domestic Violence: “Let us start taking domestic violence seriously. Sometimes children are better off having no contact with seriously violent men and women.”

Family Breakdown: “More money and research into areas for more prevention of family breakdown.”

Shared Care: “The imposition of 50-50 shared care has become a default position and it is often not the best (or even not a good) outcome.”

Criminal Court and Family Court: “There is no automatic passing of information between the Criminal Court and Family Court unless a specific request is made by the Family Court. Protection orders and breaches, for example, may not therefore be evidenced in the Family Court, however relevant to Family Court decisions.”

Client Needs: “Don’t assume everyone understands the system, can read well, are mentally well and can manage English. Recognise people are stressed, distressed or vulnerable and that everything and everyone doesn’t fit nicely into stupid bureaucratic measures and time frames.”

Child-centred: “There is a need for the Court to become more child-centred and for there to be specialist programs that support parents to make changes.”

Supervised Contact: “Have more professional supervised contact providers so supervised contact can be accessed faster.”

Provincial Areas: “Re-open country Courthouses.”

Purpose of the Family Court: “We are not a business and should not be run like one. People matter - go back to that as the people we most want to help we are not at present.”

Tribunal: “We need a two-tier system – a Tribunal and a Court.”

Relationship Property: “We need a separate relationship property Court, with judges who specialise in relationship property matters”; There also needs to be a specialty property arm of the Family Court as property issues are often behind ongoing acrimony in COCA cases and they take an inordinate time to progress as they are not afforded any priority. If we addressed property issues and child support more vigorously the COCA cases would also benefit.”

Infants: “There is a need for a baby Court so that decisions regarding infants are made in a timely manner.”

Technology: “It would be great if technology could be stepped up. For example, in Australia I understand a lawyer can log into their Court client portal for their client cases, see all the documents uploaded for their particular case, and all upcoming Court hearing dates.”

Modernisation: “The Family Court needs to be brought into the 21st century completely - not just piecemeal reforms.”

Final Comments About the Family Court

The final comments that family justice professionals made on the Family Court have been grouped into general, mixed, positive and negative themes.

General Comments

General comments by eight professionals related to the **purpose and workload of the Family Court** and the **role of the professionals** working within it.

The Family Court is only as good as the people who work within it and who appear before it. Make sure the Court staff are taken care of so they can do their job efficiently and professionally. That in turn makes those appearing before the Court have greater confidence and means less time is spent chasing procedural issues and more time is spent focusing on advocacy. (2554, Lawyer, FLAS Provider; Survey)

The Court's job is to make orders. That's what it does. It's not in the business of assisting; it's in the business of hearing this side, hearing that side, and deciding. (2495, Lawyer; Survey)

Its task is to resolve matters. Sometimes it may get it wrong. More often one parent feels aggrieved. But is there a better system? I doubt it. (2373, Lawyer, FLAS Provider; Survey)

People need help, they can't be thrown in a system, without the tools and people to guide them through it. People only come to the Family Court when they are in crisis, they cannot be expected to act in a logical or sensible manner and they need assistance, not just a process to help them. (2505, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

The Court is essential where protective orders are needed or for intractable cases - it is not a very useful forum for dealing with other parenting issues. (2365, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; FDR Mediator, Mediator (Private Practice), PTS Provider/Facilitator; Survey)

Over the years the number of files has decreased, but more applications are being filed on each case and they are getting more complex. (2415, MOJ Staff Member; Survey)

The Family Court still plays an important role in resolving child care arrangements and disputes. However, I wish people would focus more on letting the Court deal with matters that are critical e.g., risk assessments rather than leap into Court over small disputes. I suspect that if the reforms had been applied the way they were intended we'd have more hearings and less delay e.g., if you cannot sort it out at mediation then you go to Court to get a decision and not to begin a long process of adjournments to permit people to sort out their lives. People need to understand that the Family Court is about decisions being made that result in an outcome. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Six professionals also made the point that the Family Court “should be a **place of last resort** for separating parents” or “the **fall back** for people who can't make their own decisions at mediation and where there are urgent circumstances for children.”

The Court exists for those disputes where there are issues of safety or as a last resort where parties simply cannot resolve a dispute. (2455, Lawyer, Lawyer for the Child, FDR Mediator; Mediator (Private Practice); Survey)

Family separation and child care issues are complex and different for each family. The Ministry of Justice needs to have better systems so that the Family Court hearing is the last resort or used early, but in a declarative or education way. Generally, there needs to be more time on meetings between parents and professionals in a collaborative and educative way so that parents can be equipped to resolve these complex family issues, such as how to communicate in healthy ways for the future. (2451, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

The Family Court should be the last resort and could well work in better concert with other disciplines. (2346, FDR Mediator, Counsellor, PTS Provider/Facilitator; Survey)

I actually advise my clients to do their best to avoid the Family Court. It is a necessary last resort in some cases, but in the majority of cases the expense (which is now heavily increased thanks to delay) and the reduced time judges have to prepare for and carefully consider specific cases means that the outcomes feel “bare-boned” and often unsustainable. It certainly has an important role to play (particularly in DV and other urgent matters), but the level of service and assistance to family that it provides has decreased dramatically in my 13 years of practice. Individual Judges make a big difference to this in some cases, but I am concerned at the workload some of them take on in order to make that difference. (2246, Lawyer, Lawyer for the Child; Survey)

Mixed Comments

Mixed comments involved the expression of both **positive and negative statements** about the Family Court by 16 professionals.

The Family Court can be very helpful in some cases and not at all in others and somewhere in the middle for others. (2459, Lawyer, Lawyer for the Child, FLAS Provider, Citizens Advice Bureau Staff Member/Volunteer; Survey)

Depends. It can be helpful for some, but there are significant issues impacting on the level of helpfulness for people. (2259, Lawyer, FLAS Provider; Survey)

The Court can be helpful and also unhelpful depending on the facts of each case. (2214, Lawyer; Survey)

It is well-intentioned - but often loses the mark. It needs to be more human and more accessible. It's now hard for consumers to even phone the Family Court, let alone visit and talk to an actual person. (2426, Counsellor; Survey)

When it's good it's good; when it's bad it is a disaster. (2184, Lawyer, FLAS Provider; Survey)

Under siege, but not showing the white flag yet. (2200, Lawyer; Survey)

I think once we are in a hearing the Judges do a really great job overall. They are fair and reasonable and clearly are focused on the children's welfare and best interest. But holy moley, the rigmarole to get there! (2439, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I love my job, but it is stressful – the overly burdensome bureaucracy that flows from Wellington makes doing the job difficult. Make this easier and you will save a fortune and society will benefit. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I love this Court, but it's been made harder and you can see why many lawyers have walked away from Legal Aid because it's too much to manage. (2308, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It has become an incredibly bureaucratic institution which is difficult to navigate. Registry staff seem poorly trained and lack essential knowledge and skills to deal with their caseload. I honestly believe that if were not for dedicated judges and counsel the system would collapse. (2342, Lawyer, Lawyer for the Child; Survey)

It is under-resourced. It does a magnificent job considering a pack of civil servants decided to save money by taking lawyers out of the Family Court. It hasn't worked. The Court is more clogged up with cases than ever before. Not good enough. (2225, Lawyer, FLAS Provider; Survey)

The Family Court is helpful if it has access to proper resources. It plays an important role in many areas apart from separating parents. It has a vital role in the protection of children and infirmed persons which is often unrecognised, and jeopardised due to the changes inflicted. I do hope we never see the arrogant approach to the changes inflicted upon us over the past six years again. There was no real consultation in the true sense and the views of practitioners, judges, users etc., were largely ignored and overridden by a Minister who was ignorant of the realities within the work of the Court itself. The reforms were driven by an ideology of saving money. There was no consideration as to the impact upon those who were educationally incapable of self-representation, or who did not have the means to access the Court directly. It has been a mean-spirited exercise and I do wonder how many children have suffered and how many women especially have remained in untenable situations because they are incapable of working through the complexities without legal support. (2279, Lawyer, Lawyer for the Child; Survey)

It is a highly emotional contested and conflicted environment which draws criticism on a regular basis (since its inception). The reforms did not assist by layering and adding complexity. The Court system has simply worked as best as it can (as it always does) with the reforms and the professionals involved do what it takes to make it work. (2307, Lawyer, Lawyer for the Child; Survey)

People are doing their best with a broken behemoth monster of a system which is the Family Court. The Family Court was tampered with by the last National government to the detriment of the people who are the users of the Court, and for no gain. (2215, Lawyer, FLAS Provider; Survey)

The most helpful part is when lawyers collaborate and focus on therapeutic solutions for the identified issues and where they want their clients to be in the medium- and long-term. This depends on the client having the same goal, motivation and ability to get there. Some people because of their personalities will never be able to focus beyond themselves. As long as lawyers keep talking to their clients and each other, each other in particular, rather than sending angry emails or filing fiery affidavits then the real issues can be addressed. This is far more cost-effective and constructive than the "rip shit or bust" approaches far too often employed in this arena. (2234, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It's just starting to get back on track with hearings and regular case management and judge time four years on. So, I am concerned about changing anything again and moving back to the chaos we had after the first changes were implemented. (2213, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Negative Comments

Twenty-eight professionals expressed **negative views about the Family Court** post the 2014 reforms. One said it "damages families", two others said "it is a mess" and "struggling under the pressure." Five professionals stated the Court was "overdue for fixing" or "needing to be

fixed.” Others commented on such issues as workloads, waiting times, delays, uncertainty, mismanagement, fairness, adversarial approaches and inadequate resourcing.

The Family Court is an essential Court for all New Zealanders. It is unfortunately now so mismanaged by the registry management that they have created a system that is failing. (2563; Survey)

I don't think it does the best possible job. It is the only system we have, so we have to make it work. (2592, Lawyer, Lawyer for the Child; Survey)
Many clients describe the Court process as stressful due to the lack of organisation and length of time it takes to progress. (2582, Lawyer, FLAS Provider; Survey)

Waiting times for judicial conferences and hearings of most types in the Family Court were not improved by the changes. (2573, FDR Mediator; Survey)

The decline in the last 10 years in delivering timely assistance to families in distress has been huge and disappointing. (2231, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Too much uncertainty re process, time and results for families at present. (2577, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Survey)

The Court used to be helpful. It pains me to say I think it is now unhelpful. It is too slow, and with the delay comes harm to the parties, the children and the parent/child relationship. It is the delay that does the harm often. (2568, Lawyer, Lawyer for the Child; Survey)

There is a lot of room for improvement. It feels like a system based on cost cutting. Some families get a very poor deal and wait a very long time. (2281, Counsellor; Survey)

It's a detrimental working environment for lawyers. (2177; Lawyer, Lawyer for Child, FLAS Provider; Survey)

The lack of lawyers working within the Court and people appearing without full advice in the Court unless urgent is scary. The decisions being made are neither timely nor child-focused. People need to know a realistic position before getting into the system. (2327, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Of course, without notice applications increased dramatically arising from lawyers filling their own pockets. That created an injustice in itself and only the principled lawyers refused to file without notice applications that didn't meet the threshold. (2261, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

I think the judges do the best that they can, but the workload is too big, the hearing time too long, and there are too many self-represented litigants. It needs to change. Sooner the better. (2311, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Having worked in the Family Court for many years I've formed the view that it is no longer serving the people. (2488, Lawyer; Survey)

The way the Court is working at the moment is making things worse. (2288, Lawyer, Lawyer for the Child; Survey)

The Family Court requires separating parents to recount the worst aspects of each other's parenting, requires them to engage in a hostile process where the children are either child soldiers or child carers of parents, or prizes for the winner, and then expects those same parents to make the Court-imposed decisions work in the real life and time of the parents. The enforcement processes (when children are forcibly uplifted from one parent to go to the other parent) are cruel. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Survey)

There still seems to be a lot of disadvantage towards the fathers. I understand it is difficult to judge only hearing one side of the story when participants are sharing their experiences, but I wonder if more work needs to be done in this area to identify how fair the system is for both parents. (2260, PTS Facilitator; Survey)

It is overburdened and under-resourced to the detriment of family justice - not okay. (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Survey)

I think at heart the Family Court is unhelpful because, in the end, parties end up having a resolution foisted on them most of the time, even when they don't get to hearing. They are often told at Round Table Meetings or at Settlement Conference stage, "this is the best you will get and you'd better agree", so they do. There need to be more ways to bring parties together in a conciliatory fashion without lawyers telling clients what to do, but with parties being able to obtain more legal advice. This is why I am a fan of merging the current FDR/PTS system along with what we used to have of a more generous Legal Aid grant that enabled lawyers to give advice throughout the process. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

The current "improved" Family Court system is clearly recognised as not working. Cost cutting has adversely impacted on Court staff as well as those having discrete roles servicing the Courts. Experienced legal practitioners are leaving in droves. Parties remain to be convinced of the efficacy of mediation services and pre-mediation counselling has to be beefed up in an attempt to make this a more attractive and efficacious process. (2414, Counsellor; Survey)

The resources are so scarce that only the people who are having real difficulties in coming to arrangements use the Family Court. This should be a community service that is freely available to all parents and their children in times of family distress and/or breakdown. (2392, Counsellor; Survey)

Positive Comments

Positive comments about the Family Court were made by 17 professionals. They praised the importance and necessity of the Court, the dedication of the professionals who work within it, and its ability to continue "doing its best with the resources it has."

The Family Court is the most important Court in my view. It has a purpose and is necessary. (2238, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Having a Court, with someone who can make decisions, provide input etc., and with some structure for progressing a resolution of disputes is invaluable. The existence of the Court can help people to settle matters, even when a matter does not proceed to an application, when they have had good legal advice on the strengths and weaknesses of their preferred care options and the likely outcome if the matter went to Court. Having input from psychologists and social workers is also invaluable most of the time. (2550, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

When the Court works efficiently and transparently it helps people with difficult issues. (2546, Lawyer, Lawyer for the Child; Survey)

The Court tries everything within its power to assist parties. It has the best intentions, as do most of the users (mainly professionals) to settle cases without Court intervention. (2502, MOJ Staff Member; Survey)

When it's good, it's very good. (2184, Lawyer, FLAS Provider; Survey)

The Court itself, aside from the reforms, does do good work for families and is very much needed for some families. (2558, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Helpful because there are no other alternatives. (2555, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Dedicated judges, lawyers and Court staff are doing their best. (2574, Lawyer, Lawyer for the Child; Survey)

Those who work for the Family Court are very dedicated. (2403, Counsellor; Survey)

The people that work within it seem to understand how important their role is, and they care about the people within our community, and that is what is motivating them to do such a good job. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I have worked in different areas in New Zealand through different Family Courts. I have always found the staff most helpful, supportive and respectful. I have appreciated the training that has been offered from time to time in the various locations. (2575; Counsellor, Professional Associate Staff Member; Survey)

The most important change and the most positive was the introduction of FDR as a starting point as opposed to the filing of inflammatory proceedings. (2573, FDR Mediator; Survey)

These reforms haven't been as bad as I thought they might have been, so long as counsel have been able to adapt. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I think, on the whole, it deals reasonably well with people who are often very difficult and incapable, for whatever reasons, of seeing/doing what is best for their child/ren. (2377, Psychologist, Specialist Report Writer; Survey)

In my opinion the emphasis on children is evident. Care is shown in giving parents opportunity to learn and re-evaluate their thinking, and communication to best support the children through the process. (2547, Counsellor; Survey)

Summary

Eighty per cent ($n=291$) of the survey respondents shared their views and experiences of the Family Court, either by answering specific questions ($n=258$) or commenting more generally ($n=33$). Of those who answered specific questions, the majority (91%) had referred or directed separated parents/caregivers to the Family Court. Most (93%) also had some experience of working in the Family Court. The majority (84%) had experience of doing so before and after the 2014 reforms, with 9% only having experience after the reforms came into effect. These professionals indicated great dissatisfaction with working in the Family Court since the introduction of the reforms. Only 4% reported they were satisfied, while 83% indicated they were dissatisfied or very dissatisfied with this work. Less than half (45%) rated the Family Court as helpful or very helpful for separated parents/caregivers making parenting arrangements, with just over a quarter (28%) rating it as unhelpful or very unhelpful.

Open-text responses by 290 professionals to 14 survey questions about the Family Court addressed how well the following aspects of the Family Court were working in relation to making parenting arrangements:

The Family Court Tracks ($n=207$): Nearly half (44%) of the professionals commented on the tracks in general terms. A minority liked the track concept in principle, but were uncertain how well it worked in practice. Eighteen professionals said the tracks were working well, but many more ($n=68$) said they were meaningless, pointless, inconsistent, confusing, made no difference and were not working as anticipated. The **simple track** ($n=45$) could be helpful when matters were not contentious. However, it was rare for a case to be seen on the simple track, and those that were on this track experienced huge delays as they were not a priority. The **standard track** ($n=53$) could work well, but was also seldom used, too slow and bogged down - "a slow boat to nowhere." Standard track matters were often pushed back to accommodate urgent cases. The lack of legal representation on this track was also criticised as denying access to justice and making it difficult for parents to complete and file their own applications. The **without notice/urgent track** ($n=108$) was spoken of positively by 13 professionals for dealing with applications immediately and enabling progress on cases. Applications on this track had increased significantly since the 2014 reforms, such that it had now become the norm. This increase was attributed, in part, to the without notice/urgent track being the most straightforward way of cases being given some urgency and getting dealt with by the Family Court in a timely fashion. However, many professionals were concerned the without notice/urgent track was now overloaded and were frustrated by the delays that had resulted. Lawyers were criticised for their overuse/misuse of the track, by applying too often and without merit, as a means of enabling legal representation from the outset, accessing Legal Aid and "fast-tracking" cases. The track was said to be "frankly abused at times." Some professionals were also concerned that lawyers were filing without notice applications to bypass FDR. The **complex track** ($n=12$) was commended for enabling one judge to manage a case and providing greater flexibility, but some professionals were

concerned that the lack of judge time constrained the progression of complex matters within the Court. Fifteen professionals recommended the introduction of a new “semi-urgent” track for cases that do not meet the without notice threshold, but are nevertheless urgent. The ability to reduce or abridge time was also suggested.

Self-representation ($n=222$): There were said to now be more litigants in person than previously, partly due to the restrictions on legal representation under s7A. Parents’ right to self-represent was recognised and sympathy expressed with the challenges they faced which could be overwhelming and stressful at a difficult time in their lives. However, the majority of professionals were critical of the detrimental impact that litigants in person were having on the Family Court. Their three most common complaints concerned i) self-representing litigants’ lack of knowledge/direction, unrealistic expectations and high emotions; ii) the time-consuming nature of having litigants in person involved in a case and the slowness, delays and poorer outcomes that resulted; and iii) the extra work and stress that self-representation created for the Family Court staff, judges and lawyers. There was also concern about the tolerance, latitude and overcompensation accorded to litigants in person within the Family Court and the injustices that could result. Many thought it was inappropriate to encourage self-representation and were concerned about the financial impact on the other represented party. Lawyers for the Child were acknowledged as important in assisting litigants in person, but the implications of this for their role and workload were considered problematic.

The Appointment and Role of Lawyer for the Child ($n=209$): Most professionals regarded Lawyer for the Child as “working well”, “essential”, “heavily relied upon” and “the saving grace of the Family Court which would otherwise grind to a halt without them”. A minority (9%) expressed mixed or negative views as the helpfulness of Lawyer for the Child was highly variable depending on their skills and responsiveness. There were criticisms that Lawyer for the Child could, at times, be ill-equipped to undertake the role, lacked expertise about children, failed to spend enough time with children, did not remain impartial, sabotaged out-of-Court processes, or acted obstructively with colleagues or family members. Initial fears the 2014 reforms would lead to fewer appointments of Lawyer for the Child had not materialised and the situation was largely unchanged. However, what had changed since the reforms was an expansion of Lawyer for the Child’s role and the work being more complex and harder. This was attributed to the increase in self-representing litigants in the Family Court and the expectation (by parties and the Court) that Lawyer for the Child would undertake additional tasks to compensate for the lack of parties’ legal representation. This meant the role could go far beyond the brief. Mixed opinions were expressed about the timing of Lawyer for the Child appointments. Most thought the timing was about right, but some thought they were appointed too late or too often, or were sometimes not appointed when they should have been. Aspects of the Lawyer for the Child role that were particularly valued included their neutral representation of children, ensuring children have a voice and are protected, progressing cases, performing an assistance/negotiation/resolution role, assisting significantly in reaching (earlier) resolution and reducing delay. Their role in Round Table Meetings generated mixed opinions. Some regarded their pivotal role in these meetings as very effective and helping to prevent matters from proceeding to hearings unnecessarily, while others said this was not ideal and compromised their ability to concentrate on their role as the child’s representative and advocate. The poor hourly rate paid to Lawyer for the Child was strongly criticised, had not been increased for 20 years, and was in urgent need of review. Cost Contribution Orders were considered to have a detrimental impact on the Lawyer for the Child role as they could be unfair and had the potential to deter people from agreeing to the appointment. Improved initial training and

ongoing professional development were both suggested as ways of improving practice and achieving greater consistency with the role of Lawyer for the Child.

The Appointment and Role of Specialist Report Writers (n=190): Most professionals regarded specialist reports positively as a very important, valuable and necessary tool within the Family Court. Specialist report writers were particularly commended for providing impartial, objective and clinical insights that greatly assisted in resolution, particularly with complex or intractable cases. Only a minority (5%) expressed mixed or negative views, criticising some specialist reports for their poor or variable quality, bias toward a particular parent, outdated understandings about children; report writers' influence on judicial decisions or, conversely, their unwillingness to express an opinion, and the report's potentially devastating impact on families. While a few professionals said the availability of specialist reports had not changed significantly since the 2014 reforms, the general view was that the number of reports had decreased and it was now harder to convince a judge to appoint a specialist report writer. The nationwide shortage of specialist report writers, which had implications for the decreased number of reports being ordered and the delays experienced in obtaining them, was commented on by 30% of the professionals. Report writers were overworked, under-resourced and overstretched, and more were needed. Delay was the most frequently raised concern about specialist reports by 43% of professionals who felt the wait time of six, nine or twelve months was unacceptable and detrimentally impacted upon resolution timeframes. These delays meant that a specialist report would often need updating to be of value for the hearing. The shortage of report writers was attributed, in part, to the risk of complaint that report writers endured and which needed attention by the Ministry of Justice. Cost Contribution Orders were thought to make some judges reluctant to direct reports, while others felt these made no difference. Other issues raised included the timeliness of their appointment being too late in the process, having them available in FDR, having an assessment focus on parents (not just the child), utilising family therapy appointments with a family therapist, more funding, implementing succession planning, reviewing the selection criteria to expand the report writing pool to include other psychologists (e.g., educational psychologists) and social workers with specialist training, and providing scope for parents to comment on and respond to draft reports and to meet with the report writer before the hearing. Twelve per cent of professionals raised s132 reports and said that delays were also a concern with these reports by social workers. They were also criticised by some for their inconsistent quality, but others said they were of a high standard, provided essential information about a child's safety, and were sometimes being sought by the Family Court when a s133 report was unlikely because of the shortage of report writers or delay.

Round Table Meetings Led by Lawyer for the Child (n=216): The majority of professionals (82%) were positive or very positive about Round Table Meetings and said they were working well and often necessary. Round Table Meetings were happening frequently and were particularly helpful in keeping momentum, getting the parties together and talking, narrowing the issues, resolving interim arrangements or final decisions. They provided a quicker means of resolution than waiting for Settlement Conferences and often led to resolution. The minority of professionals expressing mixed (n=9) or negative (n=5) responses were concerned that Round Table Meetings varied enormously in practice and outcome depending on the training and skill of Lawyer for the Child, clients feeling unprepared for the meeting or feeling bullied into agreements, and FDR being a preferable means of dispute resolution. Round Table Meetings were criticised for being used more often than FDR or for bypassing or duplicating FDR. However, others believed that Round Table Meetings were more effective than FDR and preferred by clients. Many more professionals (n=22)

expressed a strong preference for the pre-2014 counsel-led mediation and EIP processes. The most frequently expressed concern about Round Table Meetings ($n=29$) was the challenging dual role these meetings presented for Lawyer for the Child in both representing the child and running the meeting as a neutral chairperson. Round Table Meetings were said to work best when both parties were legally represented - they were made much more difficult when self-representing parties were involved. Legal Aid funding was said to now be largely resolved with the ability of judges to direct Lawyer for the Child to convene a Round Table Meeting in appropriate cases. There was a preference, however, for this becoming part of the standard brief rather than requiring judicial direction for Legal Aid purposes.

Judicial Conferences and Hearings ($n=190$): Many professionals ($n=81$, 43%) said that judicial conferences and hearings work well and are necessary. Some thought there was no major difference in the way they were being used since the 2014 reforms. Judges were complimented for working hard, being thoughtful, thorough and compassionate and for making good use of conferences and hearings to move the parties closer to resolution. However, several professionals expressed concerns about some judges' lack of preparation, inefficiency, mood and limited skills at conferences and hearings. Time pressures and insufficient resources were recognised as accounting for some of these issues. Delay was the most frequently mentioned concern regarding conferences and hearings ($n=83$) as the allocation of dates was too slow and led to lengthy waiting times. This was said to be noticeably worse since the 2014 reforms. There was also criticism that the time allocated was insufficient (particularly for hearings) and well outside of children's timeframes. The difficulties that self-represented litigants face at judicial conferences and hearings meant these Court events were inevitably slowed down by their presence and therefore took longer. The sheer number of conferences and Court events to now get to a hearing was also criticised. Greater use of teleconferences and telephone meetings was suggested. Separating the conferences into the different types now available was thought to be confusing and arbitrary, and the Family Court's use of back-up dates was problematic for Court staff, counsel and parties.

Applications, Filing, Affidavits and Forms ($n=211$): Most (91%) of the professionals commented on the forms, with the majority ($n=188$) regarding them as one of the worst aspects of the 2014 reforms. They described the forms in very negative terms as complex, too long, unhelpful, appalling, confusing, the bane of our lives, hated with a passion, not allowing for a straightforward chronology of events and creating an excessive amount of paper. Most wanted the forms urgently revised, simplified or scrapped. Only 10 professionals said the forms were fine and worked well now they were used to them. To circumvent the issues with the forms, many lawyers said they had, with judges' approval, reverted to filing old-style affidavits setting out all the evidence and attaching these as extra pages to the forms. They wanted the forms to be optional for lawyers to use so they could instead prepare and attach Court documents as they were trained to do and had done prior to the 2014 reforms. The forms provided useful guidance for lay people and self-representing litigants and should really only be used by them. However, concern was expressed about the challenges they faced with understanding, accessing and completing the forms and fulfilling the filing procedures – self-represented people were said to struggle with, and be overwhelmed by, this. The most frequent complaint the professionals made about filing concerned documents being filed on time, but not actually making it to the Court file. Suggestions to improve filing included reconsidering the need for original affidavits to be filed as a hard copy, the registry being stricter on accepting documents that do not comply, installing a drop-box near a Court counter for documents, improving the forms generator, and introducing an electronic filing and management system.

e-Duty (n=198): The majority of professionals (79%) were positive or very positive about e-Duty, and said that it was working well. The rapid turnaround of urgent applications resulting in quick decisions was particularly appreciated, and there was sympathy for judges' heavy workloads on the e-Duty platform. However, the high volume of applications that were, at times, overloading the e-Duty platform was the most frequent concern. It was particularly irksome when an urgent application filed prior to the registry's daily cut-off time, was held over for review by a judge the following day. Other concerns included inconsistency and variability of the decisions being made on the e-Duty platform, and judges' lack of accessibility to case files which could result in poor knowledge of the history of a case. Some preferred that urgent applications be dealt with by a local judge who was familiar with local cases.

Caseflow Management (n=179): Nearly a quarter (24%) of the professionals said that case management was working well. However, the majority (76%) said it was not. Their most frequently mentioned concern related to lack of timeliness and delays - for example, with processing on notice applications, report writer referrals and availability of reports, referrals to counselling, receiving minutes back and getting Court orders issued. Other criticisms concerned the inability to reach a case officer directly; lost files, files not being at the Court, or registrars not taking ownership of a file; centralisation; unrealistic time frames; the inefficiency of a registry; understaffing; inadequate training; inexperienced staff; increased registry workloads and lack of resourcing.

Cost Contribution Orders (CCOs) (n=168): The majority of the professionals did not consider that CCOs were working well, while around a fifth were positive about them. They were noted as being seldom made because clients were primarily legally aided and therefore exempt or because judges were reluctant to impose such orders on parties. Where CCOs were made, concern was expressed about their administrative cost-effectiveness, the lengthy delays in issuing the CCO to the parties, and the fairness of imposing them i) on private clients who sat just above the Legal Aid threshold or were middle income earners, ii) on grandparents caring for their grandchildren, and iii) on clients whose ex-partners were the ones engaging in unreasonable, vexatious or obstructive conduct. Client affordability was questioned, as was the impact of CCOs on clients' perceptions about the use of Lawyer for the Child and specialists within the Family Court.

Ways in Which the Family Court is Working Well (n=210): A fifth (21%) of the professionals said the Family Court was *not* working well or had deteriorated. However, the majority (79%) provided positive responses and directed their most frequent praise to the people, staff, professionals and practitioners working within the Family Court generally. The Family Court's role in attending to urgent/without notice applications was the second most frequently mentioned aspect that was said to be working well, followed by the Court's decision-making ability in achieving resolutions and outcomes for families, the appointment and role of Lawyer for the Child, the availability of hearings and time in front of a judge, the Court being a good avenue or forum for families to turn to, the availability of settlement conferences, counselling (particularly communication counselling), e-Duty, out-of-Court processes like PTS and FDR, and specialist reports.

Ways in Which the Family Court Could Be Improved: Around three-quarters of the 364 professionals completing the survey commented on how the Family Court could be improved in relation to the making of parenting arrangements. Their diverse range of suggestions varied from overarching or general statements to very specific and detailed recommendations about the 2014 reforms; legal representation/access to justice; judges;

case management; delay; Family Court staffing; forms; funding and resources; counselling; FDR; EIP; specialist report writers; Lawyer for the Child; training, supervision, peer support and networking; Legal Aid; Family Court tracks; triage; lawyers; self-representing litigants; and legislation/rules.

Summary of Ratings on the Family Justice Services

Common variables across the family justice services are presented in the following three tables to allow comparison across services. The highest percentage is highlighted for each service, in green to indicate a positive rating and in red to indicate a negative rating.

Table 33: Satisfaction with delivering or working in the family justice service

	PTS	FLAS	FDR	Family Court
Very dissatisfied	4.7%	31.0%	13.5%	37.1%
Dissatisfied	4.7%	28.4%	18.9%	46.3%
Neither satisfied nor dissatisfied	4.7%	21.6%	14.9%	12.5%
Satisfied	58.1%	13.8%	37.8%	4.2%
Very satisfied	27.9%	5.2%	14.9%	-

Table 34: In general, how helpful do you think [service] is for separated parents/caregivers making parenting arrangements?

	MOJ Website	MOJ Phone line	PTS	FLAS	FDR	Family Court
Very unhelpful	5.7%	17.8%	7.6%	10.6%	5.2%	7.5%
Unhelpful	18.9%	40.0%	2.2%	16.9%	7.3%	20.2%
Neither helpful nor unhelpful	22.6%	26.7%	5.9%	23.9%	19.7%	27.3%
Helpful	48.4%	6.7%	53.5%	40.8%	46.6%	39.9%
Very helpful	4.4%	8.9%	30.8%	7.7%	21.2%	5.1%

Table 35: Would you recommend [service] to separated parents/caregivers making parenting arrangements?

	MOJ Website	MOJ Phone line	PTS	FLAS	FDR
Yes	48.4%	23.9%	89.2%	71.1%	69.9%
Maybe	36.6%	15.2%	8.1%	20.4%	25.5%
No	14.9%	60.9%	2.7%	8.5%	4.6%

A clear pattern emerges from Tables 33, 34 and 35 which shows that, on the whole, the professionals supported the family justice services, with the exception of the Ministry of Justice 0800 2 AGREE phone line which was rated negatively in comparison with the other services. The majority of professionals rated PTS (84%), FDR (68%) and the Ministry of Justice website (53%) as very helpful or helpful to separated parents/caregivers making parenting arrangements. However, the proportion rating the Family Court (45%) and FLAS (49%) as very helpful or helpful to parents/caregivers was lower, and for the 0800 2 AGREE phone line (16%) it was much lower.

The majority of professionals had referred or directed separated parents/caregivers to the Ministry of Justice website (92%), the 0800 2 AGREE phone line (67%), PTS (96%), FLAS (82%), FDR (95%), and the Family Court (91%). Only a minority indicated they would *not* recommend services to separated parents/caregivers: the Ministry of Justice website (15%), PTS (3%), FLAS (9%), and FDR (5%). However, 61% would not recommend the 0800 2 AGREE phone line to parents.

The majority of those delivering PTS (86%) were very satisfied or satisfied with providing this service, compared with 19% providing FLAS, 53% providing FDR, and 4% working in the Family Court.

The 2014 Family Law Reforms

Survey Findings

Satisfaction with the 2014 Reforms

Survey participants were asked for their views on, and satisfaction with, the 2014 reforms. Professionals' satisfaction with changes to the family justice system as a result of the reforms are presented in Table 37 and their views on whether the objectives of the reforms have been achieved are detailed in Tables 36 and 38. The most commonly selected option is highlighted in green for a positive rating and in red for a negative rating.

Overall, **more professionals were dissatisfied than satisfied with the changes to the family justice system resulting from the reforms** (see Table 37). The only change the majority (57%) indicated they were satisfied or very satisfied with was making Parenting Through Separation mandatory prior to proceeding to the Family Court. Satisfaction with the provision of FLAS and the introduction of FDR was evenly split, with no major differences between the numbers indicating they were dissatisfied or very dissatisfied and those who were satisfied or very satisfied. However, on the remaining five changes outlined in Table 37, the majority of the professionals expressed **dissatisfaction**, particularly in relation to:

- the reduction of Family Court counselling (92% were dissatisfied or very dissatisfied);
- limiting legal representation/self-representation (80% were dissatisfied or very dissatisfied);
- FDR costing \$897 (67% were dissatisfied or very dissatisfied).

More professionals were dissatisfied or very dissatisfied with parties being required to attend FDR prior to making an application to the Family Court than were satisfied or very satisfied (51% compared with 33%). Nearly twice as many were dissatisfied than satisfied with having three Family Court tracks (40% compared with 23%).

In addition to being largely dissatisfied with the majority of the changes resulting from the 2014 reforms, most professionals considered that **the objectives of the 2014 reforms** had not been achieved (see Table 36). Only 7% agreed or strongly agreed that the reforms had achieved the purpose of ensuring "a modern, accessible family justice system that is responsive to children and vulnerable people, and is efficient and effective,"¹⁰ while 81% disagreed or strongly disagreed that this objective had been met.

¹⁰ The purpose of the reforms as stated in the General Policy Statement included in the Family Court Proceedings Reform Bill.

Table 36: Agreement that the 2014 reforms have achieved the purpose of ensuring “a modern, accessible family justice system that is responsive to children and vulnerable people, and is efficient and effective”

	<i>n</i>	Percent
Strongly disagree	194	53.3%
Disagree	101	27.7%
Neither agree nor disagree	29	8.0%
Agree	26	7.1%
Strongly agree	1	0.3%
Don't know	13	3.6%
Total	364	100%

This lack of agreement that the reforms had achieved their purpose was also reflected in the ratings of the following objectives as presented in Table 38. The majority of the professionals considered that the following objectives of the 2014 reforms were either *not at all achieved* or had *very limited achievement with extensive shortcomings*:

- Faster resolution of family disputes (through the use of out-of-Court services) – 74%.
- Less adversarial resolution of family disputes (through the use of out-of-Court services) – 69%.
- More efficient and effective operation of the Family Court – 83%.
- Less adversarial Court proceedings – 78%.
- Improved Family Court response to victims of domestic violence – 53%.
- Better targeting of resources to ensure that the family justice system remains affordable in the future – 75%.
- Better targeting of resources to support those children and vulnerable people who most need protection – 77%.

Table 37: Satisfaction with changes to the family justice system

	Very dissatisfied	Dissatisfied	Neither satisfied nor dissatisfied	Satisfied	Very satisfied	Don't know/ Not sure
Making Parenting Through Separation (PTS) mandatory for many applicants before they proceed to the Family Court	8.9%	14.4%	18.0%	32.1%	24.7%	1.9%
Reducing availability of Family Court counselling	70.8%	21.5%	4.1%	0.8%	0.8%	1.9%
Providing low-income parents with up to four hours of legal advice through the Family Legal Advice Service (FLAS)	14.4%	21.5%	22.4%	29.0%	7.5%	5.2%
Introducing the Family Dispute Resolution (FDR) service to resolve parenting and guardianship matters out-of-Court	13.8%	25.4%	21.8%	20.2%	18.0%	0.8%
Family Dispute Resolution (FDR) costing \$897 (unless eligible for government funding)	37.3%	30.1%	18.2%	9.9%	2.5%	1.9%
Requiring parties to attend Family Dispute Resolution (FDR) before making an application to the Family Court (unless on the Without Notice/Urgent track)	21.5%	29.8%	14.6%	18.5%	14.9%	0.8%
Having three Family Court tracks (Simple, Standard, Without Notice/Urgent)	13.2%	27.0%	30.9%	20.1%	3.0%	5.8%
Limiting legal representation/Parties self-representing rather than using lawyers	59.5%	20.7%	5.5%	9.4%	1.9%	3.0%

Table 38: Do you think the reforms have achieved the following in practice?

	Not at all achieved	Very limited achievement, extensive shortcomings	Partially achieved, benefits and shortcomings finely balanced	Largely achieved, despite a few shortcomings	Fully achieved, very few or no shortcomings	Don't know/Not sure
Faster resolution of family disputes (through the use of out-of-Court services)	40.7%	33.2%	12.5%	9.4%	0.3%	3.9%
Less adversarial resolution of family disputes (through the use of out-of-Court services)	32.5%	36.4%	15.7%	10.2%	1.9%	3.3%
More efficient and effective operation of the Family Court	65.0%	18.2%	6.9%	1.9%	0.3%	7.7%
Less adversarial Court proceedings	55.6%	22.0%	8.5%	3.0%	0.6%	10.2%
Improved Family Court response to victims of domestic violence	27.3%	25.7%	20.4%	6.9%	0.6%	19.1%
Better targeting of resources to ensure that the family justice system remains affordable in the future	49.2%	25.8%	10.7%	1.9%	-	12.4%
Better targeting of resources to support those children and vulnerable people who most need protection	51.6%	25.5%	11.5%	1.9%	0.3%	9.1%

Unintended Effects of the 2014 Reforms

In addition to asking professionals whether they believed the objectives of the reforms had been achieved, they were also asked if they thought the reforms had had any *unintended* effects. Almost three-quarters (73%, $n=265$) detailed at least one unintended effect, and almost all of these were negative. Most commonly, specific effects were listed, but several more general comments echoed the professionals' views that the reforms had not achieved their purpose.

They have done the opposite of their goal. It would be laughable if it weren't so tragic. (2234, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

They have had the reverse effect of what was intended. (2536, Judge; Survey)

The unintended effect is that the "reforms" have made things worse in almost all target areas rather than better. (2292, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

The opposite of what the policy statement claims. (2321, Lawyer, Lawyer for the Child; Survey)

There are many aspects of the reforms that exacerbate rather than help parties/families resolve their issues. (2364, FDR Mediator, Counsellor, Social Worker; Survey)

Fragmented, stressful, less efficient delivery of family justice to families for children now. (2314, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, FDR Mediator; Survey)

The very opposite has been achieved, the process is harder to use (due to the forms), it is far less efficient/accessible, and there are far bigger delays in getting Court time (even for Directions Conferences) than previously. (2316, Lawyer, Lawyer for the Child; Survey)

The family justice system is no longer accessible or responsive. It is certainly not efficient but still, when access is granted, it is effective. (2563, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I feel that the reforms have actually clogged up the system, not streamlined it. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The specific unintended effects mentioned included:

- The increase in without notice applications;
- Negative effects due to self-representation;
- Backlogs and delays;
- Limiting of access to justice.

Increase in without notice applications

One of the most frequently mentioned unintended effects was the increase in without notice applications before the Court, with 35% ($n=92$) of the responses making reference to this. The increase was attributed to parties using the without notice track **to avoid or bypass FDR in order to access the Court system directly, to avoid delays, and to allow them to have legal representation.**

They have pushed parties towards without notice applications to attain the right to be represented. (2474, Lawyer, Lawyer for the Child; Survey)

The use of without notice applications to get in the door of the Court with representation (although everyone who had any knowledge saw this coming a mile away). (2306, Lawyer, Lawyer for the Child; Survey)

The reforms have resulted in an increase in without notice applications. The reason for this is that parties use this in order to not have to access the system through the FDR process. (2507, FDR Mediator; Survey)

It has forced more without notice applications to be made in an effort to speed up proceedings and circumvent the inherent delays in FDR and getting proceedings before a judge and Lawyer for the Child appointed. (2510, Lawyer, Lawyer for the Child; Survey)

Presumably due to the delay in reaching the Family Court and the mandatory steps before applying ... without notice applications have increased as using this track bypasses the mandatory steps. (2171, Lawyer; Survey)

More without notice applications because otherwise the process is too long in cases where there is no contact and clients do not want to proceed without a lawyer. (2324, Lawyer; Survey)

It drives people to make applications without notice, either to get access to the Court, or because problems have escalated while access to the Court was denied. (2338, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Some noted that **lawyers, too, were advocating this track** for their clients.

To try and speed up the process for clients I will try and make applications without notice if at all possible. This must be making more work for Lawyer for the Child and judges. I am not abusing the system; just some matters you could file on notice and seek abridgment of time. Now we don't do that. Also, where parties are difficult, why would we suggest FDR when the result (a parenting agreement) is not enforceable? (2566, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The number of without notice applications have increased exponentially. Lawyers will always find a way to work around for their clients. (2215, Lawyer, FLAS Provider; Survey)

Lawyers supporting matters of urgency is creating impossible queues for the normal track. (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Survey)

Lawyers seem to be choosing to do without notice applications more often in an effort to sidestep mediation, which must be affecting the Court processes, and is leading to very different pathways. (2427, FDR Mediator; Survey)

Parties and lawyers largely bypass the initial out-of-Court process by filing without notice applications despite clearly not meeting the evidential thresholds. (2582, Lawyer, FLAS Provider; Survey)

Some professionals commented that some without notice applications were **not genuine or necessarily urgent**.

Huge growth in the number of without notice applications, many of which are not genuinely without notice. (2325, Lawyer; Survey)

More unnecessary without notice applications (but necessary because of the inability to access Court help in any other way). (2291, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

The creation of a huge number of without notice applications that don't need to be fast tracked at that high/fast level. There needs to be a 'semi urgent' track that enables people to make applications without doing FDR first, and where the respondent has say seven days to respond. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

More without notice applications when there shouldn't be to avoid pre-requisite steps or so counsel can act. (2218, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

I believe that there has been an impact where without notice is used inappropriately due to an absolute need for a person to have a lawyer due to be unable to properly deal with matters themselves. (2559, Lawyer; Survey)

Higher without notice applications – more people swearing affidavits with misleading evidence in order to try and meet urgent threshold; little repercussion for filing misleading/incorrect evidence. (2538, Lawyer, Citizens Advice Bureau Staff Member/Volunteer; Survey)

More urgent applications which clog up the system and are often unwarranted. (2482, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Concern was expressed that parties may **exaggerate safety concerns** to justify without notice applications which could **negatively impact on family relationships and children**.

Huge increase in without notice applications, which often are inappropriate, as a means of getting into the system. It provides an incentive for parties applying to exaggerate their evidence to make out urgency, when there is not. (2304, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

People are over-exaggerating violence and safety concerns to get on the without notice track. (2505, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

Many more without notice applications, some not justified, resulting in more “warring” between parents and stress for children. (2593, PTS Provider/Facilitator; Survey)

Far more urgent applications. More safety concerns raised to justify urgent applications, therefore escalating the conflict and damaging the family relationships. (2568, Lawyer, Lawyer for the Child; Survey)

The increase in without notice applications was regarded as **clogging up the court system** due to judicial resourcing being stretched to deal with the volume. This, in turn, led to **increased delays** in the Court, particularly for those not on the urgent track and those who genuinely needed to be on the without notice track.

Higher number of without notice applications, judicial resource required to deal with them, and therefore less resource to deal with usual business. (2590, Lawyer, Lawyer for the Child; Survey)

Massive increase in without notice applications, meaning the most urgent ones sometimes get held up by the less urgent ones due to lack of judicial resourcing. (2543, Lawyer; Survey)

Increase in without notice applications has clogged up the Court system. (2317, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

They take a huge amount of judge time. (2304, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

The huge spike in urgent applications led to the judicial conference backlog and delay. (2169, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Mediator (Private Practice); Survey)

The impact of this has been increased delays for parties who have a genuine need to approach the Family Court either because it is appropriate to do so directly or once the FDR process has been exhausted. (2507, FDR Mediator; Survey)

The most obvious is the dramatic increase in without notice applications which has increased the load on the Family Court. (2270, FDR Mediator, Mediator (Private Practice); Survey)

The amount of without notice applications has sky rocketed to the point that if you file anything other than without notice it will not be looked at. (2258, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Increased without notice applications resulting in families not really at risk holding up families that are truly at risk getting into Court. (2295, FDR Mediator, FDR Supplier Staff Member; Survey)

Unintended effects due to self-representation

While parties representing themselves early on in the dispute resolution process was an **intended**, not unintended, purpose of the reforms, 41 professionals mentioned unintended effects of parties' self-representation. As shown above, limiting legal representation was one reason given for the increase in without notice applications. Concern was expressed that this **left people unsupported** and having to navigate the process by themselves. Some professionals noted that the assumption that people could effectively represent themselves was flawed and **disadvantaged vulnerable people**.

I believe the impact on the system of the increased number of self-represented litigants was not foreseen. It is all well and good to believe people should represent themselves, but the reality is many people who approach the Family Court struggle to regulate their lives on any level and representing themselves creates additional stress for all involved. It needs to be remembered that Family Court consumers are not usually the wealthy and well-resourced – these are the people who will do well at FDR mediation and may never need to get to Court at all. But many, many of our clients do not fit this demographic and have longstanding issues which greatly affect their ability to resolve these most personal and important of difficulties - those around their children and partners. (2203, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The unintended effect is that policy makers assumed that anyone can represent themselves in Court and not get professional advice or representation. This has caused a complete shambles of this system which is now overloaded by 'urgent' cases and has backlogged the Courts even more than the system before the changes. (2525, PTS Provider/Facilitator; Survey)

Not all parties are capable of self-representation due to personal and/or relationship factors and are disadvantaged. (2332, Lawyer, Mediator (Private Practice); Survey)

Disadvantaged parties cannot have legal representation and struggle to place the relevant information before the Court. I have also noticed a rise in the number of parties who think they are lawyers and proceed to waste the Court's resources with irrelevant, long-winded, self-absorbed information. (2571, Lawyer, Lawyer for the Child; Survey)

Increased without notice and complex cases as parties cannot access full and proper legal advice. (2366, Lawyer, Lawyer for the Child; Survey)

Parties feeling unsupported without counsel. (2509, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Increasing use of self-representation has slowed everything down and disadvantaged parties who can't actually represent themselves adequately. (2270, FDR Mediator, Mediator (Private Practice); Survey)

As these previous quotes highlight, professionals also considered that self-representation had **increased delays and clogged the Court system**.

It is encouraging people to represent themselves and not obtain any legal advice; self-litigants use so much Court time. (2499, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Self-represented people bumble around in the Court system. (2201, Lawyer, FLAS Provider; Survey)

Significant delay in identifying the issues for determination, principally due to the requirement to self-represent. Delays caused by service, especially where lawyers are unable to accept service early in proceedings. (2338, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The bog down in the system caused by self-represented people, especially on the simple and standard tracks. (2280, Lawyer, FLAS Provider; Survey)

More self-litigants which slows the Court process down. (2532, FDR Mediator; Survey)

Cluttering up the Court with home-made applications. (2446, Lawyer, Lawyer for the Child; Survey)

Increased lay litigants delay matters. (2178, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Some professionals noted the **impact that self-representation had on judges, Lawyer for the Child and Court staff** by increasing their workload and cost.

The reforms have placed judges and Court staff in a compromised position having to provide advice to self-litigants. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Lawyer for the Child have to do more as fewer parties are represented – at cost to the Ministry. (2338, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

This has resulted in judges having to spend time handholding unrepresented litigants. (2195, Lawyer, Lawyer for the Child; Survey)

I suspect that there are higher number of self-litigants which, in turn, has added to the cost of the system in terms of increased judicial time and an increased burden on registry staff. (2212, Lawyer, Lawyer, Community Law Centre Staff Member/Volunteer; Survey)

Some also believed that **self-representation could prolong and exacerbate conflict between parties**, whereas early lawyer involvement could help defuse such situations and focus clients on the relevant issues.

Parties get more protracted in their positions because of the delay in getting a lawyer giving them advice. (2178, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I don't think you can use the word "unintended". I am certain the policy makers were always aware that the effects of the changes would be intended in that they would

create clogged Court systems and create more hostility between parties as they are required to be without a lawyer at least initially. (2224, Lawyer; Survey)

The increase in without notice applications and self-represented parties has led to catastrophic delays. Lawyers could often sort parenting issues out at an early stage for parties immediately following an on notice application, then discontinuing, leaving only the most serious issues for the Court to decide. That opportunity has now been lost. (2462, Lawyer; Survey)

It has eliminated lawyers who often defuse a situation and reality check and refocus clients early. (2210, Ex lawyer and FLAS Provider; Survey)

Self-represented litigants create havoc for represented parties – often as a form of continued abuse towards the other party. (2495, Lawyer; Survey)

The lack of legal advice and a lawyer on board early on means that people do not get good advice about their children and are instead more interested in their own rights (and the issues of child support/sole parent benefit). (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, PTS Provider/Facilitator; Survey)

Delay, increase in complexity and level of conflict from people representing their unfiltered views on the other parent in FDR and the initial applications. (2404, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Delays

As indicated above, many professionals commented on delays in the family justice system due to the increase in without notice applications and parties self-representing. Delay was mentioned by 35% of the professionals ($n=94$) who provided a response to the question about unintended effects of the reforms. They said that delays were causing **cases to take longer to resolve, prolonged disputes** and **parties becoming more entrenched** in their positions. The **negative impact of lengthy delays on children** was also raised as an unintended effect of the reforms.

The reforms have increased the costs and time required to manage disputes. (2172, Lawyer, FLAS Provider; Survey)

The wait times in the Family Court have increased significantly. (2329, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

It's more difficult to access timely resolution of disputes. (2283, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The Family Court is completely congested which has resulted in proceedings dragging out for years in some circumstances. (2582, Lawyer, FLAS Provider; Survey)

Probably more delays, rather than less. (2306, Lawyer, Lawyer for the Child; Survey)

The length of time to resolve a Family Court case seems to have increased. (2344, Lawyer, FLAS Provider; Survey)

There are far bigger delays in getting Court time (even for Directions Conferences) than previously. (2316, Lawyer, Lawyer for the Child; Survey)

The cases that now come to the Family Court take longer to resolve, are more complicated with unrepresented parties as well as often multiple parties, therefore limiting the scope for resolution by negotiation. The impact of this is that cases are now regularly over two years old without any end in sight. (2225, Lawyer, FLAS Provider; Survey)

The matters that do get to the Family Court are slower to be resolved, which entrenches conflict and draws out resolution. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Slowed things down, leading to decisions and settlements taking longer. Much greater burden on judges, which leads to delays. (2377, Psychologist, Specialist Report Writer; Survey)

Slowed things down considerably, especially when people are required to attend PTS and FDR. This has made some situations worse. (2317, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Longer resolution times. Less availability of hearing time due to less availability of judges. (2183, Lawyer, Lawyer for the Child; Survey)

More cost over-all as cases seem to take longer and parties are more entrenched. (2568, Lawyer, Lawyer for the Child; Survey)

I'm not sure if it is the reforms or not, but the system seems to get slower and slower, at least for those involved at the phases I work at. (2351, Psychologist; Survey)

Adding delay instead of reducing it. (2449, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

The professionals noted that these **delays had a detrimental impact on children**. Delays in resolving disputes meant that children could remain in a state of uncertainty for extended periods of time and, in some cases, not have any contact with one parent. As noted earlier, delays could also escalate conflict and frustrate parents, which further impacted negatively on children.

I am worried that a child will be seriously hurt because of the significant Court delays. (2226, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Significant delays and harm to children and families. The Court process with defended hearing is 12-24 months. A huge time to be in limbo. (2569, Lawyer; Survey)

I think our children are suffering and our parents are suffering. They wait so long for outcomes. I think there will be long-term impact on our children. (2439, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The period of time and lack of support for families to make better supported resolution is meaning a long-term detrimental effect for many kids. (2412, PTS Provider/Facilitator; Survey)

Kids being stuck for long periods of time in their parents' conflict that is often exacerbated by the Court's time frames. (2495, Lawyer; Survey)

I imagine that in more busy Courts, the unintended consequence is children having to wait many months before seeing their absent parent (usually fathers) because an interim Parenting Order is made without notice, providing for no or professionally supervised contact only. And there is no ability for the father to meaningfully oppose or challenge that ruling until the first Directions Conference. This is unacceptable. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

They have had a negative impact on vulnerable children as without notice applications are not being processed fast enough. (2436, Judge; Survey)

When a matter goes to Court, due to all the delays, the adversarial positions of the parties has increased and the objectivity of the parties has decreased. ... Children have been adversely affected by the delays. (2570, Lawyer, Lawyer for the Child; Survey)

They have ensured an inaccessible system with considerable delays – particularly having regard to time frames for children. It is neither efficient nor effective. (2262, Lawyer; Survey)

The delays that now take place have a significant impact on parents and children. (2288, Lawyer, Lawyer for the Child; Survey)

Sometimes it draws out resolutions longer and vulnerable children are further impacted by frustrated parents. (2535, Counsellor; Survey)

The time it takes to get a resolution can be detrimental to children. (2400, Ex-FDR Provider, Ex-Family Court Counsellor, Not currently working in family justice sector; Survey)

Polarising more parents which leaves them stressed for longer and their children suffer significantly. (2511, FDR Mediator, Counsellor; Survey)

Limited Access to Justice

A reduction in access to justice was cited as another unintended effect of the reforms, due to parents/caregivers being unable to have legal representation and/or afford services. This could then result in people (particularly the vulnerable) not accessing the help they needed. Some professionals regarded the family justice system as becoming less accessible since the reforms.

The Family Court is becoming increasingly remote and inaccessible. (2426, Counsellor; Survey)

Impeded access to legal advice and to justice. (2231, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Increased lack of access to justice, increased self-represented litigants who actually need help from a lawyer. (2291, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Many professionals noted that the reforms resulted in **cost becoming a barrier to accessing justice**, particularly for those on a low income. Those who could not afford legal representation, but were not eligible for Legal Aid or FLAS, were seen as particularly affected.

Cost of access to justice is a real struggle for most. (2569, Lawyer; Survey)

Access to justice now depends more greatly on your personal resources. A person who qualifies for FLAS, gets up to four hours of help. A private paying person can access as much support as they like in the background, even if the lawyer is prevented from assisting in Court initially in both scenarios. (2395, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

It has made the poor have less access to lawyers and the Court. (2308, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Legal Aid is so restrictive, only pays on a “fixed fee” basis and puts significant hurdles in place for junior lawyers to become lead providers. ... This also means there is less access to Legal Aid – hence less access to justice. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

A system that is not affordable for the poor litigants. (2561, Lawyer; Survey)

There is a group of people who now can't access proper legal help because the FLAS is not sufficient and they can't afford to seek legal advice in advance of a judge saying lawyers can act. (2554, Lawyer, FLAS Provider; Survey)

Clients who can't afford private representation, but are deemed ineligible for Legal Aid, have been significantly disadvantaged. (2268, Lawyer, FLAS Provider; Survey)

Cost is a barrier for clients unable to receive Legal Aid/subsidy. (2298, Social Worker, PTS Provider/Facilitator; Survey)

It has created a barrier for lower income (working poor) people to achieve resolution. (2412, PTS Provider/Facilitator; Survey)

They have shut out parties who cannot afford the time and cost. Proceedings now cost them before any Parenting Orders are even made. (2172, Lawyer, FLAS Provider; Survey)

The impact of the reforms in limiting access to justice was considered to **particularly disadvantage vulnerable members of society** – such as those on a low income, those with literacy or mental health issues, victims of domestic violence, and children.

Barriers to justice for people who don't speak English or who are illiterate. (2494, Lawyer, Lawyer for the Child; Survey)

Delays being the most obvious and making access to justice even more difficult for the most vulnerable members of our community. (2572, Lawyer, Lawyer for the Child; Survey)

'Compromised' clients (challenged educationally, intellectually, financially etc.) are disadvantaged by a system where they have minimal assistance. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The removal of lawyers disadvantages vulnerable clients. The removal of counselling disadvantages all separated parents. The lack of detail and resourcing of child-inclusion practices disadvantages children. (2573, FDR Mediator; Survey)

Less access to justice for lower-income litigants. The impact may then be extended to victims of lower-level domestic violence, including psychological abuse, and to children who may have to continue living with the impact of this. (2174, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

Less access to the justice system for those most vulnerable. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

They have exposed vulnerable people to even more stress by denying them experienced, moderate legal advice. (2186, Lawyer, Lawyer for the Child; Survey)

The reforms have made it more difficult for vulnerable people to access fast and accessible justice in the Family Court sphere. (2315, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Disadvantaging the vulnerable, in particular women, by removing access to Legal Aid for on notice matters. (2423, Lawyer, FLAS Provider; Survey)

They have had the reverse effect of what was intended – delay has increased and access to justice for vulnerable children and their families has significantly decreased. (2536, Judge; Survey)

More vulnerable people with limited education or with mental health difficulties are struggling to obtain good access to assistance when on anything other than the without notice track. (2559, Lawyer; Survey)

The professionals expressed concern that these access to justice issues meant people were **falling through the cracks** in the system and/or **not accessing services** at all.

Separated parents decide the system is too complex for them to navigate alone and walk away from resolving the dispute. (2395, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I honestly believe some people who should, wouldn't go near the Court or the out-of-Court processes. (2349, Lawyer, Lawyer for the Child; Survey)

People have fallen into the void in between FDR and self-representing. I imagine if you looked at the statistics of the number of applications to the Family Court pre-reforms

and added those post numbers with FDR cases, there is a massive gap of missing people. (2165, Lawyer, FDR Mediator, Survey)

There are people who are not accessing FDR and not accessing the Family Court, so it is very uncertain how things are going for the children in those circumstances. I have seen an increase in Oranga Tamariki cases where they stepped in due to interparental conflict. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

In my experience [the reforms] reduced the range of people accessing pre-hearing services. This range being: socio-economic, cultural, stage of separation, parental relationship. (2368, FDR Mediator, Counsellor; Survey)

It has hidden a true picture of what is going on for children in separating families. People are not seeking help. (2413, Mediator (Private Practice), Counsellor; Survey)

It's made access to justice harder – those who fall into the category where FDR doesn't assist, but not urgent enough to apply without notice, yet have no support and advice outside the limited FLAS scheme. (2454, Lawyer, FLAS Provider; Survey)

Difficult forms and lawyers unable to act makes things very difficult for parents and children where there are no risk factors, or the risks do not meet the threshold, as they don't have access to ongoing legal representation. (2272, Lawyer; Survey)

This lack of engagement with services then meant that **parties were not resolving disputes**, which could lead to an exacerbation of conflict, crisis-driven applications, and people remaining in unsafe situations.

Some disputes go unresolved because parties do not wish to attend FDR. (2374, Lawyer, FLAS Provider; Survey)

The reforms have created a huge gap in the availability of out-of-Court processes and supports for people to resolve their issues at an early stage, contributing to an increase in crisis-driven applications to the Court without notice which, in turn, exacerbate the tensions and hostilities between the parties. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Families are unable or unwilling to negotiate the Family Court system, so they stay in dysfunctional relationships to the detriment of themselves and their children. There's not enough easily accessible help for abuse victims – a number of whom believe protection orders are either misused or create more danger. (2388, Counsellor; Survey)

An unintended effect is that people would not engage with anyone and then end up in a crisis. (2188, Lawyer, FLAS Provider; Survey)

I imagine there is a whole host of disgruntled parents who have found it too hard to resolve their problem, whose disputes may remain time-bombs. (2373, Lawyer, FLAS Provider; Survey)

Many disillusioned parents are without access to quality information, advice and support. ... Either frustrated parents then criticised for overreaction or victimised

parents agreeing to care arrangements feeling bullied because their case is not urgent enough to warrant urgent assistance/advice and they simply want to get out of the system. (2213, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The high financial cost accruing for people who can't afford it, usually women. The abused partner, men as well as woman, find it extremely difficult to get safe outcomes for them and children. ... Many 'give up' or don't approach the Family Court because of lack of finances, building up debt, and/or fear of the outcome putting children and also themselves into a more dangerous or distressing situation. (2401, Counsellor; Survey)

People are waiting until a crisis situation to try and resolve issues. (2499, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Interview Findings

A number of themes emerged in the interviews with the professionals about the 2014 reforms. These included their impact on the family justice system, on children, and on the different professionals groups working in the sector. Professionals also suggested ways in which the family justice system could be improved and shared their views on the review that was announced by the Minister of Justice in 2018.

Impact of the 2014 Reforms on the Family Justice System

Many professionals spoke movingly in their interviews about the impact of the 2014 reforms on the family justice sector. A few were positive about the changes, particularly the addition of out-of-Court services, but most – particularly lawyers – were critical of many, if not most, aspects of the reforms.

We went from a Rolls Royce system, which was perhaps over the top, but if the government is committed to assisting families it needs to be a Rolls Royce system. Now we've got a sort of Ford Prefect system. ... I used to be so proud of the system. I used to say we have a really therapeutic system, we have skilled lawyers, we have psychologists, we have a very 'fix it' pragmatic type of focus. Now we have a more 'legal' focus. Of course, the Family Court should be legally focused, but legally focused with an overview of what the issues are - which are things like hurt, conflict, violence. So, it's not a strictly legal focus. If you don't manage the people issues, the legal issues will remain unresolved or they'll be temporarily resolved. These reforms aimed to get it more a legalistic, rather than resolution, focused let's say. ... As a tax payer it really bothers me that a system that was by and large working - it certainly wasn't perfect, definitely not - perhaps needed a bit of a review. But it's been so dismantled into a really second-class thing. And, now, we're going to go back and reinvent the wheel. I mean, seriously! (2231, Lawyer, Lawyer for Child, FLAS Provider, FDR Mediator; Interview)

It changes the goalposts when there's clients on one side that are educated and have got the money to get private advice. I'm really concerned about the other side: the low socioeconomic group that are really disadvantaged by the expectation that they can manage their way through this system without legal advice. I've got this analogy which is that, to me, it feels like taking the nurses out of the hospitals. You have the surgeons at the top, or the physicians or the doctors, and then you have the patients

who are supposed to be treating themselves while relying on the surgeons and doctors to fix them up. I know they couched this in terms that, "you're going to be emboldened, we're giving you the power", but I never wore that. I always thought it was a money-saving exercise. If that's what their aim was, they haven't saved any money and it's been a huge disservice because it's really impacted some clients in ways that you can't get back. People get really disillusioned and angry. Of course, the system's slowing down because it's clogged. So, then people get more frustrated and angrier. In my view it's just not working. (2579, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

The 2014 reforms were driven by the desire to cut costs. It was very much a focus on how they could potentially save money, rather than how human beings respond in situations. They've got to have a very good look at human behaviour. The Court process is a blunt instrument, but sometimes it's necessary to have a blunt instrument to start a conversation in terms of how to resolve matters about children. (2304, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Interview)

I feel like people have been let down by the justice system. I really do. (2237, Lawyer, Lawyer for the Child; Interview)

I understand what they were trying to achieve, but the process I, in no way, believe has achieved that. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

One of the biggest things that I think has happened is that the Court used to be very well served by Family Court co-ordinators, many of whom are very expert in helping clients with their initial negotiation with the Court system. With the 2014 reforms and with the emphasis on domestic violence, they are unavailable to clients now. So the Court no longer has a human face and people are referred to the generic counters where you have people with no knowledge at all really of Family Court processes. So, all in all, I think the reforms have really taken away from what was the particular, special and valuable qualities of the Family Court as it had existed pretty much up until 2014. It isn't the field that's wonky, it's the idiotic bureaucrats who don't have a clue. It's a bit like if something is not broken, why would you change it? We didn't have a broken system. We had a system that struggled with capacity, but it wasn't broken. It's become broken. (2362, Counsellor, Psychologist, Specialist Report Writer; Interview)

If my car needs to be fixed I'm not going to try and fix it myself. I'll go to a mechanic. They do that sort of stuff. I don't. (2500, Ministry of Justice/Family Court Staff Member; Interview)

The system's overwhelmed. I genuinely can't think of anything in the reforms that have added value to anybody. I am racking my brains genuinely. I don't want to be the voice of doom, but if you look at it as a bunch of initiatives, I can't think of anything that has made people's journey through the system better. Possibly the mindset of early intervention services is a really good one, but the reforms have really had the opposite effect. (2361, Lawyer, Lawyer for the Child; Interview)

The Family Court's under-resourced and we just knew, having been in practice on the ground, that it wasn't going to work. (2422, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Interview)

My Lawyer for the Child work now is far more complex than it was because we're not sorting out some good old access visits or the more simplified stuff that you could deal with quite easily. Now it's quite fraught. So, from a practitioner's perspective, there's a lot more headaches to it. You're dealing with a lot more self-represented litigants which presents a whole load of problems in itself. The conflict situations, you're dealing with far more of those. Talking around with my colleagues the job satisfaction has just plummeted in that time. Everything's become more complicated. (2279, Lawyer, Lawyer for the Child; Interview)

It's made it a hell of a lot harder and there's a lot more complex work required. I don't think it's worked well for families. As Lawyer for the Child, because there's no lawyers involved, you're trying to work your way through that and maintain relationships with both parents while you're still trying to represent the child – it's become an incredibly difficult balancing act, more so than it used to be. (2329, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Interview)

Overall, the system is unwieldy. It's woefully under-resourced first and foremost. It's slow - appallingly slow. The delays are horrendous and there are men who are going a year or two years without seeing children, or having very limited contact with their children. (2288, Lawyer, Lawyer for the Child; Interview)

In [region] they introduced three different reforms all at around the same time. It's actually hard to divide it all up to say what's the 2014 changes, what's the centralised file management system, and what's the centralised fixtures hearing process. It is just so frustrating to get movement with the Family Court. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Previously, the Family Court was the manager of the whole process including counselling and conciliation, so the Court dealt with the soft end of family disputes as well as the hard end. Whereas, now, the Court's only dealing with the hard end because the conciliation end of it is dealt with somewhere else. That's tended to make the Family Court a much more confrontational and less conciliatory place than it used to be. When I started in legal work and Family Court work 30 years ago the Court managed the process and there was the duty on family lawyers to promote conciliation, reconciliation. Whereas now, the Court is just a Court, just dealing with litigation and so it's a much more hardnosed place than it used to be. There's much more of a silo approach. ... The reforms were seen as another step towards trying to save money, rather than a step towards something positive. It's a much less pleasant environment to work in for everybody and not helpful for families. The changes came across as being another line of withdrawal of resource from that sector. Historically, there was a really close working relationship between all of the agencies involved in supporting the families, whether it was the Court or the social services or counselling or whatever. But that has really withered over the time I've been involved - a lot of it's about funding and every agency is just under such pressure that they can't really see beyond their own survival. (2365, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff/Volunteer, FDR Mediator, Mediator (Private Practice), PTS Provider/Facilitator; Interview)

It was such an opportunity lost. We had a system that fundamentally had some really good things about it, but it needed work. Obviously it could have been improved, but instead they lost the opportunity and ended up with something so much worse and demoralised a whole lot of quite hardworking family lawyers in the process. I just feel so sad really for the Family Court that it has been decimated to such a degree by the reforms. I was relatively proud of the work that we did and just to have the system so devalued like that, I found really hard. 2104 was a hard year actually. (2197, Lawyer, Lawyer for Child, FLAS Provider; Interview)

The counselling was taken away so there's no therapeutic intervention available to anyone now prior to coming into the Family Court. In order to get counselling now approved by the Family Court, parents have to actually have filed an application and had an interim order before the judge can then direct them into some communication counselling to assist their functioning. But really, those people need that counselling before coming into the Family Court. Most often, these situations are around how they separate in a way that is as amicable as it can be. When you come into the Family Court, whether you like it or not, it's a Court system and it's an adversarial system. It pushes people into that adversarial role because someone has to be the applicant and they have to lay out why they want that. Then someone has to respond to that and say why they don't agree with that. So you're automatically pushing people into those roles of being against each other, rather than providing them with any form of therapeutic intervention that allows them to communicate between themselves, control their behaviour and understand that they can't control other peoples' behaviour. It keeps them in the right frame of mind, but we took all the help away and set people up to begin an argumentative process. (2417, Ministry of Justice/Family Court Staff Member; Interview)

I actually don't have a terribly big issue with some of the changes. The use of FDR is well-placed, well-funded and well-researched and practiced. It's a bloody good idea, but where it's placed is in the wrong place. ... I don't think these changes were designed to help people. They were designed to streamline and save money. I appreciate that at a fiscal level you have to do that because if you don't look after the system then it's not going to be there for everyone. But these aren't changes that have been based on human need. They're based on finance and aimed at saving money. They siloed things off, they excluded certain parts of Legal Aid. I always thought that the changes they made were deeply cynical. They moved mediation out of the Court process so they could realistically say, "Yes, there's been a reduction on matters that are brought to Court." They made it difficult for matters to be brought before the Court so that they could say there's a reduction of applications. The changes as they were effected were not practical. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

With the changes came a smashing of the current working relations that the Court had with lawyers and psychologists, therapists, counsellors, the community at large really. We had a really good Court system where we had a great coordinator who would match people to families. Through the restructuring of everything, we don't have that anymore. It's taking quite a while to build a collaborative community of professionals again. (2560, Lawyer, FDR Mediator, Mediator (Private Practice); Interview)

It's like going to a doctor isn't it and then being told, "Well, you've got to go off and do all of this yourself." I don't know if I really can think of any improvements. It's been a

complete waste of time and a complete waste of money. Delay is the biggest thing now, in terms of families have to wait for so long for a judicial settlement conference. Then the parties get an hour and a quarter! To be fair we do have the ability to say, "Well, we need a double slot - two and a half hours." An hour and a quarter is barely enough. (2572, Lawyer, Lawyer for the Child; Interview)

We've had four years and the reform changes should have settled now, but I think the problems are just getting worse. The impact on practitioners has been huge. We're under a hell of a lot more stress than we used to be, and pressure. I'm not entirely sure why that is, but that also then has an impact on families. It's an indirect flow-on effect where you've got your lawyers so busy and we've got quite a small bar, so it's tricky. I think it certainly needs some quite significant tweaks. (2329, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/ Volunteer; Interview)

I thought the pre-reformed system was actually pretty good. I know there were issues about cost, and there were always going to be issues about delay, but I don't know how you count the cost of the current system - the social cost. I think you're going to get people opting out, just saying, "Well, that's just too hard, I can't be bothered, I'm not going to go there." There's a disconnect now between the social agencies, the FDR side, the legal side. We need to somehow reconnect that. (2592, Lawyer, Lawyer for the Child; Interview)

Impact of the 2014 Reforms on Children

The reforms were considered to have had a **detrimental impact on children** due to the lengthier delays and consequential exacerbation of family conflict. Despite a key objective of the reforms being the creation of a "family justice system that is responsive to children", many professionals considered that children had largely been **invisible** in the changes and that **delays** meant decisions were not being made and implemented in a time frame appropriate to a child's sense of time (as required by s4(2)(a)(i) of the Care of Children Act 2004).

What I witness is people going into the system with distressed children and halfway through, or at the end, coming out with children suffering from depression and anxiety and self-harm just because of the delays. (2165, Lawyer, FDR Mediator; Interview)

It certainly hasn't improved the lot of children because I don't think things are happening any more quickly. It's just become a lot more complicated. (2279, Lawyer, Lawyer for the Child; Interview)

You can't lose sight of the fact that the children are impacted by this. With proceedings that are protracted or difficult or don't enable people to resolve things promptly it's actually the kids that are in the middle of it. (2316, Lawyer, Lawyer for the Child; Interview)

Children become symptomatic not just because of their parents' conflict, but also because of the delay in the Family Court. They can't cope with it. (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Interview)

The Family Court is supposed to operate on the child's timeframe. It doesn't happen. The reality is there's no Court time available. So, if you're dealing with situations

where perhaps one parent has made a without notice application and got day-to-day care with the other parent having supervised contact - and it might be a young child - the hope of them getting that supervised contact quickly is unrealistic. It takes probably eight weeks to get that supervised contact underway. That's too long for young children. That's because of how much clogged up stuff there is in the Family Court now. There's also a real lack of supervised contact providers available because the work is difficult. We struggle to be able to allocate files to what's needed. It's the same with specialist report writers. Administrative justice doesn't do enough to support them, so it's really difficult to recruit them. We had two resign a couple of months ago. We haven't managed to recruit any new ones as yet. It has a real impact on how long it takes to get those reports to the judge. So, if a specialist report takes six months - they're supposed to take eight weeks, but they are never only eight weeks. They're always later than that. Generally, they take 12 weeks. And if there's delays because people don't file on time or we haven't even been able to appoint a report writer because we don't have any available for a while because they only take on new work if they finish and file other reports. So, sometimes it can take up to six months to get a specialist report in. That report might be what the judge is going to use to decide whether or not someone goes from having supervised contact to unsupervised contact. The difference between that contact regime could be them having two hours supervised contact at Barnardos once a fortnight, to an unsupervised regime that could see them having contact two or three times a week and an overnight stay. In the life of a child, six months is a long time. (2417, Ministry of Justice/Family Court Staff Member; Interview)

Overall, the wheels have come off. It's completely and utterly out of control and children are suffering and suffering badly. It can take three years to get a decision for some people and that can be a third of a child's life. Particularly with young children, when they're not seeing a parent, to get that into Court and to get that resolved if there's no agreement is really hard. There's no Court dates and you're just waiting and waiting and waiting for a Court date. I don't know whether it's because of the reforms, but it's certainly worse and it's getting worse all the time. (2483, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

Children's **participatory rights** under Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) were also said to be being breached and a strong call was made to provide greater opportunities for children to have a voice in the out-of-Court processes.

Children have been very much let down by the family justice system, not only in the time taken to resolve their disputes, but in the available resources to make sure that they're done appropriately and in accordance with the UNCRC. Not only has it been a negative impact, but also the government's actually in breach of its legal requirements under the Convention - as these children are (a) not being heard and (b) not having matters dealt with in accordance of the timeframes required. The delays are extraordinary. (2237, Lawyer, Lawyer for the Child; Interview)

The reforms tried to straddle two gaps - to make the Family Court a user-friendly forum but, at the same time, retain the fact that it is a Court and there's rules of procedure and evidence and everything else. It tried to straddle two areas and it hasn't achieved that. We've also got international obligations under the UNCRC. I think we let children down if we see this issue as purely as a dispute resolution. It seems like we don't value our children and that we see this as being a soft area of the law. That just

makes a mockery of all the obligations that we've signed up to as part of the Convention. (2236, Lawyer; Interview)

The involvement of children needs further refinement. I still believe it's misconceived and misunderstood by people with good, best intent. The voice of the child within the mediation process needs to be further considered. (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Interview)

Ensuring advocacy for children or involvement of children any processes that lead to decisions about their future is going to be really important. Otherwise Courts are simply going to continue refusing to use resources that don't have that at the forefront, because their legislation requires them to do so. (2365, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, FDR Mediator, Mediator (Private Practice), PTS Provider/Facilitator; Interview)

The loss of the child's voice at an early part of the proceedings is, I think, catastrophic. The ability in the old days as Lawyer for the Child to get in really early and quickly and say, "okay, that's really good, but think about this child in these circumstances and what we've got to do for this child." That's one of the main criticisms I have of the reforms. It's partly taken the child's voice out of the proceedings from the beginning. You're a long way down the road before the child's voice becomes heard in any cogent way. (2518, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Interview)

There was also concern that the delays in proceedings and lack of supervised contact services meant **some children did not see a parent for a considerable period of time.**

It is damaging children. Those who want to keep children away from the other person must love it because that's the effect it's having. It is slowing things down so much that the relationship between children and the absentee parent is being hugely damaged. Hugely damage. (2288, Lawyer, Lawyer for the Child; Interview)

It has had a very detrimental effect, and continues to have a detrimental effect, on many children. I have multiple cases where, because of the reforms, children are not seeing parents for a long time. In the pre-reform days, if someone filed an application without notice and it was, say, put on notice perhaps for abridged time for three or five days, if no response was filed then that could then be dealt with by the Court on the papers. If a child had been, say, taken by one parent from their primary place and then kept, often an order could be made getting that child back so they weren't distressed about being removed. Nowadays if someone doesn't file a response to a without notice or an on-notice application, we then have to wait for a formal proof hearing which, of course, is good in that it provides people with the chance to speak to the judge and understand what's being asked before the order's made. But it has the effect of delaying things because a formal proof hearing might be at least six weeks or months away. There are many other cases where it's been much, much longer for kids to see parents. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, PTS Facilitator; Interview)

The changes made things worse for children. With self-representing litigants and then with the volume of without notice applications, children were separated from one or other of their caregivers, and sometimes their primary caregiver, for far too long. The process of supervised contact, or anything like that, being set up just took way too

long. We had, and we still do have, clients that don't see their children – or, more importantly, children who don't see one of their parents for a long period of time. I just don't think that works for them. There's obviously some circumstances where they shouldn't see the children, but those are rare in comparison to the number of times that parents are capable of caring for their children with some kind of oversight. There were glaringly obvious gaps for children not seeing their parents which concern me. I think there's much more lip service to what's in the children's best interests. It normally gives my clients a real fright when I say, "Look, go and research the statistics for children that come out of high conflict separations and what they need. You might be surprised and then reconsider what it's worth to deal with your own stuff somewhere else rather than with your children." (2422, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Interview)

Finally, professionals spoke of **the reforms generally disadvantaging children.**

I don't think that the changes fundamentally assisted children in any way. The repercussions of it are that they actually produced something that places children in much more high conflict with parents. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

It's not benefitting children. Children are being severely disadvantaged by this. Repeat that one sentence in capital letters. Children, I believe, are being severely disadvantaged by the 2014 law change, it's not helped them. The best needs of children are not being met with the current system. (2347, Counsellor; Interview)

The reforms had a detrimental impact upon the services we can provide to our clients. As I understood the consultation prior to the legislation being enacted, it was intended that matters would be child-focused and everything would speed up. It's had the opposite effect. Things are slower, they tend to be more litigious, and the children - because the parties aren't being reminded, because they are self-represented and they don't have counsel advising them to actually focus on the child - they seem to be lost in the battle. Delay is a major factor now. We did have delay before, but we had various ways we could combat delays that don't appear to be available now. I believe that previously we had more options to assist people. We no longer have that part of the Court process. (2563, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Our littlest people – that's actually who it's always about - are at risk with the system we've got because it's expecting parents to be articulate and educated enough, for there to be no parental control dynamics and a domestic violent relationship, to fill out these forms themselves and go through this process personally, not even with a lawyer as a buffer. There are so many things that are fundamentally wrong with the changes that were made. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

A shift in the parents to get them more child focused. The system doesn't provide for that whatsoever. (2165, Lawyer, FDR Mediator; Interview)

The children are just ignored frankly. I think the legislation ignores children. COCA is flawed; people always focus on the adults. If we talk about vulnerable children and the inability to get good expert reports, who does that most affect? It affects children because the real issues for them do not get put before the Court. (2362, Counsellor, Psychologist, Specialist Report Writer; Interview)

Impact of the 2014 Reforms on Different Professional Disciplines

The impact of the 2014 reforms within the family justice sector varied across the different professional disciplines. Parenting Through Separation became mandatory, which pleased the **PTS providers and facilitators** (and other professionals), but did not really affect their day-to-day role. **Counsellors** found their much-valued role in s9 and s10 counselling had disappeared and many had to rethink their future role in the sector. The greater use of s46G as the reforms bedded in has, however, brought counselling somewhat back into the picture, but not as an initial step as occurred previously. **Mediators** were excited by the introduction of FDR, regarding this as a welcome and long overdue opportunity to develop out-of Court dispute resolution processes in New Zealand for the benefit of separated parents/caregivers. **Lawyers** found the changes very challenging given, for example, the constraints imposed on legal representation, the rise of self-representing litigants, the introduction of new, but inadequate, forms, the rapid growth of without notice applications, more extensive delays within Family Court proceedings, and the pervasive sense that their role was misunderstood and undervalued by those promoting the changes. **Community Law Centres** experienced an increase in their family law workload. The role of **specialist report writers** continued much as it had previously, but the shortage of psychologists, the increasing complexity of their work, the risk of complaints and the lack of resourcing has taken its toll. The then **Minister of Justice** and the **Ministry of Justice** came under fire for the reforms, the staff turnover that resulted, the new forms, and the implications of the reforms for the sector generally. In the face of inadequate resourcing and too few staff, front-line staff became overworked and overwhelmed by the rise in without notice applications and dealing with the flow of people, including self-representing litigants, to their counters for advice and support.

The Ministry of Justice

The Ministry of Justice is the body where the left-hand never knows what the right-hand is doing. Their divisions may as well be little groups like archipelagos; there's no sense of the one family justice system. They are all operating as silos and that's how it comes across to the client. ... The Ministry's invitation for feedback from the profession is like some deep throat nightmare. They are continually asking to hear from you, so you can be trying to give them everything from a person on the ground who knows the system inside out, who's got practical experience, and yet it goes nowhere. They've got no on the ground experience of what they are writing about. (2187, Lawyer, FLAS Provider, FDR Mediator; Interview)

They just don't have enough resources for staff and in [city] the turnover of staff is just phenomenal. It's because they're just under resourced - it's no wonder they're leaving. They're constantly training new people and training all of these people that just don't have the experience like our old case officers used to have of 20 plus years. It's just a changing environment and they don't stay very long because it's just too much work, too many cases. (2226, Lawyer, Lawyer for Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

Since the reforms I think the Ministry of Justice has gone from bad to worse. The individual people there are really good, but the system is terrible. The centralisation of stuff, nobody knows where it is or what's happening. The inability to get the case manager on the phone. The huge turnover of skilled Ministry staff who are just overworked and burnt off. New people being brought on and mistakes coming out. I

just think the Ministry of Justice really needs to look at itself. It's not providing a good service. (2231, Lawyer, Lawyer for Child, FLAS Provider, FDR Mediator; Interview)

They're understaffed. Well, to put it bluntly, Justice and Treasury - I can't say the F word - but they've cocked it up. Cocked it up completely in their estimation of how the service was going to work. They certainly didn't save the money they were expecting to. In fact, I bet it's ended up costing them mega bucks. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I shudder to think what's been spent on the changes and all of the Ministry work that goes into this. It seems to me that the Ministry's focused on being top-heavy and not actually putting the resources where they need to be. Top heavy in that there seems to be all of these officials and managers and all sorts of things in the Head Office rather than putting registry staff in registries and judges on the bench. Judicial and registry resourcing rather than Head Office resourcing! (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, PTS Facilitator; Interview)

The Ministry was struggling, but they didn't struggle quite long and hard enough. They should have got better advice about the forms. It was such an opportunity lost. (2197, Lawyer, Lawyer for Child, FLAS Provider; Interview)

When the 2014 reforms came in I just remember going this is going to be diabolical and it was. You'd be sitting in the roadshows and practitioners of all levels just spitting vile at these Ministry of Justice advisors who bought the system in. I still believe the reality wasn't clear to those advisors. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

The biggest failure was to get rid of the counselling co-ordinators from each of the Courts. The work that they did was amazing. They stopped so much of the nonsense that went on. They would either meet with the partes or direct the parties to counselling, but you don't have that now. That's all gone. Those people had huge intellectual property. They had contact with the counsellors, they knew the families. We had Court staff who had been there for 10, 15, 20 years. They had dealt with these families generationally and all that was lost. (2196, Lawyer, FLAS Provider; Interview)

I'm a Family Court case officer. I basically do file management right from when they're processed to taking Court - everything to do with that from the start to the finish. I have a lot to do with processing the applications. I have noticed that there has been an increase since the changes in people applying without notice just to sort of get their foot in the door so they're not having to do FDR and PTS - yeah, just the increased workload on us with without notices. It's just difficult because you're not able to plan your work for the day. You never did know when without notices were coming before, but because of the increased numbers that certainly has had an impact on us. Also, the fact that parties aren't able to have legal representation throughout the proceedings unless the judge directs. On a standard track I think that puts the parties at a disadvantage and it probably draws out the Court process as well because they're not familiar with what's required. We do get a lot of non-compliance by those self-litigants because they're not familiar with what they need to do. The forms they use are not that user-friendly. With those applications, you're having to look through several pages to see what it is that they're seeking as it's not clear from the outset. If they are wanting a Parenting Order, for example, you actually need to look at it to see what

they're actually wanting in that Parenting Order - whereas, before, it used to outline that within the first page or so. I mean, there's pages and pages that don't seem to be getting completed. With the new process, because they're having the Directions Conferences, our lists are quite full. Some days we're out two months before the parties can even get to Court. That's not working as effectively as I think it was intended, just that initial delay. Before the new process the parties were able to have Round Table Meetings or mediations informally and that was resolving a lot of stuff and you didn't have to have the judge's direction to do that. I know some judges are now making that direction that they may be able to convene a Round Table prior to that Directions Conference happening, but it's not set in concrete and not all the judges are doing that. You're getting some time down the track before it's even directed. We're dealing with people when they're filing their initial applications and things. They get a bit overwhelmed by the documents. A lot of our clients in this area don't have access to the internet so they're at a bit of a disadvantage because of that. They're coming in and we're printing off the documents for them so they can access it that way. A lot of them are not capable of completing the forms on the internet anyway. ... The filing fee - that's a waste of time because the majority of our clients are beneficiaries. They're not meeting the criteria, so probably about 95 per cent of our cases have fee waivers. I just think it's disadvantaging the ones that genuinely want to apply, but they don't meet the threshold to get exempt from paying a filing fee. By having a filing fee it's creating extra work for us when they're filing fee waivers anyway, so it defeats the purpose. (2415, Ministry of Justice/Family Court Staff Member; Interview)

A lot of the information is provided by self-litigants, then the judge is calling for independent reports even from a social worker or from a specialist report writer to provide some independent clarity around what the actual issues are and how they can resolve them. Lawyer for the Child is now appointed on pretty much every single file. I don't think there's any files that they don't have a role now. Whereas before the reforms there were quite a few files that would come through where both parties were represented and there was agreement and the judge would just be signing off what the parties had agreed to. Whereas now, even if there's an agreement from self-litigants, the judge still appoints Lawyer for the Child to check out what the situation is for the child. I think there's real difficulties with self-litigants perhaps not understanding the Court system or what the Court can and can't do. There's just a massive increase of work into the Family Court in terms of case managing the files that come in now. Generally, everything is filed on a without notice basis. The mass influx of that workload is pretty plain on the Family Court as an organisation. It's very difficult to manage that workflow in any reasonable way. (2417, Ministry of Justice/Family Court Staff Member; Interview)

Community Law Centres

Family law climbed from 10% to 40% of the Community Law Centre's workload within six months of the reforms coming in. They've taken on an additional 30% of clients. I can't find a positive in there; it's been disastrous. (2161, Lawyer, FLAS Provider, Community Law Centre Staff Member; Interview)

Parenting Through Separation

I happen to think we've got a Rolls Royce out-of-Court service in a very small country. I just think we're lucky compared with many, many countries. I hope, assume, it's economically quite a good investment because it probably allows a lot of people to resolve things without going to Court. So it probably saves a lot of money. The whole system seems to be really quite effective. I tend to make the most of what's available and I'm very happy with the system. (2385, PTS Provider/Facilitator; Interview)

I've been running the PTS course now for three years. The changes were already implemented and that was my first role in relation to the reforms. They've definitely played a massive role in the delivery of services and the accessibility to the supports people can have. (2412, PTS Provider/Facilitator; Interview)

Counsellors

The nature of the work prior to the reforms was often people who genuinely found themselves struggling and needed a bit of help before they went near a lawyer, near a mediator, near anyone else. The Family Court would then do a referral to a counsellor and they would get at least six sessions. Most counsellors in those six sessions, if the couple had children, would help them to work through the process relative to the children, as well as to themselves. Then it reduced to three sessions. After 2014 I couldn't do anything like that and there was a lull from the Family Court. But the Court has actually changed again now because often the judges are giving out quite lengthy sessions. This has only happened in the last 6-7 months. The Family Court is building up again. What happens now is that they come after they've been to the Court in about 90 per cent of instances. By then, because they've been through the legal process, they're further away from one another than they were at the beginning, and the children are getting caught up in that. Prior to the reforms people came of their own volition to counselling. Now people come via the Court after the legal process has begun. The system wasn't broken before. I'm not joking! The s9 was really valuable - I couldn't believe it when they took it out of there. They're busy going on about the impact on children in New Zealand and how much children are damaged. Leave us with a process that enables somebody who had knowledge to interact with people before it got to that point. (2403, Counsellor; Interview)

Removing counselling was sad really because it just seemed to me to not be a wise move. I was disappointed that the six hours had been taken away. There was a sadness about it I guess – shock, disappointment and sadness. And lack of understanding, especially with my professional agency being completely disinterested. I was shocked because it just seemed to happen and I thought, "Well, I've just got to go along with it because somebody is doing this and they believe it's great." I did go to the odd meeting about it at that time, but I thought it seems to have been taken out of the hands of the people who are doing this work. There was no consultation that I was aware of, or perhaps a little bit, but it was already along the lines of, "This is the system we're going to use", so there wasn't much point in me pushing it too much. I thought, "Oh well, they've got it all cut and dried so that's how it is." It was sad that there seemed to be no consultation and that some people were so hugely convinced it was right. They astonished me really. There certainly appeared to not be enough consultation with the people who were affected by this. (2396, Counsellor; Interview)

When the six counselling sessions dried up completely, judges were only allowed to refer for three sessions. I did that for a little while and then stopped because in three sessions, particularly with conflict cases, you really couldn't get anywhere at all. You saw each of the partners once and then you had one session together. It was very rare that you could get some progress on a relationship that had really broken down. The good thing that's happened in the last two or three years is that judges refer far many more cases. I've just had one 46G last week where I've got 16 sessions – now with 16 sessions you can really do some work. Usually the minimum now is six and often you can get to more of their more complex dynamics. That's one of the good things that I see has happened in the last few years. The work is often more difficult now because the people have not had a good communicative relationship before they've separated, so it's often intractable. Previously people could come, and just self-refer, often before they separated. I did lots of reconciliation work. ... When things had got to the point where somebody felt that they wanted to leave, sometimes it was very fixable with six sessions of counselling and often we could get another six then too. Even if the couple did decide to separate, within 12 sessions you had the time to work with them about making good arrangements for the children and doing some educative work about the dangers of conflict. I had lots of handouts and things that I used to give people then. Back then there was quite a big educative role in being a Family Court counsellor. That just isn't there as a community service anymore. It benefited the children and that's not happening anymore. I don't think that's so good. You don't get a chance to stop some of the problems happening – it's the ambulance at the bottom of the cliff sort of stuff, I suppose. (2392, Counsellor; Interview)

It's almost impossible to work with people in a way that is therapeutic really. It's like they're really entrenched and a lot of the time the order is already made and the work is around trying to help them communicate - compared to what it used to be like. I've been in the system for 30-odd years now and so the counselling that we used to do was available right at the beginning when parents were having troubles with their marriages, troubles with working out arrangements for children, and that kind of thing. So, it was starting from a point where a lot of them hadn't become really entrenched with their views. It was much easier to get them to see what it might be like for the other parent. So that opportunity's not there now. The only counselling is judge-directed which is way down the track. (2511, FDR Mediator, Counsellor; Interview)

There's a lot of frustration amongst those Family Court counsellors who were aware of how the process used to work a lot more effectively for the families than it is now. When the 2014 reforms happened, they reduced the options. It wasn't about empowering clients or helping clients find solutions to their issues and not seeing the courtroom as the only option to resolve matters. As I see it, it's about trying to keep the matters out of Court in the interest of the parties for their emotional security - encouraging them to see their strengths and how they might attend to things and who might help with that. There should be a counselling option, but there isn't - they should reintroduce that as it's a lot more cost-effective than what they've got at the moment where everything is shovelled into the Court and is ending in a pile at the bottom of the cliff. The cost and the time lapse, and all of that, has just increased. It's not got better. (2364, FDR Mediator, Counsellor, Social Worker; Interview)

I was a Family Court counsellor. I was seeing people for s9, s10(4) and s19 counselling. Of course, s9 disappeared and in order to keep working with people doing parenting

agreements I had to train and qualify as a mediator. That was part of the personal impact. I'm still working as a Family Court counsellor. I'm getting s46G referrals and, to me, that's an indication sometimes of where things haven't worked and where they've got to in the current system. To me the most significant thing is who I'm seeing and not seeing. Who the clients are - because that has changed. I am seeing only a tiny proportion of people at the point of separation. Occasionally at about 3-4 months post separation, but often 2-3 years post-separation, or 10 years, or something like that. You always had some of those, but the percentage of people who are at the point of separation is very small. To me, we need to be asking is the PTS programme working? Are some people doing this effectively on their own? Or are we having a whole host of people who are doing this and who are coming later because it hasn't worked well at the beginning? It can be both of those things. That would be one group of people I'm not seeing to nearly the same extent as I saw before. When I saw people under s9 and they then decided to separate I did not have one example in 10 years of people who did not reach a parenting agreement successfully because you've worked with them through the whole process. There might be little things that they didn't agree on, but they would reach reasonable agreements on day-to-day care, holidays, contact and the key guardianship issues. To me, it's significant that we're not seeing people so much early on. I did a quick look at my stats for the period since the changes and I would say it's well under 10 per cent and it's probably closer to 5-6 per cent of the people who are right at the point, or within a month or two, of separation. We talk about this now as "family dispute resolution" but not everyone sees it as a dispute at the beginning. They see it as an issue for the two of them to solve. When it's framed as a dispute you have two people wanting something. The changes mean I am actually seeing different clients, it's slower, it's more bureaucratic, it's less flexible, it's less clear to them. This is changing, but it's less clear to them how to enter the system. It's less clear how the connection between the out-of-Court services link in with the Court and it's less straightforward to do that. People sit in either uncertainty or conflict for longer which is good for nobody, particularly the children. ... The flow of work is much less predictable. The information I get is less. When the intake was at the Family Court they already had an affidavit and knew the level of violence and knew some of those issues, so that the assessment of whether the people would go to counselling or move straight to Court was made at the Family Court with that information at hand. Now, people are ringing cold. They're coming to one process and having to then go to another. That that is less cost-effective and more clunky for everyone. ... I've found it very frustrating. Doing the mediation with clients to help them reach a parenting agreement is the work that I'm here to do and enjoy doing, but it's so much more bureaucratic and so much more time-consuming - it's hard to quantify that at times. I know how many hours a week I spend not with clients doing paperwork and reporting and so forth and that's a change! (2368, FDR Mediator, Counsellor; Interview)

I have struggled to see a positive impact in any of the reforms. I've, very sadly, seen it as more a gatekeeping exercise which paid lip service to the ideology that was intended rather than actual beneficial change - people can sort things out for themselves and only need the support of the Court in the worst instances to do so. I think that's a mistaken belief. People, if they can resolve themselves, are better doing it outside the legal process. After 2014 it became far more obviously a legal process and that changed how people approach it. It's very much a 'win at all costs' thinking and it's not benefiting children. People are not getting what the changes intended to give. They're not getting the service they were told they were going to get. I believe the changes were ideologically driven, that it should be a legal process, therefore it

should be staffed primarily by legal representatives. It threw away the free service of counselling. The legal system is a very hard system to be dealing with a very delicate and hugely varied issue. In that legal framework there are fairly sharp edges and corners that do not best address people and children. Previously people would be coming to us and resolving things before they got involved in a more litigious process. Often it was able to be resolved at that lower level - if there was just some parental disagreement about styles of parenting, for instance, it was easily resolved early on. (2347, Counsellor; Interview)

The 2014 reforms have probably evolved. For example, we rely a lot now on s46G counselling because the free counselling you used to be able to get through the Family Court was cut out in the initial reforms. But 46G has kind of grown and we're utilising that a lot more which has been useful. (2279, Lawyer, Lawyer for the Child; Interview)

FDR Mediators

I was excited when the changes came in because that meant I was able to do what I love doing, which is helping families resolve their disputes outside of Court. I could have done that before then, but without it being mandatory people knew even less what mediation was four year ago, than what they do today. They wouldn't even contemplate it then because they would go to lawyers, and lawyers wouldn't contemplate it either - because it would be, "Oh, we do this via lawyers or we go to Court." There are people who wouldn't ordinarily have access to out-of-Court resolution processes who now do, and who have for the past four years. I firmly believe that out-of-Court processes are much less damaging to families than in-Court processes for the majority of cases. (2533, FDR Mediator; Interview)

Any good work with families' needs to have a kind of collaborative aspect to it to be good. What I try to do, I suppose, and what I think needs to be done in FDR, is that it is honoured as an out-of-Court process. We're trying to strip it from its legal moorings to some extent, whilst also acknowledging that in the end this needs to take place within the context and framework of family law. (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Interview)

No profession likes it when their boundaries are threatened. You can see that in every line of work, you certainly see it in medicine and mental health. But lawyers they can make all kinds of justifications about the reforms - their argument that it's not good for people. The bottom line is they're worried about their income and they want the Court to be their realm. Not all lawyers, but some lawyers. However, after a while, within a couple of years, people accept the new law and it just becomes normal. At first people were threatened, but it seems to be becoming more accepted because generally it just works better. I suspect this will become a normal accepted part of just the process of separation. (2269, FDR Mediator; Interview)

The whole idea of the reform was to try and help parties resolve matters as much as possible out-of-Court, but I don't think practically it's happened like that. It hasn't been implemented well and, unfortunately, there's a lot of lawyers who have become very protective of their patch if you like. I'm questioning how well some of them, especially in some regions more than others, accommodate the needs of parties to try and self-resolve or resolve with assistance out-of-Court. There's a lack of co-ordination in the Court about what the out-of-Court options are. When parties are in dispute, or are

having difficulties, their entry to the system is very varied and the responses they get are very varied. (2364, FDR Mediator, Counsellor, Social Worker; Interview)

Specialist Report Writers

I think the reforms have fundamentally caused a lot of damage to the Family Court and therefore by analogy alongside that, they have caused further damage to the capacity to provide expert reports for the Family Court. In a kind of strange way just as the Family Court most needed that to happen, as the cases have become more difficult, there have been more issues. It's become harder and harder to get specialist reports because there are fewer and fewer report writers. The cases are more intractable, there are more complaints, there are more self-represented litigants, lawyers are more stressed and struggling and also have a greater need to keep clients happy. The things that have really consumed us are the wording of various things and the lack of definition of what things means. Specialist reports are only supposed to be provided "in exceptional circumstances", but nobody has a clue what that means. What that means is that many cases that probably could do with a specialist report are judged as not exceptional enough. Well, what is exceptional? Incest, is that exceptional? Domestic violence, is that exceptional? Alienation? These are what the Family Court deals with at the level at which you get a psych report in any jurisdiction. So that particular bar has been a problem. And there was also a failure to understand how psychologists do reports. There is a standard brief, but then under the exceptional circumstances issue, judges can also do very specific briefs. That's again incredibly unclear. The reforms said you can have a critique/second opinion index and that's not defined. I think I live in a different world from people in Wellington - when they say you can have a second opinion, to many people that means you can get a psychologist to do redo the whole thing, which has never been the view of psychologists. We have always believed that there is a right to a critique because as an expert you should be able to be critiqued, but that shouldn't involve seeing the child or seeing any of the parties. It should only be a critique of the work of the Court experts. So that has caused a lot of problems. I'm currently aware of two complaints to the Board that have arisen out of the lack of clarity about that. Then the third issue that they didn't deal with was our notes. They changed the legislation so that self-represented parties and other people could have access to our raw notes. It raises for us all sorts of issues about privacy. I guess, technically, the problem with it is a misunderstanding about the fact that the Family Court report is just that, it is about a family, and that therefore data is collected from a number of people about a number of people. Whereas, there are often assumptions under the Privacy Act and the Health Practitioners Competency Assurance Act that you've got an individual client and an individual permission and so reports are written about an individual client. A psychologist's Family Court report is never about one person. If you release your raw data to that person, they will see a huge amount of information about a whole lot of other people, and there is a lack of clarity about what happens when that data is refused because, again, it never occurred to anybody in 2014 to think about that. (2362, Counsellor, Psychologist, Specialist Report Writer; Interview)

A lot of the cases I see are terribly complex. The families that I'm writing reports about involve very complex proceedings. I don't know that that many of them have gone down the mediation route. Some have and clearly that hasn't worked for them because they've proceeded to having a specialist report written. That's only on the s133 side. The s178 side remains essentially unchanged as far as I can tell. Conflict

between parents or caregivers, guardians, always impacts on children because, of course, they have a relationship with all the parties and they almost inevitably end having torn loyalties between each party. Either intentionally, or not, they are often exposed to adult information, so there's that impact on them too. Proceedings are often drawn out over such a long period of time - often more than a year, sometimes more than two years - meaning that there's no resolution. It's really difficult, often very unpleasant, work but I've always had good support from the staff and great interactions with Lawyers for the Child. ... I really enjoy doing this work. We have quite free reign to do things as we see appropriate, and so I can do a really quality assessment. I'm allowed to travel and see people's homes and collect all the information I want and sometimes there has been some really good outcomes for children which is fantastic. (2369, Psychologist, Specialist Report Writer; Interview)

As a specialist report writer I have to say that I haven't noticed enormous changes, other than on the impact of my work in the sphere that I work in where families have hit the level of requiring a report to be written about them. In general, and it's always been the case, you're dealing with people who can't sort things out themselves, for whatever reasons - it could be cognitive, it could be personality-driven, or whatever. I'm not sure that that's changed, but one thing that may happen is that because things have all slowed down in the Court process, it may be that more people are getting to that state, if you know what I mean. (2377, Psychologist, Specialist Report Writer; Interview)

There needs to be much earlier intervention. The delays have meant that it has become quite an uneven contest as it were. It does seem to be coming much more adversarial. The use of second opinions and critiques leave the report writer pretty vulnerable to being intimidated really. There is a lot more animosity and a lot more complaints going to the Health and Disabilities Commission and to the Psychologist Board. (2263, Psychologist; Interview)

Lawyers

The 2014 reforms were called “**changes**” **not reforms** by many lawyers who objected to their lack of “reformatory” direction.

We don't call them reforms. We call them changes. Many family lawyers just will not refer to them as reforms, because they were not reformatory from what their direction was. They were changes that were rolled out from a government that tried to sell them to the public on the basis that lawyers were impeding settlements, lawyers were holding up things, lawyers weren't needed for much of the process, and yet the focus needed to be on the best interests of the children. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, PTS Facilitator; Interview)

I object to them being called reforms because I don't think there was anything reformatory about them. (2373, Lawyer, FLAS Provider; Interview)

They were never reforms from our point of view. (2501, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

However, **fewer lawyers** were now doing family law work and some had **left the sector** entirely, creating a **shortage of experienced family lawyers**.

It's had quite a big impact. I've got two colleagues who resigned or left the practice of family law because they couldn't really face the idea of working with these reforms. ... It's just made my practice much less personally satisfying. (2197, Lawyer, Lawyer for Child, FLAS Provider; Interview)

I've seen some of the lawyers panic and leave Family Court work. I remember thinking, "Oh flipping heck, maybe I should too"— thinking, "Oh damn, I should have gone and done tax law or company law - I would have been much richer!" I probably could have retrained. I was young enough and I had other skills and degrees that I could have used. But I want to be self-employed, I hate working for others, I'm a terrible employee. ... I think it's forced some lawyers out of the profession; ones who panicked and left too soon. I can think of several who did close their practices. (2234, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

We did a redundancy process prior to the reforms coming in because that's how significant we thought we were going to be affected; the fact that we had to let two staff go. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

There is a shortage of family lawyers. Family law is incredibly stressful work and incredibly rewarding emotionally - helping people and helping kids and keeping people safe. But lawyers don't want to do it, because it's badly paid in terms of Legal Aid. You're seeing people at the worst time of their lives. Eventually the government's going to have to face the fact that they're losing family lawyers. If people go and do other law, they'll be wealthy; well paid for their work. If they do family law, they'll just be doing fine but, really, compared to the hours they do, it's not well recompensed. A problem is finding enough family lawyers. (2345, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, PTS Facilitator; Interview)

Fewer senior lawyers are doing any Legal Aid work and actually fewer people are doing family law. (2279, Lawyer, Lawyer for the Child; Interview)

What the essence of the reforms mean is just less lawyers available to do the work, and limitations on what you can do when the clients are in front of you too. There was a mass exit of lawyers out of Legal Aid. (2528, Lawyer; Interview)

The Family Court bar is quite a close bar. We're dealing with each other a lot. There's less and less doing this work, so you're kind of getting closer to the ones who do. (2173, Lawyer, FLAS Provider; Interview)

Because of the reforms, there's less new lawyers being trained and more people have got out of doing Legal Aid altogether. I don't know what the statistics say, but I think that there's a dual combination of less lawyers (i) because they're frustrated with the system and ii) because they're not training up new lawyers. (2483, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

I became a bit disillusioned with law full stop. I lost the passion for family law actually and I think part of it was the perpetual grind of doing just COCA - the reality of the day-to-day COCA grind. I wasn't prepared to do that anymore. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

The problem that we have with these reforms is that people will not do the work. They have left the family bar in their droves and one of the biggest problems we have is that people cannot get a family lawyer to represent them even if section 7A permits it. They are struggling to get a family lawyer because nobody wants to bloody well do the work, and I don't blame them. There's going to be a complete lacuna at the bottom end, you better believe it. What happens when the current senior family lawyers retire? Then it's people like me, who are senior but haven't been around for 30 years kind of thing. To be honest, there's been weeks where I think if I could find something else to do without a huge pay cut and without feeling like I was letting myself down, I'd be off like a shot. A lot of us stick with it because we think it's the right thing to do. We think it's important work - and it is important work. (2361, Lawyer, Lawyer for the Child; Interview)

In this region nearly all of the senior lawyers stopped doing Legal Aid. There's a handful of them, but it's more the junior ones, which I think is really risky. I don't know whether it can be attributed solely to the reforms, but certainly very few of the families that we deal with are straightforward. They're all multi-layered and very complex. A lot of the Legal Aid changes all sort of happened at the same time and so the ability to serve a client adequately on Legal Aid has been very compromised because of that. (2508, Lawyer, Lawyer for the Child; Interview)

Talk to those at the coalface. There are a lot of us that really want to make this work, but there's also a lot of us now going, why do this because it's just a headache? It's not easy and we're not getting matters dealt with quickly. (2196, Lawyer, FLAS Provider; Interview)

The reforms/changes and Legal Aid were noted by eight lawyers as having impacted on the ability of **junior lawyers** to obtain employment in the family law field. Failure to acquire the necessary experience at the entry level, or “burning” young lawyers out with the challenging nature of (Legal Aid) family law work, will have significant downstream consequences for the sector moving forward as the current echelon of senior family lawyers retire.

My overall concern is that we've got the baby boomers retiring and we've got Legal Aid making it so difficult to take on juniors. I'm not seeing young lawyers coming through the Family Court system. So, what I'm personally seeing is our pool of family lawyers shrinking dramatically at both ends. Retirees are going out and new, fresh lawyers aren't coming in. We're constantly having to turn people away who are looking for Legal Aid. Honestly, it's become the rich can access the Court system and the poor cannot! I've been taking on juniors to do the Legal Aid work and supervising them, but that's because I love mentoring and helping people - but it's not economic. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

It has actually had an impact in the profession in regard to the training ground available for junior solicitors. (2237, Lawyer, Lawyer for the Child; Interview)

Because of the Legal Aid regime that's now in place, it's not quite so easy to get new lawyers on board either. There's a worry about succession planning; not for us personally, but generally I think in terms of getting younger lawyers to come on board in family law. (2508, Lawyer, Lawyer for the Child; Interview)

In terms of longevity are there going to be lots of people able to continue under that amount of stress long-term? I don't see a lot of new younger lawyers coming up doing Legal Aid work - a firm being able to afford to take them on, train them and supervise them, all at their cost. (2468, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Pay us for the work we actually do on Legal Aid. The rate has not increased in real terms in longer than I've been alive, as I understand it. I have been doing Legal Aid work for six years. Everyone in my firm does Legal Aid work, but we're pretty unusual in that way. However, the more experienced you get, the less likely you are to do Legal Aid, which is not what parties need. They don't need just juniors doing their work all the time. So, I work for a firm that chooses to commit to that, but it is a huge financial strain. (2411, Lawyer, FLAS Provider; Interview)

A lot of young people choose not to go into family law now because it will burn you out. It is a gruelling kind of work. It's emotionally draining. You find yourself waking up in the middle of the night having been dreaming about a case. I have largely stopped that by learning to switch off, but when I was younger I think I wouldn't have been able to. (2225, Lawyer, FLAS Provider; Interview)

We put our youngest, least experienced, lawyers working for usually the most difficult cases because those people can only access Legal Aid. They're not paying privately for lawyers. So, we're putting high conflict, highly difficult, people onto young lawyers. There is a real lack of family lawyers throughout the country. I was training four young graduates in my last firm. They were straight out of law school doing their very best, obviously very bright, but they were interviewing very high difficulty, low educated, people and trying to get across the complexity and the seriousness of the issues to them. I was like, I'm very concerned about this knowing that they would be appearing in Court with them. There are real things at stake; people's lives, children's lives, drug addiction, yes, alcoholism. These four are going to be absolutely wonderful family lawyers as long as we can keep them, but we're exposing them to all this sort of saying, "This is the situation, these are the people you're dealing with, these are the skills that you need to learn pretty quickly." It's just not economically viable for firms to have family lawyers unless they're pretty much self-reliant. I've had several partners at a couple of firms say that to me, "We want someone who's going to come in and plug and play." I got approached by a recruiter who wanted a senior family lawyer and I said, "Good luck." And she's like, "Yep, rare as hen's teeth." So if we consider that the Family Court is crucial - that we need it - then we need lawyers in it. Law schools are pumping out, each year, fabulous, eager, possible family lawyers. But if no-one is going to hire them and train them, it's no good. They go elsewhere. They're getting sucked up to other more commercially viable areas. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

Seven lawyers said that despite initial fears about the impact of the reforms/changes on their businesses, they were now as **"busy as ever"** or **"busier."**

I'm as busy as I ever was. I don't know anyone in the Family Court who isn't. In fact, most people I know in the Family Court are busier than ever - they turn away work. (2288, Lawyer, Lawyer for the Child; Interview)

I've never advertised, never put an ad in the paper. I haven't got a website or anything. Because if I was advertising, I wouldn't be able to cope with the number of people that

are wanting a family lawyer. (2483, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

It's really busy. I don't do any adult stuff. I wouldn't have the capacity to act in a private capacity for adults these days. We turn down work every single day of the week from the Court. (2508, Lawyer, Lawyer for the Child; Interview)

Everything's just become more stressful and more busy, with urgency attached to that. As a consequence, we've got to look at our well-being as well and prioritise that. It's a health and safety issue for us, and our staff, making sure that we're not getting burnt out too quickly either in our work. (2226, Lawyer, Lawyer for Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

The "gloom and anxiety" in 2014 energised some lawyers to "**up our game**" and "**rethink** how we deliver our services."

We thought the work would dry up, but it didn't and, in fact, some of us are just as busy or got busier. It was profoundly stressful; I remember being very stressed personally with these changes. I remember a lot of gloom and anxiety amongst my colleagues when they came in. Many of us in [city] are women and self-employed, so that was quite a worrying time for us all – "Oh my gosh, what's going to happen to us?" So, there was that personal level. Secondly, I think some of us actually did up our game. We started to really think about how we were running our practices. I actually became incredibly efficient. I still work really hard and I do provide really well for my family, but I think it made me more efficient because I thought, "Flip, what am I doing that I need to change?" So it brought that kind of change. I think other practices also really looked hard at what they were offering and how they were delivering it. We were all just really looking at how we can tailor our cloth. Those were some of the changes I saw immediately. One, anxiety and fear; two, changing our practices; three lawyers leaving the profession. (2234, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

The reforms were significant in that we paid very close attention to what they would be because we had to retrain our staff and systems and process and we also had to rethink how we deliver our services as well. In particular, we developed a speciality in crisis work as a result because of the effect of s7A of the Care of Children Act 2004. We needed to know when we could act and when we could not. We were concerned about what impact the reforms might have on the work that would come into the business, which has been well-founded. We're still busy; we're very busy, we've grown post-reform. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I haven't found the reforms to be as bad as I think counsel had anticipated in terms of our business model. I think we all were a bit afraid that we might have no work and that has simply not been the case. I think that I am quite adaptable, so I have adapted my practice quite easily to fit in with the reforms. But I think there's a lot of counsel that have found that more difficult. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Many lawyers felt "**completely undervalued**" by the reforms and said they had been "treated like absolute dirt in this process." The reforms/changes "pulled the rug out from

under us” and they were particularly incensed by the way they were characterised and “dumped on” when the reforms were first proposed and then implemented.

It feels like we, as lawyers, are completely undervalued for the work that we do. Everyone is there for the right reasons and trying to do a good job and they sort of just pulled the rug out from under us, changed the way that we work, reduced the funding and kind of said, “Just get on with it.” I know it was a different government, but comments like, “Why don’t people just get on with each other and, you know, play happy families kind of thing?” It displays so little understanding of the people that we work with. I don’t think anyone goes along to see a lawyer for fun, do they? It’s, you know, “We’ve really reached the end of the road here and we desperately need help.” To be told, “Okay, well here’s a letter and here’s a bit of advice, now you go away and resolve it” is not that helpful. (2310, Lawyer, Lawyer for the Child, FLAS, Community Law Centre Staff/Volunteer, Citizens Advice Staff/Volunteer; Interview)

This mistaken mindset of anybody can do family law, which is pretty much what they’re saying, is beyond stupid. You’re dealing with people and it requires a really distinct set of skills to be able to do this job well. We’ve been treated like absolute dirt in this process. We’ve been told that we make matters worse for people. We charge a fortune and we’re not very good! Look, this has been hurled at family lawyers since the beginning of time. In Rumpole of the Bailey there’s this fantastic scene where there’s a bunch of High Court Judges and they’ve got their knickers in a twist because there’s some bill before Parliament to allow solicitors to appear in the higher Courts and extend their rights of audience. So, all these High Court Judges, of course, came from the bar, and go, “Oh, this is a disgrace.” They’re standing together and they’re saying, “Oh, you know, we need to do something about this. We’ve got a meeting at lunch-time and we’ve got everybody involved.” Then there’s this beautiful line which just cracks me up. “We’ve got everybody involved, everybody’s on board, I’ve even approached the chaps from the Family Division.” It’s always been the case that people think we’re not proper lawyers. In England, they call us the ‘socks and sandals brigade’ - the cardigan wearing lawyers. But this is what I’ve chosen to do with my life because I think it’s a good thing. I work really, really hard - most of the people I know, who I work with, work really, really hard. They’re passionate about what they do, not in a Mother Theresa way, but they want to do good things for people. It’s about making things better for the service users and for the children, of course. Something needs to be done about getting out a positive message that we are valued. A lot of us feel really quite down-hearted by the reforms and how we are perceived. (2361, Lawyer, Lawyer for the Child; Interview)

My personal opinion is that the government just tried to cut back on funding and stopped lawyers from helping parents at that initial stage. I think it was actually quite critical of lawyers. It was almost like we were a hindrance to the whole process and that we couldn’t be trusted and that all parents needed to do was have an opportunity to sit together with the mediator and then everything would be sorted. FDR has its place, but it’s not been the magical answer that the government suggested it would be. I’ve just ended up with really high-end clients because I stopped doing Legal Aid when they did the fixed-fee system, which was quite a long time ago. I always have one Legal Aid client because that’s my philosophy, that people should always receive help. So what changes for me? I don’t know if it’s an experience thing or just the reality. If people can pay you, you’re going to go with the private work. You can’t carry

on providing Legal Aid work. I know that's the reality, but it's depressing really. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Before the reforms, family law has always been the sort of poor cousin and there's a sense of martyr to what we are doing. When Judith Collins dumped on us - she wrote an article in the paper that was really derogatory and offended family lawyers - I think she did us a disservice. It was really disloyal to what I think family lawyers and Family Courts do. We've had to sort of deal with that and justify what we do. I don't think it's been good for morale. I don't think it's been good for consumers either. (2509, Lawyer, Lawyer for the Child, FLAS, FDR Mediator, Mediator (Private Practice); Interview)

I objected strongly to the personification or the characterisation of family lawyers by Ms Collins and her cronies at the time as being money hungry dogs who were just trying to make things worse for people. That was the overwhelming message that came through. I objected strongly to the smug tone with which the changes were effected on the basis that Ms Collins in response to any question said, "Well, I've been a lawyer so I understand what the pressures were", which was blatant misrepresentation. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

The Minister had no family law experience. That's been part of the problem and now we're bearing the brunt of it. (2196, Lawyer, FLAS Provider; Interview)

The attitude of Judith Collins towards family lawyers made everybody fall into a bit of a slump in terms of the value of our work. We've got over that, of course, but we still have the effects of it. All those forms are still sitting there reflecting the fact that Judith Collins and co didn't really contribute anything useful to the system. A lot of people have found that hard. (2197, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

There was a huge lack of respect shown to people who knew how to operate the Family Court and have decent forms and actually have systems and processes that helped people get through the system. It's a disgrace. I can understand completely how angry and disempowered both judges and lawyers have felt. (2471, Lawyer, Lawyer for the Child, FDR Mediator, FDR Staff Member; Interview)

The Ministry of Justice You Tube video on how to cross-examine makes a bit of a mockery of our profession because it's saying, "Well, you can go and do this yourself." (2165, Lawyer, FDR Mediator; Interview)

People still have a view of lawyers of being almost like going to the dentist. You can give them all the paperwork and like brochures under the sun. But the thing is, people come to you for reassurance and guidance. If the government wants to alter that experience for them, they've really got to alter their expectations before they get here. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Practitioners around the country felt angst about what was happening and what was going - what's going to happen to us and our practice, I suppose? I'm not saying that was the primary concern, because I think the greater concern was what was happening to the Family Court and those people who require the Family Court. That was the overarching concern at the time. I suspect it still is. ... I've never detected any enthusiasm whatsoever amongst practitioners for the reforms. We were never listened to around the forms. I mean, the forms are just a bug-bear and that was always an

overarching complaint. Even if you accepted that lawyers were going to be cut out of the system and the only way to stay in was if you managed to find a without notice ground, putting that aside, the forms were so useless and not fit for purpose. What's happened since then, of course, is yes, everyone does use the forms, but we all do additional pages. We do essentially what was an affidavit and put in those additional pages as an annexe almost. So, from that point of view, it was a waste of time. Practitioners were also frustrated because they were very clearly well aware that the Ministry of Justice wasn't particularly interested in talking to us, or they were talking to us, but not listening. The changes that they introduced, well, the view now is that they haven't been successful, haven't achieved what they wanted to achieve because lawyers are as busy as ever. (2501, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

Most of us don't do it for the money; well, you wouldn't. Some of the comments that the last government made about family lawyers were really misleading - the \$400-an-hour lawyer; well, there'd be buggers-all people in [this region], or across the whole country I would think, that would be charging that amount of money. Most of us undercut our rates all the time; we do lots of pro bono work in lots of different ways and we do it because, well, because we're committed to it. Family Court lawyers are absolutely not valued and I think it's reflected in some of those changes too; it was designed to keep lawyers out of it, whereas if you've got really good, skilled lawyers who are committed to supporting families through that process then you do get good outcomes. (2508, Lawyer, Lawyer for the Child; Interview)

Lawyers have to take responsibility for part of the delays because I think that we're making too many without notice applications. But it's kind of a circular argument. You give a lawyer an exception, what are they going to do? If the situation is desperate enough or there's a loophole there I understand why counsel do that. Because there's a sense of frustration with a lot of the stuff that we can't help people. Fundamentally, I think most family lawyers don't get in it for the fancy lifestyle and the wonderful benefits. You get in probably because you think you can help people. I don't think that we're necessarily able to do that as well as we used to. I'm not slavishly sort of devoted to the old system, it had real problems. But I think it's better than what we've got at the moment. I've got no evidence of this whatsoever to back up that statement, but my job used to be fun. I used to enjoy it and I used to enjoy the people that I worked with. I used to work in a pretty collaborative way with a number of people. Some of the best days I've had have been in this job. But I was at a meeting recently where I was going hammer and tongs at another solicitor who I've known for 12 years. We have a great deal of respect for each other, and we were just roaring at each other which is unlike both of us. I stopped at one point and said, "Oh shit, I don't know about you, but I'm not having any fun." I think that's the consequence of the system that we have at the moment which it is placing everyone under pressure. There's less lawyers doing family law, there are less people doing Legal Aid. The local registrars are under an extreme amount of pressure. The judges are under pressure, which puts the registrars under pressure. We used to have a system here where we would all sort of back each other up, but that's gone nowadays. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Lawyers spoke of the **importance of their role** as "front-line workers" in the family justice sector and the **value** that effective family lawyers bring to post-separation dispute resolution processes. They liked building relationships with their clients, getting in early and "nipping

things in the bud”, discerning what was urgent, calming people down, acting as a “buffer”, “reality testing” clients’ expectations and beliefs, making referrals, “breaking the family violence cycle”, helping clients find “a good practical result” ideally with litigation as a last resort.

I see my job as a vocation, not necessarily as a way of earning money. (2483, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

People think we make things more litigious, but if you’re a good family lawyer you don’t. We don’t want to be in Court fighting. We don’t want to see families unhappy. Most of us have families. There’s no benefit for us whatsoever in disputes continuing on a long-term basis. If you’ve chosen to do family law you haven’t chosen to do it because you want to be a litigator. (2183, Lawyer, Lawyer for the Child; Interview)

The beauty of the old system was that lawyers could identify stuff that the client might not think is urgent. ... Lawyers build relationships with people and over that time you get to see whether people are telling you everything or something’s bothering them. It’s that thing about nipping things in the bud. You can calm people down and say, “Look, hold on, we’ll have a Round Table Meeting.” ... Lawyers have a better judgement of what’s injurious stuff because we deal with it all the time, what could potentially be high risk for kids. (2188, Lawyer, FLAS Provider; Interview)

It’s created delays. It’s become more aggressive, particularly where you’ve got self-representing litigants - they tend to focus on the other person, rather than what’s best for the children. When they appear in Court they aren’t focused on what they are there for. So, that adds a dimension that probably wasn’t there when they were both represented by lawyers. I think there was a desire to get lawyers out of the Family Court in the early stages. Bash lawyers, blame us for everything. But by and large, we’re part of the solution. There are very good family law bars around. ... Most of us want to find a solution. We don’t want to go to Court. Most family lawyers actually want to work together to achieve a good practical result. (2196, Lawyer, FLAS Provider; Interview)

My experience of family lawyers is that everybody is really child-focused and the reforms really missed one of our key roles – which is talking to parties and actually reading them the riot act about their expectations and their behaviour. That’s a huge part of what we do and there’s huge value in giving parties a reality check on their expectations and their points of view - talking to them about the impact of the conflict on their children, what their children need their parents to be doing, and how to be approaching the dispute. Overwhelmingly my experience is that people come to lawyers when they actually already have tried really hard and exhausted a lot of their options. Sometimes they’re seeking legal advice because the pattern of conflict is unchanged. So, those parties really benefit from having the support of a lawyer because it helps them to have that constant reminder reality checking their expectations, talking to them about the proposals of the other party, talking to them about the advantages of meeting in the middle. You can help broker agreement. ... Another big part of our job, that was entirely overlooked as well, is our ability to cut through all this big story that clients are saying about the last six years of their lives and pick out what is relevant, what is important, why it is relevant, how it impacts, and get rid of all the other stuff. (2212, Lawyer, Community Law Centre Staff Member/Volunteer; Interview)

We put the fires out before they actually get away on us. That's the beauty of having lawyers in quickly. (2225, Lawyer, FLAS Provider; Interview)

The point that the reforms miss is that, in general, it's like going to the dentist going to a lawyer. You don't want to go, but you know you have to! Now they go because they're in a system that they don't understand, they're bewildered by, they're overwhelmed, and the result is hell of an important. By denying them access to that, their anxiety and the sense of bewilderment is increased. In a democratic society I think that people need access. I absolutely agree that there are stupid disputes, like the kids go to this kindergarten or that kindergarten, or pick up Friday at five or Saturday at nine. Again, that should be dealt with in counselling, not by lawyers. (2231, Lawyer, Lawyer for Child, FLAS Provider, FDR Mediator; Interview)

Sometimes a buffer is helpful and having lawyers involved does assist. Because sometimes we actually do give reality checks to our clients as well and say, look, this isn't going to get over the threshold or this is what we can do. We can be the buffer and the negotiator in between if you're not comfortable, if you don't feel safe and things like that. Whereas when they are doing everything themselves it does place them and potentially their children at more risk. (2226, Lawyer, Lawyer for Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

Everybody has a right to access justice, but not limited justice. While lawyers are slated for overcharging or doing whatever, we can actually bring about resolutions quicker and probably reduce the amount of applications to the Court. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

As a legal profession you're not there to tick a box and you're not there for the money; you're there to actually hope that they come in and go out your door in a more positive space and be better equipped to deal with, in this case, parenting. I don't think that the current system encourages that sort of relationship to be developed and fostered. (2261, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

We can refer people who come to see us for advice in the very early stages of difficulties. The legal process is one way to solve certain problems. I often say to people, "This is my tool kit, this is all I've got. It doesn't solve psychological or emotional, or all the other raft of other, issues. All we can get is a Parenting Order that has got days and times. So, if the issues are a bit more complicated or a bit more involved or there are other dynamics, we can't fix that." Sending people down to the Court to fill out a request for a referral to counselling often enabled people to talk through the issues a whole lot more effectively, and I don't think we had as many proceedings because of that. The counsellors were able to hone in on what actually the issues were and save people from that process by being involved pre-emptively. (2316, Lawyer, Lawyer for the Child; Interview)

My role has changed from primarily providing legal advice on the substantive issue of the care arrangements, to advice now more about the procedure and how to navigate the Court processes. If I was going to give percentages I would say that pre- the reforms - and this is off the top of my head - maybe 70 per cent of my advice would have been on the substantive care arrangements and what was going to happen, what would be optimal; and 30 per cent on what the procedure would be. Now I would say

that my advice on the substantive side would have reduced to maybe 40 or 50 per cent and the bulk of the advice is really which pathway the parent should pursue. It leaves clients a little bit bewildered, because the processes are so confusing as to whether they fit within the urgent track, or whether they fit within the non-urgent track. It's something that we're trying to straddle all of the time. Constantly I find that because the focus of my advice is so much now on the procedural issue, it puts clients into that framework straight away because they're thinking, "Well, which track am I going to fall under and what can I do to improve my chances here?" (2236, Lawyer; Interview)

Lawyers play an important role in breaking the family violence cycle. Clients don't come to us for fun and it's hard for them to ask for help. They come to us when things are bad. We might be the first people to ask them if there is family violence, or who they tell that there is family violence. We play an important role in advising people about the existence of protection orders, connecting them to the Police or to a refuge. Too often when I look at diagrams about interventions in family violence they don't actually include lawyers, yet we are very much front-line workers when it comes to getting people the right intervention at the right time. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Lawyers have dealt with parents so many times. Every person is different, of course, but you get to work out patterns and you can see the whole spectrum of things quickly. You can help them get to it a bit quicker than on their own. I don't think lawyers are leeches. It's not an easy area of law to do family law, and you certainly wouldn't do it to finance a whole luxurious lifestyle. People do it because they're really interested in helping really. I do it as well because I like the advocacy. Any kind of administrator in Wellington needs to realise that we want to be assisting these people to get things sorted - because the outcome we all want is to get a better result for children I would have thought. The way to do that is to help these parents get it sorted and, if they can't get it sorted, then to get the judge in as soon as possible and make a finding. With any system you're always going to have five per cent of cases that are really hard - parental alienation, serious allegations - that's just human nature, it's going to be there all the time. (2528; Lawyer; Interview)

One lawyer noted that the "ever-increasing escalation of social problems" means that "skilled family lawyers" are never going to be more needed.

Ironically, the country and the world actually are facing an ever-increasing escalation of social problems. In some ways, there's never going to be more need for skilled family lawyers. Invest in us as a workforce, give us better skills. Lawyers who are not psychologically minded are bloody useless in this area of law. They need more skills in their kitty than being good at reading the legislation and being tricky in their submissions. That stuff sometimes has its place but, actually, it's a job where you go into a situation, assess what's really going on and help people get through it. That's how I see my role. I don't see it as this big, hotshot thing. I'm there to help people get through this stuff. There could be a level of investment in us as a workforce that says, "Look, what you do is important and instrumental for families", which it often is. "We're going to invest in you so that you can do this better." I think that would have a dual effect of the work being done better, which we all want, but also a workforce that feels like it's respected and seen as important. (2361, Lawyer, Lawyer for the Child; Interview)

Suggested Improvements

In response to the reforms the some professionals suggested consideration be given to professional development opportunities “for all the different professionals to get together”, training for FDR mediators “to improve their tool kit”, the Family Court having “a more visible presence in the community”, reinstating Family Court co-ordinators, utilising low-cost tools like *Our Family Wizard*, and introducing Parenting Co-ordination to assist families beyond the Court once Parenting Orders had been made.

Bring back the Family Court co-ordinators because they were fantastic, but I also think we could use them more creatively. Put some money into specialised programmes and really set up a whole new stream of work called Parenting Co-ordination. There are some smart ways that we could do things that are not so costly (like Our Family Wizard), but we really do have to think post the Court, what then? That’s where I would really like to see another layer of counselling or parenting co-ordination where people would have to think about the consequences of how they are still going to be a family beyond the Court? (2361, Lawyer, Lawyer for the Child; Interview)

Some jurisdictions have the ability to appoint a Parenting Co-ordinator. That’s someone who can assist the parties with their communication, monitor compliance with interim orders, that kind of thing. It works really well in the jurisdictions that use it. That’s the first thing I would suggest. The second thing is the ability to use Our Family Wizard, which is a programme created in the USA but is now used widely across the world, including New Zealand and Australia. The initial research indicates that it significantly reduces litigation as well, because it enables a platform for parents to communicate. (2252 Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

Seven lawyers suggested the development of a new “**second-tier gateway**” or “**middle**” **pathway** for applications that were not so urgent they needed the without notice track, but still required prompt attention within the Family Court. This more immediate step would particularly assist those parents requiring “urgent help, but where there’s no safety risk.” Abridgment of time, counselling and Collaborative Law were also mentioned as possible middle roads too.

There needs to be another step - we need to go back to the old system really! Which is, this is urgent enough that we need to get it straight into the Court process and get things moving along. It’s a big middle camp. It’s not just a few cases, it’s a significant proportion of them. You’ve got counsel being put in difficult positions where they’re thinking this isn’t really without notice, but I’m going to do it because my client’s pushing me and I can see that FDR probably isn’t the right way to go. So, it’s putting counsel in a really difficult position. But it’s doing major damage to families, you know? Let’s say the bloke gets served with this without notice application and orders have already been made. Horrible things have had to be said in the affidavit in order to get to that threshold. Sometimes you’ll get a Mum coming in and actually saying, “I just really want him to step up and have a bit of contact and whatever.” But you end up having to put in the affidavit that he smacked the kids and this time that he swore at the kids. You’re actually making things worse for these families in order to get them into the system which they need to be in. It’s a hell of a thing to weigh up. If there was going to be one answer to all of this, it would a be a second-tier gateway into Court - not without notice, but more urgent than mediation. Semi-urgent, yeah. I guess Legal

Aid would have to be available for that as it's a huge part of it. That would avoid the lawyer who can see this client really needs to get into Court having to "massage" the application to a without notice one, when it probably oughtn't be. If there was some sort of semi-urgent track, then that would be the appropriate one. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

From the perspective of a practitioner, we see it in a completely reverse way to what the legislator had intended and the way that the reforms have come about. Removing the abridgement of time for the respondent to file a defence was the biggest mistake that they did. So many cases fell into that - not super, super urgent, but not so non-urgent that they shouldn't be dealt with. It just meant that a judge got the idea about what was happening and was then able to start to manoeuvre the case through the Court system. That was really critical for so many cases. Removing that was, in my view, the biggest mistake that they did. Removing this middle road, so that it's such a binary process now, has just been devastating to so many families. ... A two tiered system is developing with the way that the litigants come to the Family Court; those who can afford the lawyers and those who can't. In what is effectively a two track system the lack of the middle pathway is problematic. If you have a Legal Aid client that falls into the middle road, i.e., not urgent, but not dire, then these people are lost in the system and lost as far as legal representation is concerned. There's clients I have who I know won't qualify for Legal Aid who I charge at my Legal Aid hourly rate, because I feel it's important that these people are represented. There's just such a huge divide now between the haves and the have nots. (2236, Lawyer; Interview)

There are the obvious without notice's, there are the ones that should be able to sort it out themselves, and then there are the ones in the middle who missed out and they are the ones that I am very concerned about. I feel those people are missing out. You'd see them the once and then you'd never see them again and you'd go, "What the hell happened?" (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

Those middle way cases that don't meet the threshold - some lawyers might think, "Right, we'll just go forward without notice, even though it will be placed on notice, as we have got some sort of grounds." That's what's really pushing those numbers up because they don't fall within the FDR category, so then they go without notice. There's no sort of middle line of being able to come to Court and not do FDR. If there was a third sort of middle-way option - like you used to have the counselling before. Have FDR as your left-hand option, and then up the middle you might have counselling through the Court, and then on the right-hand you would have without notices, or something like that. There definitely needs to be a third option; a more immediate path for those parents that do need urgent help, but there's no safety risk, so where do they go? (2272, Lawyer; Interview)

Decent people who don't have any drug or violence issues, but who can't agree on day-to-day care or contact or whatever, and therefore can't easily find a way to make it urgent, they are the ones who are really, really suffering. (2476, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

No family lawyer I know does this for the money, because if we wanted to do that we'd do tax law or commercial law. As a general rule - I'm not saying this is true of everyone because I can't speak for the whole profession - but I don't believe that we make the

process longer or more convoluted. I think, actually, early access to legal advice and representation is likely to settle your dispute rather than prolong it. Obviously, there are exceptions. But, as a general rule, if people have access to advice and know what the likely outcome of their dispute will be, it's less likely to be protracted. These thresholds for Legal Aid should be increased. Actually, the hardest financial situation to be in is probably for people who are not eligible for Legal Aid, but are not far off and find it extremely difficult to pay a lawyer at their full rate. Because there are not a lot of options for people in that scenario. (2411, Lawyer, FLAS Provider; Interview)

Another effective middle way could be Collaborative Law where the parties sign undertakings that they will not make applications in the Court. And if they do decide to make applications, the lawyers undertake that they will not file them and they will need to seek alternative legal representation. Parties feel safe and secure that they won't suddenly get served documents. Collaborative is about using a range of professionals to get to the end goal - it's more about the lawyers picking up the phone, talking to each other - "What are the problems? Right, who do we need here? Do we need a mediator? Do we need a counsellor? Do we need a psychologist?" You set meeting minutes and agenda for the meeting, so nobody gets blind-sided. A lot of the clients that come through, particularly with Legal Aid where they want the protection for the children, but they don't really want to go to Court, have no other option - they have no other way of getting there. So there's a lot of my clients, or a certain number of them at least, where I've thought if you weren't Legally Aided I would definitely be suggesting this collaborative advocacy, but they just can't afford it. It's certainly not a cheap process. But if it was Legally Aided then that could be another middle way through, something like that. A lot of the time people don't necessarily want orders, but they just don't have another option. (2272, Lawyer; Interview)

I was very much aware that the world as we knew it as family law practitioners was going to change on 31 March 2014. I thought, right, we've got a brave new world for the practice of family law in NZ and I'm going to be part of that. So I get my FDR qualification and I think about how I can restructure delivery of my services. I'm already to go. I spend hours, but from day one I could not earn a living from FDR appointments with the cost of certification and professional indemnity insurance. ... For me personally what has been profoundly transformative was the challenge to me as a practitioner to move away from the traditional view of the lawyer-client relationship and the focus on resolution through litigation, through Court proceedings, to a more collaborative team approach. That's what the reforms have done for me. My clients are loving my more holistic approach. It's encouraged me to expand my skills. They have got a whole lot of other needs for resolution and they don't just need you to solve the legal problem. (2187, Lawyer, FLAS Provider, FDR Mediator; Interview)

The 2018-2019 Review of the 2014 Reforms

The 2018 announcement by the Minister of Justice, the Hon. Andrew Little, that he would be appointing an Independent Panel to review the 2014 reforms occurred during the period the research team was interviewing the family justice professionals for this study. They were asked whether, in light of the then forthcoming review, they had any comments they wished to make about it. Twenty-six professionals (26%) discussed the review.

God, here we go again, we've got another lot of learning and changing to do. (2233, FDR Mediator, Counsellor; Interview)

Five lawyers suggested that the Minister should “scrap”, “bin” or “reverse” the 2014 reforms or “wind the clock back.”

Scrap the whole thing and go back to square one. (2279, Lawyer, Lawyer for the Child; Interview)

Scrap all the reforms and start again. They'd be better to start from the pre-reform point, rather than tinkering with the dreadful reforms that we've got now. (2197, Lawyer, Lawyer for Child, FLAS Provider; Interview)

Simply remove the reforms - the changes. Rule 416 should just go. It's not followed by the Court because it's unworkable. Totally unworkable. Without notice hearings to be resolved within 12 weeks – you must be joking. We're waiting eight weeks to get a directions conference at the moment. We're waiting six months to get s133 reports. Then once we've got them we're waiting a year, or more, for a matter to be actually set down for hearing. Make it flexible because what we've got now is not flexible. It's very rigid. (2288, Lawyer, Lawyer for the Child; Interview)

Basically, take everything that Judith Collins did and bin it. Oh, except FDR, but bring that into the full process. I object to the fact that I can't give sensible people sensible legal advice and appear for them in Court. Frankly, I'm not entirely convinced that The Honourable Andrew Little is going to do anything more. I think this is a public exercise and it's easy targets. I could be dead wrong. I really hope that I am. I really hope that what they're actually determined to do is really help people. We could actually be doing more within our communities, but it would require a complete shift of systemic change. One of the very hard lines maybe that we have to say, okay, we might have lost a generation here. We need to focus on protecting this next generation. There's a lot more that this country could be doing for our children and I don't think that we're doing it. I don't think that any change that Andrew Little can do will be enough. Because if it's only focused on the Courts it's not enough. That's a larger issue for me. I don't think as New Zealanders that we do enough to protect our children or our communities. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

We should just wind the clock back because I don't think the system was broken and I don't think it needed fixing. Thinking back on it, I don't know what Ms Collins was fixing, what the actual problem was, because the Family Court system that was brought in was in the '80s was a really good model. Judges and lawyers and Lawyer for the Child work in a really constructive way to try and help people work through the issues so there's a better outcome for the children, who are usually the ones experiencing the impact of it. I guess I'm just back to those counselling sessions, because all of those things that were happening were actually positive for people, and potentially positive for the Ministry of Justice budget as well. (2316, Lawyer, Lawyer for the Child; Interview)

Three other lawyers recognised that “starting from scratch” was likely unrealistic.

Burning it to the ground and starting from scratch would be my preferred option, but that's just too big. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

I don't think we could necessarily just say, "Let's just throw this new thing out the window and put the old one back in place." I don't think it's that simple. (2237, Lawyer, Lawyer for the Child; Interview)

I guess we can't turn the clock back literally, although that would be the obvious thing, to pre-March 2014. Possibly the Minister of Justice is concerned enough about what's happening to be setting up this inquiry. They've got to look at the whole thing. They've really got to go back to the original principles enshrined in the Care of Children Act. Then look at how best to implement those, including through the Court system and the ancillary things like counselling, mediation. I'm not averse to parenting courses at all, but there has to be a coherent order for these things to be done. (2540, Lawyer; Interview)

Others expressed the more moderate approach of retaining the beneficial elements of the 2014 reforms (particularly in the out-of-Court sphere) and **undoing, modifying or tweaking** the problematic aspects (n=4). **Resourcing** would be important in achieving this.

The first thing I'd say is reform what's going on in the Family Court because it's rubbish. Do that. He doesn't need to undo FDR, just change the section in the Act regarding the referral to FDR by judges - that could be improved so that's clear. It would be dreadful if we went back to the EIP system. It would be absolutely a smack in the nose for the need for out-of-Court mediation services for parents. I just think it would be terrible if we went totally back. It would be a huge backwards step. (2471, Lawyer, Lawyer for the Child, FDR Mediator, FDR Staff Member; Interview)

Don't come in and do these massive changes. Do small things and see if that works, and if it doesn't then tweak it a little bit. What they did in 2014 that was such a massive change. (2188, Lawyer, FLAS Provider; Interview)

I don't think you can turn the clock back unfortunately. I think they threw the baby out with the bathwater. The review needs to look into how to support and provide the best services the consumer. How to support the people who are providing these services. Obviously, funding is an issue, but they've been short-sighted, as I think in a way they've end up paying more. They got rid of good people in counselling. Once you lose skill and experience it's really hard to regain that. They've got to appreciate the people and keep them. A lot of Family Court staff have had their struggles in dealing with all of this too. In one respect everyone has sort of worked through it. They've had to, but hasn't been an easy process. (2509, Lawyer, Lawyer for the Child, FLAS, FDR Mediator, Mediator (Private Practice); Interview)

Obviously, they need to go back and look at it. At the time, we thought that not too many changes were required to make the system work better. A fundamental concern with the Court is resourcing. Putting aside the changes in 2014, it's the whole resourcing issue, because even back then the budget was being cut. So, even if you change the system a little bit again, you're still going to have that fundamental problem of there being major issues with the resourcing, not enough trained staff, not enough judges etc. Last time it was a politically driven pathway that we went down, and also EIP as it was costing them a fortune. I'm not sure it's going to take too much tinkering. The tracks are quite a good idea, but you need to have the resourcing and Court time available. So, it all comes back, in part, to money and commitment from the

government to achieve that. It's a combination of both. (2501, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

Three professionals were **concerned the Minister might favour the reinstatement of lawyers** to the detriment of the now four-year-old out-of-Court processes.

I'm disturbed by the comments the Minister made about lawyers being involved earlier in the process, because I'm thinking that the opportunity for parties to attempt resolution without requiring the involvement of lawyers or Court processes is really important. I don't think that's been encouraged under the current process and, well, the talk at the moment suggests that it could be worse, because I just see that there's a capture going on by some professionals, and lawyers in particular, around their work. They are worried about losing out on the potential to do work that doesn't necessarily need to get to the Court. I'm worried in terms of where the thinking is at the moment. I am worried that the bottom of the cliff response is still prevalent. A Court process to resolve matters is very much the way that it seems to be going. (2364, FDR Mediator, Counsellor, Social Worker; Interview)

I think he's really focused on lawyers. I know they've got a role and they're important in the whole process. But I would like him to think about therapeutic intervention too and about the children in terms of helping parents to work out arrangements for their children in a way that's away from the law. (2511, FDR Mediator, Counsellor; Interview)

I felt really pissed off to be honest because I thought the Minister was saying, "Oh, you should go to a lawyer first." I just can't believe that after all the work that's been done. I felt like he was just putting it back. My concern is more for the families. I would be very upset to see if FDR was, for some reason, taken away. I can't imagine why they would do that, but nothing surprises me. What does he need to focus on? I think it's actually around changing our attitudes about what it means to be separated and make arrangements for children. This has been in place for four years but, seriously, FDR's still not known enough. It needs to be promoted, but without it being lawyer-driven. It's about parents coming up with arrangements for their children and having that power and responsibility. That's the culture shift I would like to see. I'm hoping in 10/15/20 years it might be the case. It would really, really be so detrimental if he decides to cut things out and bring more lawyers back into the picture. (2299, PTS Provider/Facilitator; Interview)

Four professionals recommended that the review **engage directly with the consumers** using the family justice system and the **practitioners** working in it, as there was disappointment this "grass roots" advice had "fallen on deaf ears last time."

I'd just say, get on with it, don't take too long about it, and do consult the consumers. Ask and get lots of info from the people at the pointy end. Bite the bullet, boys. (2266, FDR Mediator, Mediator (Private Practice); Interview)

Had the policymakers actually taken on board what we who work in the system every day had said, we wouldn't be reviewing the reforms. They just pay lip service to us and actually, we've got some good ideas. Talk to people from a practitioner's point of view. We can show you the gaps, we can show you what works and what doesn't in a real practice. All you've got to do is ask and listen. When we say to you that 27 pages for

an application is not appropriate, don't just say, "Oh well, it's designed for everybody." It's like, "Yeah, nah, if you can't read or you can't read English, it's just too hard. How many mentally health challenged people are going to be able to fill in a 27-page form? It's not going to happen!" So, these people drop through the cracks and they don't see their kids for six months or they move. The muppets in Wellington need to stop thinking about dollars and look at how the system can be made to work effectively and then the dollars will look after themselves. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

Listen to the people that are at the grass roots because we did a massive amount of submissions before they made these changes and they just didn't listen. It fell on deaf ears and all the things we worried about have happened. We all said, "Look, you can't make these changes. The impacts are going to be so damaging." It was just so disheartening. They were going to do them anyway. (2469, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

I would love to see congruent and interconnected policy and support given through the Ministry of Justice, the Ministry of Social Development, the Ministry of Health and the Ministry of Education. It actually takes, not just people who have only ever worked in government, but people who have been at the coalface of all of these different areas to be working together. There are a lot of Ministry and government people who have only ever been managers. They've never done it themselves, so they actually can't relate to the effect it all has on their staff, let alone on the customer or client. (2533, FDR Mediator; Interview)

Others suggested the Minister should focus on the reinstatement of "free, accessible counselling as a public service and a social service"; "getting back to a system where without notice actually means risk and harm, rather than a way of getting into the Family Court without needing to go to PTS and mediation"; and obtaining "more funding, more resources, more judges, more time, more everything really!" It was also considered important to better value **the family justice system** and "**re-centre it around children's best interests** because that is actually the heart of the Care of Children Act 2004."

I'm hopeful the Minister will come up with something good. I keep saying to anybody who will listen, actually this ought to be about children. It's called the Care of Children Act; it's not called the Care of Parents Act. I think the difficulty for him is going to be the fiscal consequences. (2362, Counsellor, Psychologist, Specialist Report Writer; Interview)

I'm hopeful. It's going to take a Minister and a body to realise that we've got to properly value the family justice system. We've got to properly fund it; it's expensive, but that's what tax is there for - to actually fund these things properly. I am hopeful there'll be changes, yes, but it's going to have to take someone who actually recognises there's value to the system. If they don't recognise the value and it's too expensive, then we'll just get the same results again and again. (2528, Lawyer; Interview)

Summary

The family justice professionals interviewed were generally negative about the changes to the family justice system as a result of the 2014 reforms. Overall, more professionals were dissatisfied than satisfied with the changes. The only change the majority (57%) indicated they were satisfied or very satisfied with was making PTS mandatory prior to proceeding to the Family Court. Satisfaction with the provision of FLAS and the introduction of FDR was evenly split, with no major differences between the numbers indicating they were dissatisfied or very dissatisfied and those who were satisfied or very satisfied. However, for three changes the majority of the professionals expressed strong dissatisfaction:

- the reduction in the availability of Family Court counselling (92% were dissatisfied or very dissatisfied);
- limiting legal representation/increasing self-representation (80% were dissatisfied or very dissatisfied);
- FDR costing \$897 (67% were dissatisfied or very dissatisfied).

More professionals were dissatisfied or very dissatisfied with parties being required to attend FDR prior to making an application to the Family Court than were satisfied or very satisfied (51% compared with 33%). Nearly twice as many were dissatisfied than satisfied with having three Family Court tracks (40% compared with 23%).

In addition to being largely dissatisfied with the majority of the changes resulting from the 2014 reforms, most professionals considered that a key objective of the 2014 reforms had not been achieved. Only 7% agreed or strongly agreed that the reforms had achieved the purpose of ensuring “a modern, accessible family justice system that is responsive to children and vulnerable people, and is efficient and effective,”¹¹ while 81% disagreed or strongly disagreed that this objective had been met.

Several other objectives of the 2014 reforms were also not considered to have been achieved. The majority of professionals indicated the following objectives were either *not achieved at all* or had *very limited achievement with extensive shortcomings*:

- Faster resolution of family disputes (through the use of out-of-Court services) – 74%.
- Less adversarial resolution of family disputes (through the use of out-of-Court services) – 69%.
- More efficient and effective operation of the Family Court – 83%.
- Less adversarial Court proceedings – 78%.
- Improved Family Court response to victims of domestic violence – 53%.
- Better targeting of resources to ensure that the family justice system remains affordable in the future – 75%.
- Better targeting of resources to support those children and vulnerable people who most need protection – 77%.

The majority (73%) of the professionals identified at least one unintended effect of the reforms, and all were negative. They noted an increase in without notice applications and attributed this to people attempting to bypass FDR, avoid delays and/or to access legal

¹¹ The purpose of the reforms as stated in the General Policy Statement included in the Family Court Proceedings Reform Bill.

representation. Concerns were expressed about the validity of some without notice applications and the flow-on effect of parties exaggerating safety concerns, such as parental conflict being exacerbated and impacting negatively on children. The professionals also commented on effects of self-representation, believing it disadvantaged vulnerable people, increased delays and negatively impacted on those working in the Family Court.

An increase, rather than a decrease (as was intended), in delays in the system, was another effect of the reforms reported by the professionals. Delays were seen as being due to backlogs in the Court system as a result of the increase in without notice applications and parties representing themselves. The impact of such delays mentioned included a prolonging of disputes, resulting in parties becoming more entrenched in their positions, and children being negatively affected by a lack of contact with a parent while the dispute remained unresolved and by the exacerbation of their parents'/caregivers' conflict. The professionals also believed that the reforms limited access to justice, disadvantaging vulnerable people and those on low incomes. This meant that some people were not engaging with services and therefore not resolving their disputes and/or were remaining in unsafe or difficult situations.

Many professionals spoke movingly in their interviews about the impact of the 2014 reforms on the family justice sector. A few were positive about the changes, particularly the addition of out-of-Court services, but most – particularly lawyers – were critical of many, if not most, aspects of the reforms. One described it as a shift “from a Rolls Royce system” to “a sort of Ford Prefect system.” Another used the analogy that “it feels like taking the nurses out of the hospitals” where “the patients” are supposed to “be treating themselves while relying on the surgeons to fix them up.”

The reforms were considered to have had a detrimental impact on children due to the lengthier delays and consequential exacerbation of family conflict. Despite a key objective of the reforms being the creation of a “family justice system that is responsive to children”, many professionals considered that children had largely been invisible in the changes and that delays meant decisions were not being made and implemented in a time frame appropriate to a child’s sense of time (as required by s4(2)(a)(i) of the Care of Children Act 2004). Children’s participatory rights under Article 12 of the United Nations Convention on the Rights of the Child were also said to be being breached and a strong call was made to provide greater opportunities for children to have a voice in the out-of-Court processes. There was also concern that the delays in proceedings and lack of supervised contact services meant some children did not see a parent for a considerable period of time.

The impact of the 2014 reforms within the family justice sector varied across the different professional disciplines. Parenting Through Separation became mandatory, which pleased the PTS providers and facilitators (and other professionals), but did not really affect their day-to-day role. Counsellors found their much-valued role in s9 and s10 counselling had disappeared and many had to rethink their future role in the sector. The greater use of s46G as the reforms bedded in has, however, brought counselling somewhat back into the picture, but not as an initial step as occurred previously. Mediators were excited by the introduction of FDR, regarding this as a welcome and long overdue opportunity to develop out-of-Court dispute resolution processes in New Zealand for the benefit of separated parents/caregivers. Lawyers found the changes very challenging given, for example, the constraints imposed on legal representation, the rise of self-representing litigants, the introduction of new, but inadequate, forms, the rapid growth of without notice applications, more extensive delays within Family Court proceedings, and the pervasive sense that their

role was misunderstood and undervalued by those promoting the changes. Community Law Centres experienced an increase in their family law workload. The role of specialist report writers continued much as it had previously, but the shortage of psychologists, the increasing complexity of their work, the risk of complaints and the lack of resourcing has taken its toll. The then Minister of Justice and the Ministry of Justice came under fire for the reforms, the staff turnover that resulted, the new forms, and the implications of the reforms for the sector generally. In the face of inadequate resourcing and too few staff, front-line staff became overworked and overwhelmed by the rise in without notice applications and dealing with the flow of people, including self-representing litigants, to their counters for advice and support.

The 2014 reforms were called “changes” not reforms by many lawyers who objected to their lack of reformatory direction. However, fewer lawyers were now doing family law work and some had left the sector entirely, creating a shortage of experienced family lawyers. The reforms/changes and Legal Aid were noted as having impacted on the ability of junior lawyers obtaining employment in the family law field. Failure to acquire the necessary experience at the entry level, or “burning” young lawyers out with the challenging nature of (Legal Aid) family law work, will have significant downstream consequences for the sector moving forward as the current echelon of senior family lawyers retire. Despite initial fears about the impact of the changes on their businesses, lawyers remained busy and the gloom and anxiety in 2014 had energised some lawyers to up their game and rethink how they deliver their services. Many lawyers felt completely undervalued by the reforms, said they had been “treated like absolute dirt in this process” and had “the rug” pulled out from under them. They were particularly incensed by the way they were characterised and “dumped on” when the reforms were first proposed. And then implemented. Lawyers spoke of the importance of their role as front-line workers in the family justice sector and the value that effective family lawyers bring to post-separation dispute resolution processes. They liked building relationships with their clients, getting in early and nipping things in the bud, discerning what was urgent, calming people down, acting as a buffer, reality testing clients’ expectations and beliefs, making referrals, breaking the family violence cycle, helping clients find a good practical result, ideally with litigation as a last resort. Given the escalation of social problems, skilled family lawyers are never going to be more needed.

Suggestions to improve the family justice system included training and professional development opportunities, the Family Court having a more visible presence in the community, reinstating Family Court co-ordinators, utilising low-cost tools like *Our Family Wizard*, and introducing Parenting Co-ordination to assist families beyond the Court once Parenting Orders have been made. The development of a new “second-tier gateway” or “middle” pathway was also proposed for applications that were not so urgent they needed the without notice track, but still required prompt attention within the Family Court. This more immediate step would particularly assist those parents requiring urgent help, but where there’s no safety risk. Abridgment of time, counselling and Collaborative Law were also mentioned as possible middle roads.

The 2018 announcement by the Minister of Justice, the Hon. Andrew Little, that he would be appointing an Independent Panel to review the 2014 reforms occurred during the period the research team was interviewing the family justice professionals for this study. They were asked whether, in light of the then forthcoming review, they had any comments they wished to make about it. Some lawyers suggested that the Minister should “scrap”, “bin” or “reverse” the 2014 reforms or “wind the clock back”. Other lawyers recognised that starting from scratch was likely unrealistic. Other professionals expressed the more moderate

approach of retaining the beneficial elements of the 2014 reforms (particularly in the out-of-Court sphere) and undoing, modifying or tweaking the problematic aspects. Resourcing would be important in achieving this. Non-lawyers were concerned the Minister might favour the reinstatement of lawyers to the detriment of the now four-year-old out-of-Court processes. The professionals recommended that the review engage directly with the consumers using the family justice system and the practitioners working in it as there was disappointment this grass roots advice had “fallen on deaf ears last time.” Others suggested the Minister should focus on the reinstatement of counselling, tackling the without notice track, obtaining more funding, resources and judges, better valuing the family justice system and re-centring it “around children’s best interests because that is actually the heart of the Care of Children Act 2004.”

New Zealand's Current Family Justice System

Survey Findings

The final section of the survey asked the professionals about New Zealand's current family justice system. This included their views on children's participation, how the post-reform family justice system compared to the pre-reform system, their satisfaction overall with the current system and their perspectives on those aspects that are working well and any improvements that could be made.

Children's Views and Participation

The professionals were asked to comment on how well they thought children's views were ascertained and taken into account within the current family justice system. Seventy-nine percent ($n=289$) provided some viewpoint (10 participants indicated they didn't know or were unsure and 65 provided no comment or skipped the question). These responses were coded and professionals' views on how adequately the family justice system enabled children's participation are presented in Table 39. Issues and challenges raised by ascertaining and taking children's views into account are also outlined.

Table 39: How well are children's views ascertained and taken into account within the current family justice system?

	<i>n</i>	Percent
Well/Adequately	77	27%
Well if through Lawyer for the Child/Family Court	86	30%
Depends/Variable	32	11%
Poorly/Not at all	38	13%
Poorly if through Family Dispute Resolution	49	17%

Note: Views could fall into more than one category. For example, stating that children's views were ascertained and taken into account well if Lawyer for the Child was appointed, but poorly through FDR would be counted twice.

As shown in Table 39, just over a quarter (27%) of those who responded indicated that they believed the current system did **very well, well or adequately** in ascertaining and taking into account children's views. General responses included comments such as:

This is done reasonably well. (2546, Lawyer, Lawyer for the Child; Survey)

I think children are given good opportunity to be heard. (2444, Lawyer, FLAS Provider; Survey)

This works well in my jurisdiction, children's views are often taken into account. (2448, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Very well. We are lucky in New Zealand to have the system we do. (2303, Lawyer, Lawyer for the Child; Survey)

Very well. The Court is working hard to ensure Lawyer for the Child where needed and is fulfilling obligations well. (2213, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

A smaller proportion (13%) thought that how the current system ascertained and took children's views into account was **poor or inadequate**.

I'm not convinced that their views are being properly ascertained. Judges rarely wish to speak with children. Lawyers for the child do their best but often may be representing the views of the primary caregiver rather than the actual views of the children. Psychological reports may assist but some judges will only allow them rarely. (2451, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Somewhat inadequately. (2381, FDR Mediator, Mediator (Private Practice); Survey)

Not well – ad hoc, no best practice standards, very limited training available. (2560, Lawyer, FDR Mediator, Mediator (Private Practice), Child Consultant; Survey)

Not well enough. (2319, FDR Mediator, Mediator (Private Practice), Counsellor, Citizens Advice Bureau Staff Member/Volunteer; Survey)

My experience is that most children's views are poorly represented. (2347, Psychologist; Survey)

Not at all. However, a feature of that, in my experience, is that parents more consider their own views rather than the needs and views of their children. (2575, Counsellor, Professional Association Staff Member; Survey)

Not very well at all. Huge amount of work to be done in this area; and there is a great deal of international research available to assist, so we can save time and effort by learning what has worked - and what has not - elsewhere. We are years behind the UK, for example. (2270, FDR Mediator, Mediator (Private Practice); Survey)

Very poorly. The representation they receive is very variable, hard to challenge and then locked in by S139A. (2544, Lawyer; Survey)

However, the majority (60%) of the professionals held **mixed views**, regarding child participation as **variable and dependent on the dispute resolution pathway and the professionals involved**. Nearly a third were positive about how well children's views were ascertained and taken into account, but **limited this to situations where Lawyer for the Child or a specialist report writer was appointed or the Family Court was involved**.

Once in the Family Court it works well with the appointment of Lawyer for the Child. (2208, Lawyer, FLAS Provider, Citizens Advice Bureau Staff Member/Volunteer; Survey)

Very well, but only where Lawyer for the Child is appointed. (2218, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Fairly well once the matter is in Court with lawyers and judges. (2562, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

This continues to work well through Lawyer for the Child, judicial interviews, s133 report writers. (2468, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

When an s133 is completed, very well. (2369, Psychologist, Specialist Report Writer; Survey)

Fine if a lawyer is appointed for them, and even better if a psychologist is appointed. (2170, Lawyer; Survey)

Some noted that it was only on the **without notice/urgent track** that children's views were ascertained well.

Children's views are only taken into account in urgent matters - for non-urgent matters that are not progressing to hearing it is unlikely that the children's views will be heard. Not sure this is a bad thing - it is for parents to make parenting decisions for children. (2280, Lawyer, FLAS Provider; Survey)

For FLAS and on-notice applications, not well at all. (2179, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Well at an urgent level. Not at all at earlier levels. (2329, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

Professionals also indicated that they thought children's participation was **dependent on whether the matter was out-of-Court or in-Court**. There was a common view that prior to Family Court proceedings children's participation was inadequate, but worked well once the matter was in the Court.

Where a Lawyer for the Child is appointed the views of the child are represented. Otherwise the child has no voice. (2366, Lawyer, Lawyer for the Child; Survey)

Well if Lawyer for the Child involved. Not at all if Lawyer for the Child is not involved. (2180, Lawyer, Lawyer for the Child; Survey)

Pre-Court proceedings being filed there is no assistance available for the children's views to be taken into account. Once proceedings have made it to the in-Court stage the Lawyer for the Child system is working reasonably well and generally they are appointed where needed. (2559, Lawyer; Survey)

Pre appointment of Lawyer for the Child it does not adequately occur. (2558, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The Lawyer for the Child role is essential, must be retained and lawyers should be appointed at an early stage. I consider children's views are taken into account fairly well once proceedings are underway. I suspect that the child's developmental age and stage are not well taken into account in FDR, as there may not be anyone with any particular expertise helping to make decisions. (2315, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

I hope well - we try our best to - if proceedings are before the Court and Lawyer for the Child has been appointed. If no appointment then there is no avenue for their views and wishes to be ascertained or accounted for - just as there is no process for that in FDR. (2489, Lawyer, Lawyer for the Child; Survey)

Not well at mediation level. Improves once a lawyer for children is appointed. (2375, Lawyer, Lawyer for the Child; Survey)

Other professionals (n=49) stated more explicitly that, within the **FDR process, avenues for children's participation were poor** or did not allow for children's views to be ascertained.

Rarely are views obtained in the FDR process. Once proceedings are initiated, and Lawyer for the Child appointed, views of the child are well represented. (2499, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

This aspect hasn't really changed. I feel children are reasonably well represented in the Court process, but not necessarily at all in the FDR process. (2222, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Survey)

The FDR process sometimes totally ignores children. (2395, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

In Court this hasn't changed much. In out-of-Court processes like FDR this is dangerous and views are not adequately obtained or listened to. This is in breach of the UNCRC. (2312, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

I don't think the children's views are taken into account at all in FDR mediation except through what the parents are saying. On the without notice track the Court appoints a Lawyer for the Child, and children's views appropriately ascertained through the Lawyer for the Child. (2534, Lawyer, FLAS Provider; Survey)

Lawyer for the Child and s133 report writers do a good job. Not well done (if at all) at FDR mediation stage. (2542, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

At FDR a child's view is not taken into account unless you hear what each parent says. (2226, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

FDR child-inclusion needs more work. (2537, Lawyer; Survey)

Depends at what stage of the dispute – children's views are not adequately represented at FDR. (2193, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Not well enough. For years FDR has not had a mechanism to take children's views into account. (2379, Community Law Centre Staff Member/Volunteer, PTS Provider/Facilitator; Survey)

Not taken into account at FDR and this can be an issue, particularly when the children are older and really need to be able to give their views to an impartial third party. (2567, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

If FDR is used the children's views in my experience are not ascertained. (2563, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Lawyers for children do an excellent job with their child clients when they are appointed. This does not happen when people are making arrangements about care of children through a mediation service. (2309, Lawyer, FLAS Provider; Survey)

Some FDR providers are now doing child-inclusive mediation. However, it is not known what training they have to do this and those without legal experience lack the necessary experience in this area. (2179, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Some professionals **advocated for Lawyer for the Child to be involved in FDR.**

Not well at all with FDR. There is no provision for Lawyer for the Child in the FDR process which is mandatory for non-urgent matters. (2519, Lawyer, FLAS Provider; Survey)

Not very well in FDR currently. There is no defined process and lawyers for the child are not normally appointed and do not attend. Perhaps another role should be set up to do this, particularly of the children are 10 and up. (2374, Lawyer, FLAS Provider; Survey)

Lawyer for the Child needs to attend mediation. (2285, Lawyer, Lawyer for the Child; Survey)

Thirty-two professionals (11%) stated that whether the system worked well in relation to **children's participation was variable.**

From not at all, to where age and ability of the child/young person is assessed to 100% of all mediations. This practice has adopted an 'opt out' policy rather than 'opting in' with a Consent Form attached to the Agreement to Mediate. (2168, FDR Mediator; Survey)

From my position as both a counselling professional and a private individual I have witnessed children not even being interviewed, children who have been told they are liars, children told they are being 'told to say this by mum/dad', children's realities seriously misrepresented in out of Court and within Court decisions, through to excellent support through Lawyer for the Child and the psychological report writers with excellent outcomes for children. The former has become common, the latter more rare. The 'person' of the professional appears to make a difference. Many of those persons who were facilitating positive outcomes now seem to not be working within Family Court system. (2401, Counsellor; Survey)

Highly variable. (2524, Mediator (Private Practice), Counsellor; Survey)

The majority of those reporting variability in the system with respect to children's participation thought it **depended on the quality and skill of the Lawyer for the Child.**

Dependent entirely on individual practice of lawyers. (2471, Lawyer, Lawyer for the Child, FDR Mediator; Mediator (Private Practice); Survey)

Depends on the effectiveness of the lawyer representing them. (2580, Lawyer, Lawyer for the Child; Survey)

Dependent on Lawyer for the Child. Some are amazing. Some are lazy and clip the ticket or take work when they don't have capacity to. (2569, Lawyer; Survey)

Dependent on each Lawyer for the Child. Some lawyers for children do a better job to ascertain and advocate for the children than others. (2479, Lawyer, FLAS Provider; Survey)

Well, when competent Lawyer for the Child appointed. (2478, Lawyer; Survey)

While many advocated for the importance of the role of Lawyer for the Child and acknowledged some "very talented" practitioners who were "worth their weight in gold", **concerns were expressed about the variable competence and skill level of lawyers for the child.** There were complaints that lawyers did not meet with children, were biased or were in need of specialised training, particularly in child development and interviewing children.

Dependent on Lawyer for the Child. Some are amazing. Some are lazy and clip the ticket or take work when they don't have capacity to. (2569, Lawyer; Survey)

The Lawyer for the Child role remains important, however time frames should be shorter and Lawyer for the Child required to train on child development, impact of delays and inaction etc. (2422, Lawyer, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

I think there should be regular reviews of Lawyer for the Child lists - it shouldn't be a lifetime appointment. The work you do has to be of a certain standard. Sadly, I do not think this is the case. There needs to be regular and mandatory training for Lawyer for the Child. (2310, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer, CAB Staff Member/Volunteer; Survey)

Depends largely on lawyers for children and their prejudices or biases. Parents (who know their children best) are often ignored if their beliefs don't fit "the system". (2388, Counsellor; Survey)

It is very dependent on the kind of lawyer. ... No consistency, very few lawyers who can see the bigger picture, can understand both sides and is able to stay focused on best interest of the child. (2302, FDR Mediator, Counsellor, Therapist; Survey)

Mixed results, the skills of Lawyer for the Child to represent the child's voice can be dependent on the skill of the Lawyer (whose discipline background is not this skill base). Many ask leading questions or do not understand what the child is intending from comments at times. (2430, Social Worker, PTS Provider/Facilitator; Survey)

Not well at all. Some lawyers for the child barely meet with the child and/or have little capacity to relate to children. They apply their own lens to the situation rather than reporting the children's actual subjective views. (2161, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Sometimes the lawyers for children do not do enough research into the child's actual situation. (2400, Ex-Family Court Counsellor and FDR Mediator, Not currently working in family justice sector; Survey)

Often dependent on the quality of the Lawyer for the Child - which vary very much in ability and energy. (2537, Lawyer; Survey)

Lawyer for the Child is not trained in interviewing children and working with them. (2525, PTS Provider/Facilitator; Survey)

Some advocated that professionals other than lawyers, such as social workers, were more appropriate to ascertain children's views.

Lawyer for the Child are not trained in forensic interviewing and do not have adequate skills to interview children. Many specialist report writers are also forensically not trained in interviewing. There is a need for children to be only interviewed by skilled professionals and limited interviews. (2360, Psychologist; Survey)

Clinical psychologists or equivalent may be required for some children to ascertain views. Lawyers are lawyers and not experts in child development and wellbeing. (2529, Lawyer; Survey)

Lawyer for the Child considers the child's perspective from a legal framework - but they are not specifically trained about children and development etc. More and more, the views of social workers from s132 reports is considered critical. (2417, Ministry of Justice/Court Staff Member; Survey)

In my humble opinion, Lawyer for the Child does not represent children's interests at all. They spend time getting parental conflict thrown at them to build a case at why the children should not be with one parent or that the care of a child should be solely one parents. There needs to be a social worker involved for the children to do an assessment with the children. (2431, Social Worker, PTS Provider/Facilitator; Survey)

If the voice of the child is going to have any relevance it needs to be obtained by someone who understands how to have that conversation. Lawyers for children are at a disadvantage as they are simply not qualified to work with children at that level. (2346, FDR Mediator, Counsellor, PTS Provider/Facilitator; Survey)

We should actually consider how children would like to be heard and not assume it's through a Lawyer for the Child. Involve the Office of Children's Commissioner and ask children. (2295, FDR Mediator, FDR Supplier Staff Member; Survey)

I do not think we can rely on children's views being accurately relayed by Lawyer for the Child because they have no training in how to talk to children at every age and stage, not to mention, whether there are learning or behaviour disorders or dysfunctions needing specialist interviewers. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

As Lawyer for the Child, I think I do not have the expertise to ascertain views. I can say what the children told me in that particular moment in time I talked to them, but cannot tell you with confidence what is influencing their views or whether there are behaviours they exhibit that are inconsistent with expressed views. If views are pivotal in a case and are to carry weight I think they should come in through an expert witness. (2568, Lawyer, Lawyer for the Child; Survey)

I think it needs more highly skilled people who continue to be involved after a Court order is made. (2233, FDR Mediator, Counsellor; Survey)

An independent social worker is better placed to report children's views than a lawyer. (2528, Lawyer; Survey)

I don't have a difficulty that children's views aren't ascertained formally at FDR because most parents make decisions without lengthy consultation with their own children. I would be happy to have an expert obtain children's views and wishes for Court matters rather than Lawyer for the Child. I don't believe Lawyer for the Child are necessarily the best people to work with children at all - though they have a valuable role at a hearing. (2340, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Challenges in Child Participation

In addition to concerns about limited opportunities for children's voices to be ascertained and taken into account in FDR, and the skill and competence of Lawyer for the Child, several other issues relating to child participation were raised. These included: concerns about children's abilities and the burden placed on children; the degree to which children's views were heard and listened to; and how children's views could be misrepresented or influenced.

The professionals noted the challenges involved in firstly ascertaining and then taking children's views into account. A small number were concerned about **children's abilities** to provide their views due to their young age or shyness. Some also thought it could be stressful for children and place undue pressure on them.

Lack of psychologists and an unwillingness to appoint them due to costs mean children who are not articulate or pre-verbal often can be marginalized. (2510, Lawyer, Lawyer for the Child; Survey)

It is a requirement but reality is many children very young and can't articulate a view and ascertainment of viewpoint often dependent on skill of advocate. (2482, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Depends on the Lawyer for the Child - generally well - although difficult if the child is shy/anxious and unwilling to talk to the LFC. (2458, Lawyer; Survey)

Not all children want to be "interviewed" - it can be very traumatic especially by a lawyer. (2295, FDR Mediator, FDR Supplier Staff Member; Survey)

Too much emphasis on children's views means the poor kids are subject to scrutiny by unscrupulous parents - let kids be kids and the adults make decisions for them - long-term kids will be better off if they are not having to decide which parent to live with - this is too much pressure on a kid. (2443, Lawyer; Survey)

Often times providing a view is stressful. They don't want to make decisions or take sides. It's hurtful, scary, stressful and confusing. Sometimes though they have better ideas than their parents. (2271, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Though this is a very difficult issue. It risks the children becoming stressed/feeling guilty/wielding power. (2377, Psychologist, Specialist Report Writer; Survey)

It depends at what stage in the process. All the children who are subject to a s133 have a Lawyer for the Child and the s133 writer will also hear the child's views. The problem is that the children's views so often become a weapon used by one parent to silence another, and in the middle of the loyalty conflict, the child's views and expressing them become a burden for the children, rather offering an important perspective that is vital for the child (which is what the intent is). (2351, Psychologist; Survey)

Concern was also expressed about how well children's views were **actually heard and taken into account**. Several professionals thought that while children's views were ascertained they were not always advocated or heard or that insufficient weight was placed on these views.

The Court itself struggles to provide outcomes consistent with those views and interests. (2365, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; FDR Mediator, Mediator (Private Practice), PTS Provider/Facilitator; Survey)

Poorly trained lawyers for the child write reports with three-quarters of material on the background of proceedings and judges then say, "Children's views are mobile and can change". Unless the child is a teenager the reports hold no weight with parents. Ineffective and annoying. (2165, Lawyer, FDR Mediator; Survey)

Children's views given less weight since the passage of s9B of the Family Courts Act. (2592, Lawyer, Lawyer for the Child; Survey)

They are ascertained but taken into account not so. They are ascertained whether they are taken into account is another matter. (2283, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Their views are ascertained well, but not always advocated. (2176, Lawyer, Citizens Advice Bureau Staff Member/Volunteer; Survey)

Once you are in the Court process they are ascertained, but greater consideration should be given to weighting put on their views. (2169, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator; Mediator (Private Practice); Survey)

Consideration is always given to children's expressed views. Ascertaining the views or reporting a child's views is regularly completed. How reliable those views are and what weight can be placed upon them given the influence and children's cognition is another question. (2570, Lawyer, Lawyer for the Child; Survey)

Views are ascertained. Often not taken into account all or given too much or not enough weight. (2495, Lawyer; Survey)

Some Lawyer for the Child do not give thorough information about the child's views out of a sense of protecting them I guess - but I do not know how this can meet the requirement for their views to be heard. (2303, Lawyer, Lawyer for the Child; Survey)

However, some noted that **judges were listening to children's views and taking them into account in their decision-making.**

Children's views generally well represented - judges pay real heed to those wishes. (2334, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Judges are increasing placing more weight on the children's views taking into account levels of maturity and ages of the children. (2320, Lawyer, Lawyer for the Child; Survey)

Some professionals were concerned that Lawyer for the Child **could misrepresent children's views.**

The children don't have a voice! The Lawyer for the Child does and it often misrepresents the child's experience! (2387, Counsellor; Survey)

Lawyer for the Child apply their own lens to the situation rather than reporting the children's actual subjective views. (2161, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

They [views] aren't [ascertained and taken into account] if they conflict with the opinions of professionals. (2358, Psychologist; Survey)

Lawyers for the child do their best but often may be representing the views of the primary caregiver rather than the actual views of the children. (2451, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

There was, however, an acknowledgement by some that **children's views were not determinative** and that sometimes parents did not understand this.

Better information needs to be provided to parties in respect of role of Lawyer for the Child and the difference between the child's views and their best interests. If a party is self-represented there is no one to explain this difference which can result in confusion and resentment about the position the Lawyer for the Child takes. (2582, Lawyer, FLAS Provider; Survey)

In majority of cases views are not always considered. People also don't understand that their views are not determinative so more education needed around that. (2327, Lawyer, Lawyer for the Child, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Best welfare and interests sometimes over rides views. In some cases that is appropriate. (2375, Lawyer, Lawyer for the Child; Survey)

Inherent power limitations here about how much choice they can have. (2405, Ex Family Court Counsellor, Not currently working in family justice sector; Survey)

Children's views change depending on who is asking the question and what they are being asked and that needs to be recognised. Children's views are often seen as determining an outcome and this isn't fair on children who are being placed in to

very difficult positions. (2505, Lawyer, Lawyer for the Child, Community Law Centre Staff Member/Volunteer; Survey)

Children's views are only taken into account in urgent matters - for non-urgent matters that are not progressing to hearing it is unlikely that the children's views will be heard. Not sure this is a bad thing - it is for parents to make parenting decisions for children. (2280, Lawyer, FLAS Provider; Survey)

Children's views are taken into account and are treated seriously by lawyers for the child, counsel and the Courts. But there are times when parents have to be encouraged to parent their children and there are times when children's wishes have to be ignored, because of the child's age or because one parent is alienating the child against the other parent. This happens more often than most people realise. (2225, Lawyer, FLAS Provider; Survey)

Concern was expressed by some professionals about the **role of parents** in children's participation. Without the appointment of Lawyer for the Child or specialist report writers, **children's views were reported by their parents** and might not always accurately reflect how their children were actually thinking and feeling.

Not pre-Lawyer for the Child appointment as the parents each advocate that they know what their children's views are. (2509, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Survey)

Generally children's views are now taken into account as they should through FDR. My understanding is that the parents are stating the children's views and that children are not having an independent say, rather parents are passing on what they think are the children's views which is likely to be a biased opinion. (2344, Lawyer, FLAS Provider; Survey)

For FLAS and on-notice applications, not well at all. Parents, often recently separated, are being asked to put aside their own feelings and focus on the needs of the children, without any form of counselling. It is an impossible task and one that despite their best efforts, many parents are unable to do. (2179, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The importance of the child and the child's attachment and relationship with both their parents is not considered enough. Parents and children have biased/influenced views so are not necessarily giving good perspective for the child's well-being. (2498, FDR Mediator, Counsellor; Survey)

Once Lawyer for the Child is appointed it is normally good. The concern is in the tracks that lead to no voice apart from parents who often have a significantly different view on what the children want because the children say different things or they only hear what they want to. (2321, Lawyer, Lawyer for the Child; Survey)

Some professionals also detailed how **children's views could be influenced by parents** and other family members.

Sometimes by the time the Court appoints Lawyer for the Child it is too late and the views have been influenced. (2268, Lawyer, FLAS Provider; Survey)

Cultural beliefs such as filial piety and grandparents' influences could unintentionally put pressure on the children. Children's views are therefore compromised. (2516, Counsellor; Survey)

Generally quite well providing the children have not been coached too much by any gatekeeping parents or care givers. (2234, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

The main parents complaint is there is insufficient time given and what the child has said to Lawyer for the Child was influenced by the other parent and not what the child says to them. This highlights children caught in the middle. (2547, Counsellor; Survey)

New Zealand's Post-reform Family Justice System

Professionals were asked for their views on New Zealand's post-reform family justice system, rating how it compared to the pre-reform system (see Table 40) as well as their satisfaction overall with the current system (see Table 41). Again, the professionals indicated their discontent with New Zealand's current family justice system. Seventy per cent thought that the reforms had made the family justice system somewhat worse or much worse, and almost the same proportion (69%) were dissatisfied or very dissatisfied with the current system.

Table 40: Overall, have the 2014 reforms improved New Zealand's family justice system relating to post-separation care of children? It is now ...

	<i>n</i>	Percent
Much improved	10	2.8%
Somewhat improved	49	13.6%
Neither better nor worse	35	9.7%
Somewhat worse	84	23.3%
Much worse	168	46.7%
Don't know/Not sure	14	3.9%
Total	360	100%

Table 41: Satisfaction with the current family justice system

	<i>n</i>	Percent
Very dissatisfied	80	22.5%
Dissatisfied	165	46.5%
Neither satisfied nor dissatisfied	59	16.6%
Satisfied	43	12.1%
Very satisfied	2	0.6%
Don't know/Not sure	6	1.7%
Total	355	100%

Aspects of the Current Family Justice System that are Working Well

Professionals were also asked for their views on which aspects of New Zealand's current family justice system are working well. Two hundred and nine (57%) responded to this question, 36 of whom (17%) responded negatively saying that **no aspects of the current family justice system are working well** - "none", "nil", "very little", "it's not", "not much", "not too many that I can see", "none stand out - generally deteriorated", "none compared with pre-2014", "none – FLAS and FDR have not worked as envisaged", "I wouldn't say anything is working well at the moment", "I doubt there's any", "I can't think of anything that's working well" and "all areas have been compromised and undermined."

The 173 professionals (83%) who responded positively said that the **aspects of the current family justice system that are working well** included:

- FDR/mediation (n=67)
- Without notice track applications/e-Duty/e-platform (n=32)
- Parenting Through Separation (n=36)
- Lawyer for the Child (n=20)
- Settlement Conferences (n=5)
- FLAS (n=4)
- Counselling e.g., s46G, communication counselling (n=3)
- Ministry of Justice website (n=2)
- The three Court tracks (n=2)
- Round Table Meetings (n=2)
- The availability of out-of-Court options for separated parents (n=2)

The **professionalism and dedication of staff** working within the family justice system was also commended:

- Judges (n=12)
- Professionals generally (n=9)
- Lawyers (n=10)
- Court/registry staff (n=3)

We are muddling through because of the dedicated work of Court staff, judges and lawyers in making a system that has been screwed around work. (2501, Lawyer, Lawyer for the Child, Mediator (Private Practice); Survey)

We are fortunate to have a wonderful bench and an excellent bar who work well together. (2331, Lawyer; Survey)

The professionals are skilled and well meaning. (2525, PTS Provider/Facilitator; Survey)

There is good understanding of the dynamics involved in family disputes across the range of practitioners, Court staff, lawyers, judges, counsellor and other specialists. (2352, Psychologist, Specialist Report Writer; Survey)

There are dedicated professionals who still work in the system because they believe in the necessity for vulnerable people to receive support despite the Family Court system.

They are across the board from lawyers to Court staff to judges. Without them, the system would fall over completely. (2186, Lawyer, Lawyer for the Child; Survey)

Other aspects that are working well that were mentioned by just one professional each included the law; shared care; specialist reports; registrar's list dates; the administrative attention given to proceedings to ensure dates are allocated and files are not lost; case conferences and hearings flowing well; consideration of children's safety issues; empowering parents; and the approval process for domestic violence programmes.

How the Current Family Justice System Could be Improved

Two thirds ($n=242$, 66%) of the 364 professionals suggested ways in which the current family justice system could be improved.

The most frequent suggestion ($n=85$) involved the **reinstatement of legal representation** from the outset – “no restrictions on use of lawyers”, “repeal s7A of COCA”, “allow lawyers to act for on notice applications”, “let lawyers represent the parties from the beginning”, “put the lawyers back in”, “enable representation at the front end”, “remove the restrictions on lawyers being involved in the Court”, “recognise the value of lawyer involvement”, “permit all parties who apply to be able to use lawyers”, “bring back the lawyers” and “allow lawyers to act on all tracks and at all stages of the system.”

Let people have lawyers. It is ridiculous that in a modern Court system we literally forbid people to have access to trained advocacy and advice. (2206, Lawyer, FLAS Provider; Survey)

Lawyers also wanted the ability “to apply on notice, but to **abridge time**” ($n=6$), and for pre-Court **Legal Aid** eligibility to be restored and/or Legal Aid pay rates increased ($n=14$).

Better remuneration and less time-consuming admin for Legal Aid providers so that lawyers may begin to return to offering this work. (2203, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Have proper funding of Legal Aid for family lawyers, which is less complicated and more financially rewarding (taking into account the high time and emotional cost of those files). Trust that lawyers will give their clients good advice and manage the proceedings efficiently as best they can. (2212, Lawyer, Community Law Centre Staff Member/Volunteer; Survey)

Family Legal Aid lawyers are leaving the system exhausted after years of difficult work for which they are paid very poorly and with the huge stress of the additional unreasonable demands from Legal Aid to justify simple grants of Legal Aid for their clients. (2537, Lawyer; Survey)

Proper Legal Aid rates to help lawyers help people. (2553, Lawyer; Survey)

The availability of **counselling** was the second most frequently mentioned way of improving the family justice system ($n=68$). Most of these professionals wanted a return to “the s9, s10 and s19 counselling” that existed prior to the reforms – “provide for counselling as per the old system”, “bring back counselling” and “reinstate the six hours funded counselling for persons in a relationship.” Others wanted more counselling generally, more Court-directed

counselling, and funding to be available to introduce counselling for children, family counselling, and more communication counselling.

Restore three free counselling sessions no question. (2590, Lawyer, Lawyer for the Child; Survey)

More access to free counselling for parties and children. (2549, Lawyer, Lawyer for the Child, FLAS Provider; Survey)

Provision of counselling hours alongside mediation, where needed. (2427, FDR Mediator; Survey)

Effective initial counselling assistance for addressing issues and narrowing scope of problems. (2580, Lawyer, Lawyer for the Child; Survey)

Court-funded counselling or programmes for children e.g., Seasons for Growth format. (2413, Mediator (Private Practice), Counsellor; Survey)

Counselling by experienced highly qualified individuals should be reintroduced. A few sessions of good quality counselling can save the cost of proceedings. Mediation doesn't address the underlying issues at play which separated parents need to unpack to make headway in regards to their parenting. (2528, Lawyer, Survey)

Better resourcing of the family justice system was the third suggested improvement ($n=49$). This involved calls for “more funding”, “better funding”, “increased resourcing and staff”, “more judges”, “more Court staff”, “more registry resourcing”, “earlier triaging and resources allocated to serious cases”, “more funding for Round Table Meetings”, “more resources for FDR”, “more education resources and support for parents”, “significant increases in pay and conditions to foster retention”, “more resources for Christchurch as the post-quake social impacts are real and the flow on to families and children is significant.”

The fourth most frequent suggestion to improve the family justice system was to “roll back”, “scrap” or “ditch” (most of) the 2014 reforms, “go back to the drawing board” and “**reverse the 2014 changes**” ($n=41$). Some professionals wanted judge-led mediation conferences reinstated, EIP reintroduced, and a “total revision” or a “major overhaul” of the system as “how things were operating before was much better than now”.

Revert the process back to how it was before the 2014 reforms. (2172, Lawyer, FLAS Provider; Survey)

Bring back EIP. (2546, Lawyer, Lawyer for the Child; Survey)

The system is broken; it needs major overhaul. (2445; Lawyer, FLAS Provider; Survey)

Just go back to how it was. (2373, Lawyer, FLAS Provider; Survey)

Hopefully the new Minister will consult widely and not be afraid to turn the clock back to make things work. (2279, Lawyer, Lawyer for the Child; Survey)

Get rid of the so-called reforms. They haven't made things better and cannot be saving money. 2225, Lawyer, FLAS Provider; Survey)

Completely scrap the system, go back to the Care of Children Act and look carefully at its aims and goals. Re-craft the Family Court from the ground up, with a focus on pre-emptive measures that do not cut out any professionals. (2249, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Survey)

Completely rebuild - we have a deeply flawed system driven by ideology rather than common sense and practicality. (2292, Lawyer, Lawyer for the Child, FDR Mediator; Survey)

Improvements to FDR were suggested by 36 professionals and primarily involved increasing support for and referrals to FDR, although a minority wanted FDR eliminated from the family justice system; making FDR free; having it as an optional instead of a mandatory step; and allowing lawyers or Lawyer for the Child to attend FDR: “allow clients to have the benefit of legal advice” and “obtain legal advice on FDR agreements and assist with consent order applications”; “improve access to FDR”, “audit” mediators better following their accreditation as FDR providers, “eliminate the cost for FDR – make it free”, “provide better access and support for FDR”, “eliminate the mandatory requirement to have tried FDR”, “use FDR with counsel so that sustainable agreements are reached”, “involve lawyers in FDR”, “look at the timing of FDR”, “speed up delays in getting to FDR”, “abolish the fees for FDR and integrate it into the Family Court”, “get rid of FDR”, “FDR should not be compulsory”, “make FDR optional”, “refer more cases to FDR” and “children’s views should be represented at FDR.”

Nineteen professionals wanted the **forms simplified or scrapped**: “get rid of the forms”, “bin the stupid forms”, “allow lawyers to file memos and documents as they did pre-reforms”, “scrap the forms, at least for lawyers”, “remove or significantly amend the forms”, “simplify the forms”, “lawyers should not need to use the prescribed forms” and “allow layers to draft their own forms.”

Reducing wait times and delays was also suggested by 19 professionals to get matters moved faster through the family justice system: “eliminate delays”, “quicker access to judicial decision-making” and “faster resolution.”

A variety of improvements relating to **children** were mentioned by 14 professionals: “introduce counselling/therapy for children”, “properly fund voice of the child for FDR”, make the system “more child-friendly”, “link in with a children’s helpline to support the children”, “give children a voice right from the beginning”, “voice of child process to be an opt-out model”, “be more child-informed”, “paid programmes for any children where the parent is attending a Stopping Violence programme” and “employ social workers to work with children.”

Ways the role of **Lawyer for the Child** could be improved were suggested by 12 professionals and included increasing the number of appointments, “paying them properly”, including Lawyer for the Child in FDR/mediation e.g., to ascertain the child’s views, “more rigorous training”, “better training and monitoring” and “employing them by the Court similar to the Public Defender model.”

Nine professionals suggested ways that **specialist reports** could be improved: “they need to be more uniform in how they are done to ensure quality and undertaken earlier”, enable psychiatric and psychological reports about parties to be obtained under s33 COCA “because often it is the parent with the problem rather than the child”, “more choice in s133 report

writers”, “faster access to psychologists”, “more report writers” and “more support for report writers from complaints and critiques.”

Without notice applications were said to be in need of improvement by eight professionals: “tighten up” on these; “only genuine urgent cases” should be on this track; avoid “abuse of this track by parties filing simply to get legal representation”, “reduce their number”, “these applications should be very rare” and “there should be sunset clauses on without notice applications, preferably to the first Directions Conference.” Ten professionals also suggested the **development of a new pathway**: “introduce another option for cases that sit between urgent and non-urgent applications”, “something between a without notice and an on notice applications – a different threshold perhaps?” and “introduce an ‘urgent’ track alongside the without notice track as this would greatly reduce the number of without notice applications.”

Other family justice services where improvements could be made included:

- **Ministry of Justice Website/Marketing** ($n=5$): “scrap the website information”, “market the family justice system” and “provide clear and simple information for parents about how the family justice system works.”
- **FLAS** ($n=5$): “allocate more than four hours”; “get rid of FLAS”, “remove or better fund FLAS”, “FLAS for everyone” and “remove FLAS 2 and offer this under Legal Aid.”
- **PTS** ($n=4$): “more flexibility on mandatory PTS”, “mandate both parties to attend PTS” and “allow people to apply directly to Court without being forced to do PTS and FDR.”

Training/education ($n=6$) was recommended for judges, Lawyer for the Child, Court staff, FDR and mediators - “all professionals need to be on top of the latest research regarding best practice for the care of children during and after separation (especially for young children).” Education for parents was also needed e.g., “on the benefits of FDR.”

Seven professionals wanted a **more collaborative, non-adversarial or early intervention approach** within the family justice system. Five suggested introducing **family therapy** or a **more therapeutic response**. Three mentioned the introduction of **triage with** “better attention to intake and assessment processes.” Two professionals suggested the establishment of **Family Centres** or a **National Service** “for assessments, counselling and mediation.”

Other ways the current family justice system could be improved included:

- **Hearings/Court time** ($n=7$): “stricter” approach and “more hearing time.”
- **Self-representing litigants** ($n=4$): “a choice not a requirement”, “they are a nightmare and make every Court procedure chaotic”, “require unrepresented parties to comply with the rules”, and “reject applications that are not filed in compliance with the rules and evidential requirements.”
- **Judicial conferences** ($n=3$): “longer settlement conferences (1 hour and 15 minutes is insufficient) or at least give the option of indicating to the Court how long counsel believes a settlement conference should be for”, “get rid of five types of conferences that are limited in scope and go back to one type of judicial conference that can be held as often as needed throughout a file” and “greater use of telephone conferences.”
- Removing **centralisation/centralised fixtures** ($n=3$).

- **Enforcement** (n=3): “a better mechanism to respond when orders and agreements are disregarded”, “enforce the fines when Parenting Orders are breached” and “better consequences for people filing intentionally incorrect affidavit evidence.”
- **Back-up hearing system** (n=2): “needs serious attention regarding the impact on other stakeholders, not just catering for judicial time” and “get rid of the reliance on this or stop block fixture weeks and then we might cope with the back-up system.”
- Improve access to supervised contact providers.
- Give more power to registrars to make basic directions.
- One judge system for complex cases.
- Judges “encouraged to exercise their power to dismiss meritless applications in a summary way via written submissions and a chambers hearing.”
- Get rid of Cost Contribution Orders.
- Eliminate filing fees for COCA.
- Re-introduce the role of Senior Family Court registrar that was removed from legislation without any appointments ever being made.

One cannot see this aspect with just the legal system. Most men I see in prison have had diabolical childhoods, sexual abuse in their home and state care, neglect, domestic violence. I do not believe it is possible to solve these problems by seeing just victim-perpetrator dynamics. These issues also involve housing, employment, low pay etc. (2405, Ex Family Court Counsellor, Not currently working in family justice sector; Survey)

There is an over-focus on the legal system and an under-focus on the family system. (2187, Lawyer, FLAS Provider, FDR Mediator; Survey)

Interview Findings

Increasingly Complex Cases

Dealing with **more complex cases** within the family justice system was raised in a tenth of the interviews. These cases often involve social issues, parental separation, alcohol and drug use (particularly methamphetamine), mental health, domestic violence, trauma, parental alienation, child abuse allegations, illiteracy, parents who may not have lived together, and grandparents caring for grandchildren.

Sometimes I think the conflict patterns really do need psychologists rather than counsellors because they're really complex. Sometimes people's past trauma feeds into their patterns of conflict, as well as drug and alcohol abuse or their own family experiences as a child. ... Practitioners and judges have been saying recently how suddenly there just seems to be so many more complex and difficult cases before the Family Court compared to, say, a year ago. I don't know what that's all about. Really serious allegations being made by one parent or another. (2212, Lawyer, Community Law Centre Staff Member/Volunteer; Interview)

I think violence has changed and grown. When I first started work violence was a husband smashing his wife on a Friday night after too many beers. Now violence is surveillance and telephone texts and vicious postings on Facebook. It's changed shape. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

The increasing escalation of social problems. ... There's systemic trauma that people suffer in their engagement with the Family Court. I think, in many cases, you could go that far. That's often because you're touching on complexity - the increase in mental health disorders and personality disorders in my practice is exponential - absolutely exponential. In terms of complexity of the work and the complexity of the families and the presentations that we're dealing with, there's absolutely no doubt. It's like, why are people getting crazier? A lot of my work is care and protection, but I've got a number of files which have middle-class white people arguing over their kids. That's where the complexity sits. These nasty, parental alienation, allegations of sexual abuse, when all of a sudden Johnny comes back from contact with a sore bottom. You can see that a mile off it's a three-year job and by the end of it, the kid's going to be an absolute mess. That's what we're dealing with. (2361, Lawyer, Lawyer for the Child; Interview)

A lot of the cases I see are terribly complex. The cases that I deal with, the families that I'm writing reports about, are very complex proceedings. (2369, Psychologist, Specialist Report Writer; Interview)

Psychological violence is something that I believe everyone, including the Courts, really struggle with. Because you've only got limited time available so, for example, a three-hour hearing to unpack perhaps a twenty-year relationship - that is completely inadequate and means that the entire story doesn't get heard. Decisions are being made based on a three-hour short cause fixture where a parent might be cross examined for 45 minutes, or whatever, and it's just absolutely inadequate. ... It's the multiplicity of the issues that arise out there that makes it so complex to deal with - the addiction side of thing, the need for counselling, the meth use and the violence that erupts from it, the home invasions, the associations. How do you keep children safe from all that as Lawyer for the Child? (2508, Lawyer, Lawyer for the Child; Interview)

Recognise that for people going through separation it's traumatic. We need to decrease the trauma and make the whole process much more user-friendly and easy. We should have a collaborative approach to it. Court documents should be filed as a last course of action, not the first. Everything should be geared towards trying to get these people into a well-supported safe space to air their grievances with each other and to move on from that. (2560, Lawyer, FDR Mediator, Mediator (Private Practice); Interview)

Family disputes can be really difficult because you're dealing with people who are really distressed. They're difficult personalities or they're so distressed about the separation that they're behaving badly. It might even be a bit of both. The most common thing that all clients say when they walk in the door is, "Oh, he's narcissistic, she's narcissistic, she's got a borderline personality." I tell you, it will be eight out of 10. (2576, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

I certainly have noticed a rise in my own practice of children born after a very short-lived Tinder relationship or just a one-night stand. Often so much of the issue is about parental rights and responsibilities and legal guardianship because the parents don't know each other, don't like each other and can't communicate well enough to talk about it - which is often an issue when they've had a relationship too, of course. But

we're really noticing a few more cases where they don't even know each other well enough to have this discussion. There's no trust at all because they barely know each other. So, in my view, it would not hurt if things like guardianship and day-to-day care were part of what parents found out about routinely. Family structures have changed - the statistics are drastically different to 30 years ago. We do get an awful lot of clients who have never heard of guardianship and don't understand the concept. It's a bit of shock to them to have it explained to them for the very first time and realise that actually they don't have the right to make these decisions. (2411, Lawyer, FLAS Provider; Interview)

A lot of our clients have some complex needs. They may be intellectual challenges, they may be mental health challenges, substance abuse challenges. A lot of people don't speak English as a first language or they may not be able to read and write. (2239, Lawyer, FLAS Provider, Community Law Centre Staff Member/Volunteer; Interview)

Methamphetamine Use

Thirteen professionals noted the **increase in methamphetamine use** by clients and the associated complexities this created for family members and the family justice system – “instead of one out of 10 cases involving methamphetamine, you know, one out of two” and “methamphetamine use is rife – it's a major problem.”

In [region] we get a cocktail mix of the drugs, the alcohol. The number of clients that walk into my office who are actually drug free would be maybe 10 per cent, if I'm lucky. (2272, Lawyer; Interview)

I go to the [region] Courts and people there are really surprised by this stuff, even though it's just an average everyday file for practitioners where I come from. (2233, FDR Mediator, Counsellor; Interview)

One of the big problems, which has just got worse and worse and worse, is the issue of drugs. Methamphetamine is a major problem. I reckon one in every three cases where I'm a Lawyer for the Child has drugs as a problem and it's usually methamphetamine. We're endlessly then asking for tests to be done, then we're repeating them. That's nothing to do with the reforms, but it's just a big problem to deal with. (2476, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

Families are becoming more complex. The P situation is out of control, way out of control. Every second person who comes in this office, there's an allegation that they are on P or somebody's on P. It's just standard garden variety stuff now. There needs to be a think about where we are in society because families are more complex and the reality is they are splitting up. How are we going to facilitate the best outcomes for children. (2231, Lawyer, Lawyer for Child, FLAS Provider, FDR Mediator; Interview)

Judith Collins said that parents can just sort their own problems out. That was her theory. But she has no understanding of the complexity of families' lives and background and methamphetamine, of course, has played a huge role up here. Grandparents or other family members having to step in and take over. (2549, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Locally the use of P is on the rise. It impacts upon families. The thing that we're finding really interesting is that if you used to say, "Oh, they're on drugs", you might be talking about a certain demographic. But I had a guy the other day who's 50 years old, holds down a decent job, four kids, and every second weekend the kids go from his care to his wife's. Every now and then to celebrate, and take a bit of time out, he smokes P. That smashes into him and he doesn't see anything wrong with it! The number of people using drugs is more common nowadays with Lawyer for the Child work - there's an allegation that one of the parties uses P and ultimately that's borne out. If you're using that drug it's dangerous. (2527, Lawyer, Lawyer for the Child, FLAS Provider; Interview)

Parental Alienation

Four professionals discussed the challenges posed by **alienation** issues for the out-of-Court and Family Court dispute resolution processes.

One thing I don't think we've got the scope for is this parental alienation stuff. It usually takes up years of Court time. Sometimes it would just make a whole lot of difference if there could be a psych assessment of one of the parties - because you can see them miles away, and the kids are so affected by it. In mediation that sometimes happens as well - you can see there's some psychopathology and it's having an impact on the process and the children. I just try to work with it as best as possible for a good outcome. (2233, FDR Mediator, Counsellor; Interview)

The FDR process is in a prime position to start being conscious of any red lights flashing that are indicative of whether something's beginning as estrangement. Whether it's what we call "hybrid" where one parent is saying, "He just doesn't want to come to you anymore" and you, as the practitioner, have got enough training and knowledge to know that the child is struggling with the level of conflict between the parents. Or, in fact, whether there is a parent who is either consciously or unconsciously going about their business to seriously estrange the other parent. In a nutshell, I cannot see that awareness of alienation is anything other than hand in glove with the FDR process. (2371, FDR Mediator, Counsellor, Therapist, Child Consultant; Interview)

These cases are the ones that often need to be dealt with the most urgently. Alienation escalates very, very rapidly and without the ability to engage counsel or to get into the Court in a timely fashion, the alienation just becomes more severe and more problematic with potentially long-term issues for the children. Previously, lawyers were getting involved at an earlier stage, making the appropriate applications to the Court for appointment of Lawyer for the Child perhaps, or a s133 psychological report. People without legal representation just don't have enough ability to get good advice around what the process is and what options are available to them to try and address some of these really serious issues. The availability of therapeutic intervention was watered down in the 2014 reforms - some cases would be hugely assisted with counselling earlier on to improve communication between the parties. Instead they're just increasing in conflict significantly because the parties don't have any outlet for it and then have massive delays within a really uncertain process. (2252, Lawyer, Lawyer for the Child, FDR Mediator, Mediator (Private Practice); Interview)

Alienated children, or allegedly alienated children, waiting for six to eight months to get a psychological report. It's hopeless. You're often dealing with a psychological construct and that delay just makes things a whole heap worse for everybody, particularly for children. We have a shortage of psychologists, but the real problem is that we have all these applications and the resources are just not there to deal with them. (2361, Lawyer, Lawyer for the Child; Interview)

Grandparents Caring for Grandchildren

Four professionals were concerned that **grandparents** should receive an improved family justice response.

Because the parents are so mired in their drug and domestically violent relationship lifestyles that they can't see the wood for the trees, it's very often the grandparents struggling around, "How do I get a lawyer, how do I get Legal Aid?" I do a lot of that kind of work and they're really struggling. (2233, FDR Mediator, Counsellor; Interview)

COCA cases are getting very complex. We're having more and more grandparents seeking the care of their grandchildren. (2225, Lawyer, FLAS Provider; Interview)

Perhaps a reform of the Care of Children Act to make it easier for grandparents to apply. They've always been given leave pretty easily, but most grandparents that come to me feel shut out and inhibited. They're often saying, "Well, both my daughter and my son-in-law are in prison because they've been dealing P. Oranga Tamariki has told me that I've got to get Care of Children Act orders." Often, they feel intimidated and indeed shut out, even before 2014. I think a change to the law to make it easier for them would be good, because in the care and protection system, of course, much wider family become involved as a right. Whereas in the Care of Children Act, when we may be talking about the same child with the same suite of needs, the only people who get to come into Court are the applicants or respondents. They're the only parties. (2227, Lawyer, Lawyer for the Child; Interview)

Separated Clients and Their Needs

Several professionals spoke of the needs that **separated parents** have as clients of the family justice system. Some also addressed the assumptions on which the 2014 reforms were based and how clients simply felt bewildered navigating an unfamiliar process.

The underlying assumption of the reforms was competent people who could sort it all out without Courts, but they are actually bewildered people who are doing their best to navigate a very foreign system on their own. (2161, Lawyer, FLAS Provider, Community Law Centre Staff Member; Interview)

In mediation you are helping people to establish a different pattern of communication - that they have an experience of listening to one another and having some support to actually talk in person, as opposed to sending inflammatory texts to one another at one in the morning. (2266, FDR Mediator, Mediator (Private Practice); Interview)

The problems that people come to you with in relation to Care of Children Act matters are usually not legal problems. There's a dispute that they can't resolve and so they may need the Court to intervene. But these are interpersonal and communication

problems - the legal system is a really clunky tool to resolve that. So I tell my clients, "Look, this problem that you're having, sure, we can ask a Court to make orders so that everybody knows what's happening - we can ask the Court to make a decision about that. But the problem that has brought you here is the fact you guys can't communicate. That's why you can't reach agreement and that's actually not a legal problem." It takes a very long time for people to realise that coming to Court isn't going to solve the underlying problems that brought them here. Parties have to see that there's an issue, that they can make changes to their own behaviour that might improve that. We probably have a role to play in being their point of contact to help them understand that. But we can't then do that work with them. ... We probably only see a very small proportion of separated couples. Lots of couples separate and don't need lawyers. So, we only see the worst cases. I don't know how many people go to Parenting Through Separation and gain insight into their behaviour and communication, sort it out and get on with their parenting arrangements without needing lawyers. I have to keep reminding myself that probably lots and lots of people fall into that category. Really difficult cases are not so easily fixed really and they do need lawyers, because what I've observed is it's a whole process of them having their grievance. They've got to let it all out and then you have to gently start bringing it back to the children. If I had to average it out it probably takes me about 10 or 12 hours of client interaction before I might expect to start getting some cut through. (2212, Lawyer, Community Law Centre Staff Member/Volunteer; Interview)

Some people are just walking away. The typical client would be a Dad who is really struggling to get contact with his children as the Mum is making it really difficult. He comes in here and then he finds out he has to do Parenting Through Separation and mediation and then the Mum doesn't want to go to mediation. Some of those people are just giving up. They can't be bothered and it's all too hard. I worry about that. I worry about those kids that aren't seeing their Dads. (2220, Lawyer, Lawyer for the Child, FLAS Provider, FDR Mediator, Mediator (Private Practice); Interview)

A lot of people just go like a possum in the headlights, because they don't know how to deal with stuff when they're negotiating through these important decisions for kids without any tools. Dealing with it when they've already got deep into conflict, and the conflict cycles already spiralled them down to the bottom, isn't the ideal place to be working with it really. (2365, Lawyer for the Child, FLAS Provider, Community Law Centre Staff/Volunteer, FDR Mediator, Mediator (Private Practice), PTS Provider/Facilitator; Interview)

Once that legal process ends at the Court, people are left in a process they often don't understand. A lot of clients are coming back to us with a bit of a sense of, "what now? The Court's mandated this order and we just need to follow it, but we don't know what to do." (2173, Lawyer, FLAS Provider; Interview)

People are frightened when they separate. They don't know what to do. One of the things that we used to do pre- these reforms, when they'd come and talk to lawyers, was try and sort of unfrighten them by saying, "Look, it will be alright, this is the process, and don't sweat too much about the small stuff." You were their lawyer giving them assurance and confidence and sort of giving them the courage to negotiate. Now, they're being told to negotiate and they're really scared. When they had access to a lawyer you could say, "Okay, well, this is the legal issue, you've got all this other stuff happening, let's address that stuff and then that will reduce the legal issues."

Separating people think it's a legal issue when, in fact, it's not. Most good family lawyers weren't zooming off to Court to try sneaky things, but were actually trying to reduce the level of tension, trying to identify when applications were needed and when they weren't. Now they go off and see their friend. The quality of documentation which goes into new applications for Court is much more inflammatory and irrelevant. There's a whole lot of stuff in there because they don't know what to explain to the Court. So, they tell a tale of woe and how awful and how terrible the other parent is. It's really inflammatory and you've got all this stuff floating around. Whereas, in the good old days, you would try and avoid filing documents for a lot of cases. You'd say, "Do we really need to go there?" You'd work with people to find alternative systems. (2592, Lawyer, Lawyer for the Child; Interview)

Summary

Twice as many professionals believed New Zealand's post-reform family justice system did well in ascertaining children's views and taking them into account (27%), than thought it did so poorly or inadequately (13%). However, the majority thought the system was variable and depended on the skill and competence of Lawyer for the Child and whether the matter was out-of-Court or in-Court. Generally, the in-Court system, using Lawyer for the Child and specialist report writers, was regarded as doing well in ascertaining children's views and taking them into account. However, pre-Court processes such as FDR were regarded as doing this poorly or inadequately. Concern was expressed by some professionals about the appropriateness of using lawyers to ascertain children's views and they instead suggested that other professionals and specialised interviewers should be utilised. Challenges in ascertaining and taking children's views into account included concerns about children's abilities and the burden placed on children; the degree to which children's views were heard and listened to; and how children's views could be misrepresented or influenced by both parents and professionals.

Seventy per cent of the professionals thought that the 2014 reforms had made the family justice system somewhat worse or much worse, and almost the same proportion (69%) were dissatisfied or very dissatisfied with the current system. The five most frequently mentioned aspects of the current family justice system that were said to be working well are: FDR/mediation; without notice track applications/e-Duty/e-platform; Parenting Through Separation; Lawyer for the Child; and the professionalism and dedication of those working in the family justice sector. Numerous suggestions were made to improve the current family justice system, the most frequent of which involved allowing legal representation from the outset. Other key improvements included reinstating counselling services; better resourcing, such as more staff (particularly judges and registry staff); reversing the detrimental aspects of the 2014 reforms; improving FDR; simplifying or scrapping the forms; reducing wait times and delays; and making better provision for children.

Professionals were concerned about the increasing complexity of cases they were dealing with in the family justice system as a result of social issues, parental separation, alcohol and drug use (particularly methamphetamine), mental health, domestic violence, trauma, parental alienation, child abuse allegations, illiteracy, parents who may not have lived together, and grandparents caring for grandchildren.

Conclusion

The timing of this research project fortuitously meant that the findings were able to be provided to the Independent Panel appointed by the Minister of Justice to review the 2014 reforms. While this latest 2018-2019 review had not been anticipated at the time we proposed independently evaluating the 2014 reforms, and then commenced our study, it provided a welcome avenue for the experiences and perspectives of the several hundred family justice professionals who participated in our online survey and interviews to contribute directly to the future of New Zealand's family justice system. This valuable evidence base complemented the Panel's own nationwide consultations and helped to underpin their extensive recommendations.¹² As the Minister now considers the Independent Panel's Final Report, it is to be hoped that the strong and clear views of family justice professionals across the country about what is working well and, more importantly, the many aspects that require immediate attention are acted upon. We are very pleased to have had the opportunity, through our research, to provide the 'grass roots' or 'coal face' perspective that so many considered was missing when the 2014 changes were contemplated and then implemented. We look forward to continuing to work together to develop the child-centred and joined-up family justice system envisaged and desired.

¹² Independent Panel. (2019, May). *Te Korowai Ture ā-Whanau: The Final Report of the Independent Panel examining the 2014 family justice reforms*. Wellington, New Zealand: Ministry of Justice.

Appendices

Appendix A: Information Sheet



Parenting Arrangements After Separation Study (PASS): Evaluating the 2014 Family Law Reforms

Thank you for your interest in this study. Please read this information carefully before deciding whether to participate. If you decide to participate we thank you. If you decide not to take part there will be no disadvantage to you and we thank you for considering our request.

Information Sheet for
Family Justice Professionals

What is the Aim of the Study?

The Faculty of Law and the Children's Issues Centre at the University of Otago are undertaking an evaluation of the 2014 New Zealand family law reforms. As part of this research we want to survey family justice professionals about their experiences of, and satisfaction with, the reforms and current family justice services in New Zealand. We will also be asking parents and caregivers about their views and experiences of making parenting arrangements, and interviewing key stakeholders about their views. We want to find out what is working well and whether any improvements are needed in order to better help separated families.

What Type of Participants are being sought?

This study is for **all family justice professionals** who have experience of working in the family justice system in New Zealand since 1 April 2014. This includes mediators, FDR providers, lawyers (including FLAS providers and Lawyer for Child), government, Ministry or Court staff, judges, psychologists, counsellors, social workers, Parenting through Separation providers, community law centre or Citizens Advice Bureau staff and anyone else providing advice, guidance or support for separated parents or caregivers making parenting arrangements.

What will Participants be Asked to Do?

Should you agree to participate in this study, you will be asked to complete an **online survey** about your views on, and experiences of, the current New Zealand family justice system. This should take around 20 minutes to complete. You are able to skip any questions you do not wish to answer.

At the end of the survey you can indicate if you would also like to participate in an **individual interview** and, if so, the researchers will contact you directly by phone or email to arrange the interview. This will be conducted via telephone or face-to-face (depending on your location) and should take about 30 minutes.

We do not anticipate any risks associated with completing the survey or participating in an interview. Please be aware that you may decide not to take part in the study without any disadvantage to yourself of any kind.



PASS: Evaluating the 2014 Family Law Reforms

What Data or Information will be Collected and What Use will be Made of it?

The survey will collect information about your views on, and experiences of, the current family justice system for making post-separation care arrangements for children. We are interested in how the reforms have impacted on you and your clients and what you think is working well and what could be improved. You will also be asked to provide information about your professional background and some demographic data.

The survey will not ask you for any personal information that could identify you, unless you agree to take part in an interview and provide your contact details for this purpose. These details will be stored separately from your survey responses. Only members of the research team can access the data that will be stored on a secure server.

The interview will focus on similar topics to those covered in the survey, but will allow a more in-depth discussion of the issues. These interviews will be audio-recorded and transcribed by either a member of the research team or a professional transcriber, who will each sign a confidentiality agreement. Participants will be assigned a unique identification number and no names or identifying details will be included on any audio-files or transcribed material.

The study findings will not identify individual participants and the responses from all those who complete the survey and take part in an interview will be combined and analysed as a group. Quotes from open-ended responses and interview transcripts may be used in reports in an unidentifiable way. The findings of the research will be written in a report that will be made publicly available and distributed to key stakeholders, family justice professionals and other interested parties. Articles will also be published in journals or presented at conferences. Every attempt will be made to preserve your anonymity. A summary of the study findings and the final report will be made available on the study website (passnz.co.nz) and participants may also contact the research team directly to obtain a copy.

The data collected will be securely stored in such a way that only the research team can access it. Data obtained as a result of the research will be retained for at least 5 years in secure storage. Any personal information held on the participants (such as contact details if provided) may be destroyed at the completion of the research even though the data derived from the research will, in most cases, be kept for much longer or possibly indefinitely.

Can Participants Change their Mind and Withdraw from the Study?

You may withdraw from participation in the study at any time before the data are analysed without any disadvantage to yourself of any kind.

What if Participants have any Questions?

If you have any questions about our study, either now or in the future, please feel free to contact the Project Manager:-

Dr Megan Gollop
Children's Issues Centre
University of Otago
Tel: (03) 479 4918; 0800-472 776
Email: megan.gollop@otago.ac.nz; passnz@otago.ac.nz

To contact a member of the research team:
Ring: 0800-4-PASSNZ [0800-472 776]
Email: passnz@otago.ac.nz

To complete the survey go to:
passnz.co.nz

Principal Investigators

Associate Professor Nicola Taylor, Dr Megan Gollop and Professor Mark Henaghan

This study has been approved by the University of Otago Human Ethics Committee (Reference Number: 16/164). If you have any concerns about the ethical conduct of the research you may contact the Committee through the Human Ethics Committee Administrator (ph +643 479 8256 or email gary.witte@otago.ac.nz). Any issues you raise will be treated in confidence and investigated and you will be informed of the outcome.

Appendix B: Consent Form for Survey

[Reference Number 16/164]



PARENTING ARRANGEMENTS AFTER SEPARATION STUDY (PASS): EVALUATING THE 2014 FAMILY LAW REFORMS

CONSENT FORM FOR FAMILY JUSTICE SECTOR PROFESSIONALS, PRACTITIONERS AND STAFF

I have read the Information Sheet concerning this project and understand what it is about. All my questions have been answered to my satisfaction. I understand that I am free to request further information at any stage.

I know that:-

1. My participation in the project is entirely voluntary;
2. I am free to withdraw from the project at any time without any disadvantage;
3. Personal identifying information such as contact details may be destroyed at the conclusion of the project but any raw data on which the results of the project depend will be retained in secure storage for at least five years;
4. This project is funded by the New Zealand Law Foundation.
5. The results of the project may be published and will be available in the University of Otago Library (Dunedin, New Zealand) but every attempt will be made to preserve my anonymity

I agree to take part in this project.

Appendix C: Online Survey

Parenting Arrangements after Separation Study – Family Justice Professional Survey

This survey is for professionals, practitioners and staff members:

- with experience of working in the New Zealand family justice sector since 31 March 2014
- relating to post-separation day-to-day care and contact arrangements.

Does this apply to you?

No > Unfortunately, the survey questions don't apply to your situation, but you are very welcome to contribute your views on parental separation, making parenting arrangements, the New Zealand family justice system and the 2014 family law reforms here. [Link to Share your views page](#)

Yes > Please read the following information about the study.

Information sheet [link to download]

Consent form [link to download]

I have read the Information Sheet about this study and the consent form and agree to take part.

Please enter your email address.

[Open text box \[saved in separate file with unique id\]](#)

This is needed so:

- You can come back into the survey to complete it if you had to quit for any reason, or because of technical difficulties. A link to the survey where you left off will be sent to the email address you provide the following day. **Please note: If this email address is shared with other people they could also have access to your survey responses through this link.**
- We can email you a summary of the study findings when it is completed.

Please enter your email address. We will never provide your email address to a third party.

I do not wish to provide an email address.

Thank you very much for agreeing to complete this survey.

- The information you will provide is important so please try to answer every question.
- While each question needs an answer, you can skip any questions you don't want to answer by clicking on the cross (x) in the top right hand corner.
- Your responses are saved automatically at the end of each screen page. It is best to complete the survey in one go, but if you quit out for any reason and have provided your email address we will send you an email the next day so you can get back into the survey where you left off.

Just so you know, the survey has 6 sections that vary in length depending on your role and how much you wish to say:

1. Your role in the New Zealand family justice sector.
2. Training and professional development.
3. New Zealand family justice services.
4. The 2014 family law reforms.
5. The current family justice system.
6. Demographic information.

SECTION 1: YOUR ROLE IN THE NEW ZEALAND FAMILY JUSTICE SECTOR

<p>ROL1a ROL1b ROL1c ROL1d ROL1e ROL1f ROL1g ROL1h ROL1i ROL1j ROL1k ROL1l ROL1m ROL1n ROL1o ROL1p ROL1q ROL1r ROL1s ROL1t ROL1ot ROL1u</p>	<p>What is your current role within the New Zealand family justice sector relating to separated parents/caregivers making parenting arrangements? Please select all that apply. (selected=1, not selected=0)</p> <p>Lawyer providing advice/representing parties Lawyer for the Child Family Legal Advice Service (FLAS) provider Community Law Centre staff member or volunteer Family Dispute Resolution (FDR) Mediator Staff member working for a Family Dispute Resolution (FDR) supplier Mediator (private practice) Judge Counsellor Psychologist Therapist Social worker Specialist report writer Child consultant Parenting Through Separation provider/facilitator Ministry of Justice/Court staff member Other government department staff member Social service staff member or volunteer Citizens Advice Bureau staff member or volunteer Professional association staff member Other [Go to ROL1ota] I am not currently working in the family justice sector, but have done so at some stage since 31 March 2014 [Go to ROL1ua]</p>
<p>ROL1ota</p>	<p>If ROL1ot=1 Please specify your other current role(s) within the New Zealand family justice sector relating to separated parents/caregivers making parenting arrangements and indicate how long you have worked in these role(s):</p> <p>Open text box</p>
<p>ROL1ua</p>	<p>If ROL1u=1 Please specify what role(s) you have had in the family justice sector and indicate when, and for how long, you worked in these role(s):</p> <p>Open text box</p>

	<p>Select all items in ROL1 series that=1 and list again Items not selected in ROL1 series to be assigned a value of 88</p> <p>How long have you worked as a?</p> <p>1=Less than a year 2=1 year to less than 3 years 3=3 years to less than 5 years 4=5 years to less than 10 years 5=10 years to less than 15 years 6=15 years to less than 20 years 7=20 years to less than 25 years 8=25 years to less than 30 years 9=30 years or more 99=Don't know/Not sure</p> <p>ROL2a Lawyer providing advice/representing parties ROL2b Lawyer for the Child ROL2c Family Legal Advice Service (FLAS) provider ROL2d Community Law Centre staff member or volunteer ROL2e Family Dispute Resolution (FDR) Mediator ROL2f Staff member working for a Family Dispute Resolution (FDR) supplier ROL2g Mediator (private practice) ROL2h Judge ROL2i Counsellor ROL2j Psychologist ROL2k Therapist ROL2l Social worker ROL2m Specialist report writer ROL2n Child consultant ROL2o Parenting Through Separation provider/facilitator ROL2p Ministry of Justice/Court staff member ROL2q Government department staff member ROL2r Social service staff member or volunteer ROL2s Citizens Advice Bureau staff member or volunteer ROL2t Professional association staff member</p>
ROL3	<p>Please specify in which town, city, and/or rural district you currently work? If you work in multiple locations please list them all.</p> <p>Open text box</p>

ROL4	<p>Have you previously worked in other roles within the family justice sector?</p> <p>1=Yes 0=No [Go to ROL6 series]</p>
ROL5	<p>If ROL4=1</p> <p>Please specify your other role(s) within the family justice sector and indicate when, and for how long, you worked in these role(s):</p> <p>Open text box</p>
ROL6a ROL6b ROL6c ROL6d ROL6e ROL6f ROL6g ROL6h ROL6i ROL6j ROL6k ROL6l ROL6m ROL6ot ROL6n	<p>Do you have professional qualifications/expertise in any of the following fields? Please select all that apply. (selected=1, not selected=0)</p> <p>Administration Management Community services and development Counselling Education and training Health Mediation/Dispute Resolution Law Public Policy Psychology Psychotherapy Social Work Tikanga Māori Other [Go to ROL6ota] None of the above</p>
ROL6ota	<p>If ROL6ot=1</p> <p>Please specify your other professional qualification(s) or area(s) of expertise relevant to your work in the family justice sector:</p> <p>Open text box</p>

SECTION 2: TRAINING AND PROFESSIONAL DEVELOPMENT

The Family Law Reforms took effect on 31 March 2014. We are interested in the implications of these reforms for you and your work in the family justice sector.

	<p>Initial training/professional development</p>
TPD1	<p>How much did the reforms affect your work/role?</p> <p>1=Not at all 2=Minor effect 3=Moderate effect 4=Major effect</p>
TPD2a TPD2b TPD2c TPD2d TPD2e TPD2ot TPD2f	<p>Have the reforms resulted in any of the following changes for you? Please select all that apply. (selected=1, not selected=0)</p> <p>The nature of my work changed (e.g., type of client, workload etc.) I lost my existing role(s) I took on additional role(s) I changed roles within the family justice sector I left the family justice sector entirely Other [Go to TPD2ota] None of the above – nothing changed for me [Go to TPD4]</p>
TPD2ota	<p>If TPD2ot=1 Please briefly outline what other changes resulted for you because of the reforms:</p> <p>Open text box</p>
TPD3	<p>Overall, for you personally, was the impact of these changes ...</p> <p>1=Very negative 2=Negative 3=Neutral - neither positive nor negative 4=Positive 5=Very positive 6=Mixed – both positive and negative</p>
TPD3a	<p>Please briefly outline how the impact of the changes were positive/neutral/negative/mixed for you?</p> <p>Open text box</p>

TPD4	<p>Did you receive or undertake any (re)training/professional development in 2013 and/or 2014 to prepare you for your role in the reformed family justice sector?</p> <p>1=Yes 0=No [Go to TPD12 series]</p>
<p>TPD5a TPD5b TPD5c TPD5d TPD5e TPD5f TPD5g TPD5h TPD5i TPD5j TPD5k TPD5ot</p>	<p>If TPD4=1 Who provided your (re)training/professional development? Please select all that apply. (selected=1, not selected=0)</p> <p>Ministry of Justice AMINZ (Arbitrators' and Mediators' Institute of New Zealand) Resolution Institute (formerly LEADR) Family Law Section/NZ Law Society A Parenting Through Separation provider A Family Dispute Resolution (FDR) supplier Institute of Judicial Studies A professional association/society [Go to TPD5ha] My employer A community organisation/agency/NGO [Go to TPD5ja] A tertiary education provider Other [Go to TPD5ota]</p>
TPD5ha	<p>If TPD5h=1 Please specify the professional association/society that provided your (re)training/professional development:</p> <p>Open text box</p>
TPD5ja	<p>If TPD5j=1 Please specify the community organisation/agency/NGO that provided your (re)training/professional development:</p> <p>Open text box</p>
TPD5ota	<p>If TPD5ot=1 Please specify the other organisation that provided your (re)training/professional development:</p> <p>Open text box</p>

<p>TPD6a</p> <p>TPD6b</p> <p>TPD6ot</p>	<p>What type of training/professional development did you receive? Please select all that apply. (selected=1, not selected=0)</p> <p>General information about the reforms and operation of the family justice system [Go to TPD8]</p> <p>Specific training to deliver one or more of the family justice services [Go to TPD7 series]</p> <p>Other [Go to TPD6ota]</p>
<p>TPD6ota</p>	<p>If TPD6ota=1</p> <p>Please specify what other type of training/professional development you received:</p> <p>Open text box</p>
<p>TPD7a</p> <p>TPD7b</p> <p>TPD7c</p> <p>TPD7d</p> <p>TPD7e</p> <p>TPD7f</p> <p>TPD7g</p> <p>TPD7h</p> <p>TPD7ot</p>	<p>If TPD6b=1</p> <p>What was the specific training for? Please select all that apply. (selected=1, not selected=0)</p> <p>To be able to inform others (e.g., colleagues, clients) about the new system</p> <p>To deliver the Parenting Through Separation programme</p> <p>To become a Family Legal Advice Service (FLAS) provider</p> <p>To become a Family Dispute Resolution (FDR) mediator</p> <p>To undertake pre-mediation Intake and Assessment for Family Dispute Resolution (FDR)</p> <p>To learn about the new Family Court processes</p> <p>To learn about the changes to Legal Aid</p> <p>To learn how to use RMS</p> <p>Other [Go to TPD7ota]</p>
<p>TPD7ota</p>	<p>If TPD7ot=1</p> <p>Please specify what else the specific training was for:</p> <p>Open text box</p>
<p>TPD8</p>	<p>Overall, how helpful was the training/professional development you received?</p> <p>1=Very unhelpful</p> <p>2=Unhelpful</p> <p>3=Neither helpful nor unhelpful</p> <p>4=Helpful</p> <p>5=Very helpful</p>

<p>TPD9a TPD9b TPD9c TPD9d TPD9e TPD9f TPD9ot TPD9g</p>	<p>Did the training/professional development you received lead to any of the following? Please select all that apply. (selected=1, not selected=0)</p> <p>Approval as a provider of legal aid Approval as a provider of Family Legal Advice Service (FLAS) Accreditation with AMINZ (Arbitrators' and Mediators' Institute of New Zealand) to provide FDR mediation services Accreditation with Resolution Institute (formerly LEADR) to provide FDR mediation services Accreditation with the NZ Law Society to provide FDR mediation services Contracting as a FDR provider with a FDR supplier Other [Go to TPD9ota] None of the above</p>
<p>TPD9ota</p>	<p>If TPD9ot=1 Please specify what else the training/professional development you received led to: Open text box</p>
<p>TPD10</p>	<p>Overall, how much did your training/professional development and/or any related accreditation processes cost you personally?</p> <p>1=Nothing 2=\$1-\$100 3=\$101-\$200 4=\$201-\$500 5=\$501-\$1000 6=\$1001-\$2000 7=\$2001-\$3000 8=\$3001-\$4000 9=\$4001-\$5000 10=\$5001 or more 99=Don't know/Not sure [Go to TD12 series]</p>
<p>TPD11</p>	<p>Do you think the cost of your training/professional development and/or any related accreditation processes was reasonable?</p> <p>1=Yes 0=No</p>

	<p>Ongoing training/professional development</p> <p>In what way(s) do you receive ongoing training/professional development relating to your role in the family justice sector? Please select all that apply. (selected=1, not selected=0)</p> <p>TPD12a In-house sessions provided by my employer/supplier TPD12b Webinars TPD12c Mentoring TPD12d Professional supervision TPD12e Seminars/conferences TPD12f Professional specialty training, e.g., for Lawyer for the Child, Specialist report writing [Go to TPD12fa] TPD12g Tertiary study TPD12ot Other [Go to TPD12ota] TPD12h None of the above – I don't receive ongoing training/professional development [Go to TPD14]</p>
TPD12fa	<p>If TPD12f=1 Please specify what ongoing professional specialty training you receive:</p> <p>Open text box</p>
TPD12ota	<p>If TPD12ot=1 Please specify what other ways you receive ongoing training/professional development relating to your role in the family justice sector?</p> <p>Open text box</p>
TPD13	<p>Overall, what ongoing training/professional development have you found particularly helpful, if any?</p> <p>Open text box</p>
TPD14	<p>Do you have adequate opportunities to receive ongoing training/professional development?</p> <p>1=Yes 0=No</p>
TPD15	<p>What constraints, if any, limit your undertaking of ongoing training/professional development?</p> <p>Open text box</p>

<p>TPD16a TPD16b TPD16c TPD16d TPD16e TPD16f TPD16g TPD16h TPD16i TPD16ot TPD16j</p>	<p>On what topics (if any) would you like to undertake further training/professional development? Please select all that apply. (selected=1, not selected=0)</p> <p>Engaging with children and/or ascertaining their views Cultural competency Family violence How the family justice sector operates Legislation (e.g., Care of Children Act 2004) Regulations/rules Professional/practice policies, protocols and/or guidelines Ethics Administrative requirements (e.g., RMS) Other [Go to TPD16ota] None of the above</p>
<p>TPD16ota</p>	<p>If TPD16ot=1 Please specify on what other topics you would like to undertake further training/professional development:</p> <p>Open text box</p>
<p>TPD17</p>	<p>How could training/professional development be improved, for you and/or others working in the family justice sector?</p> <p>Open text box</p>
<p>TPD18</p>	<p>Please add any final comments you might have about training/professional development:</p> <p>Open text box</p>

SECTION 3: NEW ZEALAND FAMILY JUSTICE SERVICES

Now we are interested in your views and experiences of the current family justice services available to assist parents and caregivers to make parenting arrangements or resolve parenting disputes. You may not have personal experience or knowledge of all of them, but please comment on those you wish to – either from your own experience or from what others (e.g., clients, colleagues) have told you.

	Ministry of Justice (MOJ) website regarding post-separation care of children
PWEB1	<p>Do you have views you wish to share about the MOJ website (regarding post-separation care of children)?</p> <p>1=Yes 0=No [Go to PPHN1] 2=I only want to comment generally rather than answer specific questions about the Ministry of Justice website [Go to PWEB8]</p>
PWEB2	<p>Do you have experience of accessing the Ministry of Justice website (regarding post-separation care of children)?</p> <p>1=Yes 0=No</p>
PWEB3a PWEB3b PWEB3c PWEB3d PWEB3e PWEB3f	<p>Who of the following people have you directed to the Ministry of Justice website? Please select all that apply. (selected=1, not selected=0)</p> <p>Separated parents/caregivers Grandparents and wider family and whānau Colleagues/co-workers Other professionals Other people None of the above</p>
PWEB4	<p>What aspects of the Ministry of Justice website regarding post-separation care of children are helpful, if any?</p> <p>Open text box</p>
PWEB5	<p>How could the Ministry of Justice website regarding post-separation care of children be improved, if at all?</p> <p>Open text box</p>

PWEB6	<p>In general, how helpful do you think the MOJ website regarding post-separation care of children is for separated parents/caregivers making parenting arrangements?</p> <p>1=Very unhelpful 2=Unhelpful 3=Neither helpful nor unhelpful 4=Helpful 5=Very helpful</p>
PWEB7	<p>Would you recommend the Ministry of Justice website to separated parents/caregivers making parenting arrangements?</p> <p>1=Yes 2=Maybe 0=No</p>
PWEB8	<p>Please add any (final) comments you have about the Ministry of Justice website regarding post-separation care of children:</p> <p>Open text box</p>

PPHN1	<p>Ministry of Justice 0800 2 AGREE phone line</p> <p>Do you have views you wish to share about the Ministry of Justice 0800 2 AGREE phone line?</p> <p>1=Yes 0=No [Go to PPTS1] 2=I only want to comment generally rather than answer specific questions about the 0800 2 AGREE phone line [Go to PPHN8]</p>
PPHN2	<p>Do you have experience of calling the 0800 2 AGREE phone line?</p> <p>1=Yes 0=No</p>
PPHN3a PPHN3b PPHN3c PPHN3d PPHN3e PPHN3f	<p>Who of the following people have you directed to the 0800 2 AGREE phone line? Please select all that apply. (selected=1, not selected=0)</p> <p>Separated parents/caregivers Grandparents and wider family and whānau Colleagues/co-workers Other professionals Other people None of the above</p>
PPHN4	<p>In what ways is the 0800 2 AGREE phone line working well, if any?</p> <p>Open text box</p>
PPHN5	<p>How could the 0800 2 AGREE phone line be improved, if at all?</p> <p>Open text box</p>
PPHN6	<p>In general, how helpful do you think the 0800 2 AGREE phone line is for separated parents/caregivers making parenting arrangements?</p> <p>1=Very unhelpful 2=Unhelpful 3=Neither helpful nor unhelpful 4=Helpful 5=Very helpful</p>
PPHN7	<p>Would you recommend the 0800 2 AGREE phone line to separated parents/caregivers making parenting arrangements?</p> <p>1=Yes 2=Maybe 0=No</p>

PPHN8

Please add any (final) comments you have about the 0800 2 AGREE phone line:

[Open text box](#)

PPTS1	<p>Parenting Through Separation (PTS) – free parenting information programme</p> <p>Do you have views you wish to share about Parenting Through Separation?</p> <p>1=Yes 0=No [Go to PFLAS1] 2=I only want to comment generally rather than answer specific questions about Parenting Through Separation [Go to PPTS14]</p>
PPTS2	<p>Do you have experience of delivering or providing Parenting Through Separation?</p> <p>1=Yes [Go to PPTS3] 0=No [Go to PPTS9]</p>
PPTS3	<p>How satisfied are you with delivering or providing Parenting Through Separation?</p> <p>1=Very dissatisfied 2=Dissatisfied 3=Neither satisfied nor dissatisfied 4=Satisfied 5=Very satisfied</p>
PPTS4	<p>Please briefly explain your reason(s) for how satisfied you are with delivering or providing Parenting Through Separation:</p> <p>Open text box</p>
PPTS5	<p>Is there content not currently covered in Parenting Through Separation that would be useful to include?</p> <p>1=Yes 0=No [Go to PPTS7] 99=Don't know/Not sure [Go to PPTS7]</p>
PPTS6	<p>If PPTS3=1</p> <p>Please briefly outline what content not covered in Parenting Through Separation would be useful to include:</p> <p>Open text box</p>
PPTS7	<p>Please add any comments you may have about the delivery of Parenting Through Separation, e.g., timing, facilitators, mode of delivery, duration, cultural appropriateness, venue etc.:</p> <p>Open text box</p>
PPTS8	<p>Please add any comments you may have about the funding to deliver Parenting Through Separation, e.g., adequacy, implications for service delivery etc.:</p> <p>Open text box</p>

PPTS9	<p>In what ways is Parenting Through Separation working well, if any?</p> <p>Open text box</p>
PPTS10	<p>How could Parenting Through Separation be improved, if at all?</p> <p>Open text box</p>
PPTS11	<p>Have you directed/referred any separated parents/caregivers to Parenting Through Separation?</p> <p>1=Yes 0=No</p>
PPTS12	<p>In general, how helpful do you think Parenting Through Separation is for separated parents/caregivers making parenting arrangements?</p> <p>1=Very unhelpful 2=Unhelpful 3=Neither helpful nor unhelpful 4=Helpful 5=Very helpful</p>
PPTS13	<p>Would you recommend Parenting Through Separation to separated parents/caregivers making parenting arrangements?</p> <p>1=Yes 2=Maybe 0=No</p>
PPTS14	<p>Please add any (final) comments you have about Parenting Through Separation:</p> <p>Open text box</p>

PFLAS1	<p>Family Legal Advice Service (FLAS)</p> <p>Do you have views you wish to share about the Family Legal Advice Service (FLAS)?</p> <p>1=Yes 0=No [Go to PFDR1]</p> <p>2=I only want to comment generally rather than answer specific questions about the Family Legal Advice Service [Go to PFLAS19]</p>
PFLAS2	<p>Do you have experience of providing FLAS?</p> <p>1=Yes 0=No [Go to PFLAS14]</p>
PFLAS3a PFLAS3b PFLAS3c PFLAS3d PFLAS3ot	<p>If PFLAS2=1</p> <p>How do you deliver FLAS? Please select all that apply. (1=selected, 0=not selected)</p> <p>Face-to-face Online By videoconference e.g. Skype, Facetime, Zoom By teleconference/phone Other [Go to PFLAS3ota]</p>
PFLAS3ota	<p>If PFLAS3ot=1</p> <p>Please specify how else you deliver FLAS:</p> <p>Open text box</p>
PFLAS4	<p>On average, how many new FLAS clients do you have per month?</p> <p>0=None, I do not currently provide FLAS 1=I provide FLAS infrequently/irregularly 2=1-2 clients per month [Go to PFLAS6] 3=3-4 clients per month [Go to PFLAS6] 4=5-9 clients per month [Go to PFLAS6] 5=10-19 clients per month [Go to PFLAS6] 6=20+ clients per month [Go to PFLAS6]</p>
PFLAS5	<p>If PFLAS4<2</p> <p>Why do you currently provide FLAS infrequently or not at all?</p> <p>Open text box</p>
PFLAS6	<p>How satisfied are you with the number of FLAS clients you receive?</p> <p>1=I receive too many FLAS clients 2=The number of FLAS clients I receive is about right 3=I receive too few FLAS clients</p>

PFLAS7	Approximately what percentage of your FLAS clients receive both Part 1 and Part 2? Open text box
PFLAS8	How satisfied are you with providing FLAS? 1=Very dissatisfied 2=Dissatisfied 3=Neither satisfied nor dissatisfied 4=Satisfied 5=Very satisfied
PFLAS9	Please briefly explain your reason(s) for how satisfied you are with providing FLAS: Open text box
PFLAS10	Is there content not currently covered by FLAS that would be useful to include? 1=Yes 0=No [Go to PFLAS12] 99=Don't know/Not sure [Go to PFLAS12]
PFLAS11	If PFLAS10=1 Please briefly outline what content not covered by FLAS would be useful to include: Open text box
PFLAS12	Please add any comments you may have about the delivery of FLAS, e.g., timing, mode of delivery, duration-, cultural appropriateness, venue etc.: Open text box
PFLAS13	Please add any comments you may have about the funding to deliver FLAS, e.g., adequacy, implications for service delivery etc.: Open text box
PFLAS14	In what ways is FLAS working well, if any? Open text box
PFLAS15	How could FLAS be improved, if at all? Open text box
PFLAS16	Have you directed/referred any separated parents/caregivers to FLAS? 1=Yes 0=No

PFLAS17	<p>In general, how helpful do you think FLAS is for separated parents/caregivers making parenting arrangements?</p> <p>1=Very unhelpful 2=Unhelpful 3=Neither helpful nor unhelpful 4=Helpful 5=Very helpful</p>
PFLAS18	<p>Would you recommend FLAS to separated parents/caregivers making parenting arrangements (if they meet the eligibility criteria)?</p> <p>1=Yes 2=Maybe 0=No</p>
PFLAS19	<p>Please add any (final) comments you have about FLAS and/or the provision of legal advice to separated parents/caregivers making parenting arrangements:</p> <p>Open text box</p>

PFDR1	<p>Family Dispute Resolution (FDR) Service</p> <p>Do you have views you wish to share about the Family Dispute Resolution (FDR) service?</p> <p>1=Yes 0=No [Go to PFC1] 2=I only want to comment generally rather than answer specific questions about the Family Dispute Resolution (FDR) service [Go to PFDR18]</p>
PFDR2a PFDR2b PFDR2c PFDR2d PFDR2e	<p>Do you have experience of providing any of the following? Please select all that apply. (1=selected, 0=not selected)</p> <p>Pre-mediation intake and assessment/Pre-mediation meetings [Go to PFDR11] Preparation for Mediation/Coaching/Preparatory Counselling [Go to PFDR11] Child consultation [Go to PFDR11] Family Dispute Resolution (FDR) mediation [Go to PFDR3 series] None of the above [Go to PFDR13]</p>
PFDR3a PFDR3b PFDR3c PFDR3d PFDR3ot	<p>If PFDR2d=1</p> <p>How do you deliver Family Dispute Resolution (FDR) joint mediation sessions? Please select all that apply. (1=selected, 0=not selected)</p> <p>Face-to-face Shuttle/caucus mediation (face-to-face but moving between clients in different rooms) By videoconference e.g. Skype, Facetime, Zoom By teleconference/phone Other [Go to PFDR3ota]</p>
PFDR3ota	<p>If PFDR3ot=1</p> <p>Please specify in what other ways you deliver Family Dispute Resolution (FDR) joint mediation sessions:</p> <p>Open text box</p>
PFDR4	<p>On average, how many new FDR cases do you have per month?</p> <p>0=None, I do not currently provide FDR mediation 1=I provide FDR mediation infrequently/irregularly 2=1-2 cases per month [Go to PFDR6] 3=3-4 cases per month [Go to PFDR6] 4=5-9 cases per month [Go to PFDR6] 5=10-19 cases per month [Go to PFDR6] 6=20+ cases per month [Go to PFDR6]</p>

PFDR5	<p>If PFDR4<2</p> <p>Why do you currently provide FDR mediation infrequently or not at all?</p> <p>Open text box</p>
PFDR6	<p>How satisfied are you with the number of FDR referrals you receive?</p> <p>1=I receive too many referrals 2=The number of referrals I receive is about right 3=I receive too few referrals</p>
<p>PFDR7a PFDR7b PFDR7c PFDR7d PFDR7e PFDR7ot PFDR7f</p>	<p>Children’s thoughts, feelings and views</p> <p>How are children’s thoughts, feelings and views taken into account within your FDR mediation practice? Please select all that apply.</p> <p>I discuss these with the parties I speak with the child(ren) myself Through a Child Consultant Through another professional [Go to PFDR7da] The child(ren) attend part of the mediation session(s) Other [Go to PFDR7ota] None of the above</p>
PFDR7da	<p>If FDR7d=1</p> <p>Please specify which professional ascertains children’s thoughts, feelings and views within your FDR mediation practice:</p> <p>Open text box</p>
PFDR7ota	<p>If PFDR7ot=1</p> <p>Please specify in what other ways children’s thoughts, feelings and views are taken into account within your FDR mediation practice:</p> <p>Open text box</p>
PFDR8	<p>Please add any comments you might have about how children’s thoughts, feelings and views are, or should be, taken into account within FDR mediation:</p> <p>Open text box</p>
PFDR9	<p>How satisfied are you with providing FDR mediation?</p> <p>1=Very dissatisfied 2=Dissatisfied 3=Neither satisfied nor dissatisfied 4=Satisfied 5=Very satisfied</p>

PFDR10	<p>Please briefly explain your reason(s) for how satisfied you are with providing FDR mediation?</p> <p>Open text box</p>
PFDR11	<p>Please add any comments you may have about the delivery of the FDR mediation service, e.g., timing, mode of delivery, cultural appropriateness, venue etc.:</p> <p>Open text box</p>
PFDR12	<p>Please add any comments you may have about the funding to the deliver FDR mediation service, e.g., adequacy, number of hours, implications for service delivery etc.:</p> <p>Open text box</p>
PFDR13	<p>In what ways is the FDR service working well, if any?</p> <p>Open text box</p>
PFDR14	<p>How could the FDR service be improved, if at all?</p> <p>Open text box</p>
PFDR15	<p>Have you directed/referred any separated parents/caregivers to the Family Dispute Resolution (FDR) service?</p> <p>1=Yes 0=No</p>
PFDR16	<p>In general, how helpful do you think the Family Dispute Resolution (FDR) service is for separated parents/caregivers making parenting arrangements?</p> <p>1=Very unhelpful 2=Unhelpful 3=Neither helpful nor unhelpful 4=Helpful 5=Very helpful</p>
PFDR17	<p>Would you recommend the Family Dispute Resolution (FDR) service to separated parents/caregivers making parenting arrangements?</p> <p>1=Yes 2=Maybe 0=No</p>
PFDR18	<p>Please add any (final) comments you have about the Family Dispute Resolution (FDR) service:</p> <p>Open text box</p>

PFC1	<p>Family Court</p> <p>Do you have views you wish to share about the Family Court since the reforms took effect on 31 March, 2014?</p> <p>1=Yes 0=No [Go to PREF1] 2=I only want to comment generally rather than answer specific questions about the Family Court [Go to PFC18]</p>
PFC2	<p>Do you have experience of working in the Family Court (e.g., as a lawyer, judge, Court worker, report writer etc.)?</p> <p>1=Yes, both before and after the 2014 reforms 2=Yes, only since the reforms of 31 March, 2014 3=Yes, but only before the reforms of 31 March, 2014 [Go to PFC5] 0=No [Go to PFC5]</p>
PFC3	<p>How satisfied are you with working in the Family Court since the reforms?</p> <p>1=Very dissatisfied 2=Dissatisfied 3=Neither satisfied nor dissatisfied 4=Satisfied 5=Very satisfied</p>
PFC4	<p>Please briefly explain your reason(s) for how satisfied you are with working in the Family Court since the reforms:</p> <p>Open text box</p>
PFC5	<p>Have you directed/referred any separated parents/caregivers to the Family Court?</p> <p>1=Yes 0=No</p>
<p>The 2014 family law reforms have impacted on the way the Family Court operates. Please comment on how the following aspects of the Family Court are working in relation to making parenting arrangements. If you do not wish to comment on a particular aspect, just click on the cross (x) at the top right to skip that question.</p>	
PFC6	<p>The three Court tracks – Simple, Standard and Without Notice/Urgent:</p> <p>Open text box</p>
PFC7	<p>Self-representation/litigants in person – parties representing themselves:</p> <p>Open text box</p>

PFC8	The appointment and/or role of Lawyer for the Child: Open text box
PFC9	The appointment and/or role of specialist report writers: Open text box
PFC10	Round Table Meetings led by Lawyer for the Child: Open text box
PFC11	Judicial conferences and hearings: Open text box
PFC12	Applications, filing, affidavits and forms: Open text box
PFC13	e-Duty to allow judges to make decisions on urgent applications: Open text box
PFC14	Caseflow management: Open text box
PFC15	Cost contribution orders: Open text box
PFC16	In what ways is the Family Court working well, if any? Open text box
PFC17	How could the Family Court be improved, if at all? Open text box
PFC18	In general, how helpful do you think the Family Court is for separated parents/caregivers making parenting arrangements? 1=Very unhelpful 2=Unhelpful 3=Neither helpful nor unhelpful 4=Helpful 5=Very helpful
PFC19	Please add any (final) comments you have about the Family Court: Open text

SECTION 4: THE 2014 FAMILY LAW REFORMS

The 2014 reforms were introduced to:

1. Support separated parents to resolve parenting issues/disputes themselves, where appropriate out of Court;
2. Refocus the Family Court on resolving disputes that need a judicial decision in a manner that is understandable, simple, transparent, timely, and proportionate to the dispute; and
3. Improve the Family Court’s response to domestic violence and better support vulnerable people.

General Policy Statement included in the Family Court Proceedings Reform Bill

	<p>The reforms have resulted in many changes to the family justice system over the past four years. Please rate your level of satisfaction with the following:</p> <p>1=Very dissatisfied 2=Dissatisfied 3=Neither satisfied nor dissatisfied 4=Satisfied 5=Very satisfied 99=Don’t know/Not sure</p>
PREF1	Making Parenting Through Separation (PTS) mandatory for many applicants before they proceed to the Family Court
PREF2	Reducing availability of Family Court counselling
PREF3	Providing low-income parents with up to four hours of legal advice through the Family Legal Advice Service (FLAS)
PREF4	Introducing the Family Dispute Resolution (FDR) service to resolve parenting and guardianship matters out-of-Court
PREF5	Family Dispute Resolution (FDR) costing \$897 (unless eligible for government funding)
PREF6	Requiring parties to attend Family Dispute Resolution (FDR) before making an application to the Family Court (unless on the Without Notice/Urgent track)
PREF7	Having three Family Court tracks (Simple, Standard, Without Notice/Urgent)
PREF8	Limiting legal representation/Parties self-representing rather than using lawyers

<p>PREF9 PREF10 PREF11 PREF12 PREF13 PREF14 PREF15</p>	<p>Now we are interested in whether you consider the reform’s objectives have been achieved. Do you think the reforms have achieved the following in practice?</p> <p>1=Not at all achieved 2=Very limited achievement, extensive shortcomings 3=Partially achieved, benefits and shortcomings finely balanced 4=Largely achieved, despite a few shortcomings 5=Fully achieved, very few or no shortcomings 99=Don’t know/Not sure</p> <p>Faster resolution of family disputes (through the use of out-of-Court services) Less adversarial resolution of family disputes (through the use of out-of-Court services) More efficient and effective operation of the Family Court Less adversarial Court proceedings Improved Family Court response to victims of domestic violence Better targeting of resources to ensure that the family justice system remains affordable in the future Better targeting of resources to support those children and vulnerable people who most need protection</p>
<p>PREF16</p>	<p>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)</p> <p>Overall, how strongly do you agree or disagree that the 2014 reforms have achieved this purpose?</p> <p>1=Strongly disagree 2=Disagree 3=Neither agree nor disagree 4=Agree 5=Strongly agree 99=Don’t know/Not sure</p>
<p>PREF17</p>	<p>Have the reforms had any unintended effects? If so, please outline what these are and their impact.</p> <p>Open text box</p>
<p>PREF18</p>	<p>Overall, have the 2014 reforms improved New Zealand’s family justice system relating to post-separation care of children? Do you think it is now ...</p> <p>1=Much improved? 2=Somewhat improved? 3=Neither better nor worse? 4=Somewhat worse? 5=Much worse? 99=Don’t know/Not sure</p>

	SECTION 5: THE CURRENT FAMILY JUSTICE SYSTEM
PFJS1	<p>Now we are interested in your views on the current family justice system relating to post-separation care of children.</p> <p>What aspects of the current family justice system are working well, if any?</p> <p>Open text box</p>
PFJS2	<p>How could the family justice system be improved, if at all?</p> <p>Open text box</p>
PFJS3	<p>How well are children's views ascertained and taken into account within the current family justice system?</p> <p>Open text box</p>
PFJS4	<p>Overall, how satisfied are you with the current family justice system?</p> <p>1=Very dissatisfied 2=Dissatisfied 3=Neither satisfied nor dissatisfied 4=Satisfied 5=Very satisfied 99=Don't know/Not sure</p>
PFJS5	<p>Please add any final comments you might have about New Zealand's family justice system and/or the 2014 reforms:</p> <p>Open text box</p>

SECTION 6: DEMOGRAPHIC INFORMATION

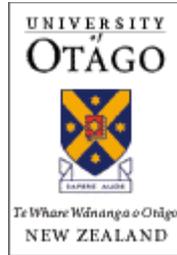
PDG1	<p>Are you ...</p> <p>1=Male 2=Female 77=Other 66=Prefer not to answer</p>
<p>PDG2a PDG2b PDG2c PDG2d PDG2e PDG2f PDG2g PDG2h PDG2ot</p>	<p>Which ethnic group(s) do you belong to? Please select the option(s) which apply to you.</p> <p>New Zealand European (selected=1, not selected=0) Māori (selected=1, not selected=0) Samoan (selected=1, not selected=0) Cook Island Māori (selected=1, not selected=0) Tongan (selected=1, not selected=0) Niuean (selected=1, not selected=0) Chinese (selected=1, not selected=0) Indian (selected=1, not selected=0) Other (such as Dutch, Japanese, Tokelauan) (selected=1, not selected=0) [Go to PDG2ota]</p>
PDG2ota	<p>If PDG2ot=1 Please specify which other ethnic group(s) you belong to:</p> <p>Open text box</p>
PDG3	<p>What is your highest level of educational qualification?</p> <p>1=No qualification 2=Secondary school qualification (e.g., NCEA, School Certificate, University Entrance) 3=Trade or vocational qualification 4=Tertiary qualification (e.g., Bachelor's degree, Postgraduate Certificate/Diploma, Master's degree, PhD)</p>
PDG4	<p>Have you personally been involved in making or changing parenting arrangements in your own family/whānau?</p> <p>1=Yes 0=No</p>

PDG5a PDG5b PDG5c PDG5d PDG5e PDG5f PDG5g	Have you personally used any of the following family justice services as a client ? Please select all that apply. (1=selected, 0=not selected) Ministry of Justice website Ministry of Justice 0800 2 AGREE phone line Parenting Through Separation Family Legal Advice Service (FLAS) Family Dispute Resolution (FDR) Family Court None of the above
PDG6	That was the last question. Please add any final comments you might have: Open text box

If you wish to share, in more depth, your views on current family justice services and/or the impact of the 2014 reforms you are welcome to express your interest in taking part in an interview with a member of the research team. We are very interested in speaking with a range of people who have either detailed knowledge about a particular service or broader experience of the family justice system more generally.

Appendix D: Consent Form for Interview

[Reference Number 16/164]



PARENTING ARRANGEMENTS AFTER SEPARATION STUDY (PASS): EVALUATING THE 2014 FAMILY LAW REFORMS

CONSENT FORM FOR FAMILY JUSTICE PROFESSIONALS

I have read the Information Sheet concerning this project and understand what it is about. All my questions have been answered to my satisfaction. I understand that I am free to request further information at any stage.

I know that:-

1. My participation in the project is entirely voluntary;
2. I am free to withdraw from the project at any time without any disadvantage;
3. Personal identifying information such as audio-recordings may be destroyed at the conclusion of the project but any raw data on which the results of the project depend will be retained in secure storage for at least five years;
4. This project is funded by the New Zealand Law Foundation;
5. The results of the project may be published and will be available in the University of Otago Library (Dunedin, New Zealand) but every attempt will be made to preserve my anonymity.

I agree to take part in this project.

.....
(Signature of participant)

.....
(Date)

.....
(Printed Name)

This study has been approved by the University of Otago Human Ethics Committee. If you have any concerns about the ethical conduct of the research you may contact the Committee through the Human Ethics Committee Administrator (ph +643 479 8256 or email gary.witte@otago.ac.nz). Any issues you raise will be treated in confidence and investigated and you will be informed of the outcome.

Appendix E: Interview Schedule

Thank you for completing the online survey and indicating your willingness to participate in an interview with the research team.

This interview focuses on New Zealand's current family justice system and how it assists separated parents to make parenting arrangements since the 2014 family law reforms.

We have your survey responses so this interview is an opportunity for you to tell us about your views and experiences in greater detail. We'll be talking about:

- The service(s) you provide for separated parents;
- Your satisfaction with the current family justice system and whether any improvements are needed.
- Your views on the impact of the 2014 family law reforms for you, your clients and their children, and your profession/agency.

Obtain verbal consent

1. Firstly, tell me a little about the service(s) you provide for separated parents and your role within it.
2. How have the service(s) you provide or your role(s) changed as a result of the 2014 family law reforms?
3. What do you think has been the impact of the 2014 family law reforms? (Probe for both positive and negative impacts.)
 - a. For you?
 - b. For your organisation/firm or your profession more broadly?
 - Have the reforms had any resource and service delivery implications for you and/or your organisation/firm?
 - c. For your clients/separated parents?
 - d. For children?
4. How well do you think the current family justice system assists separated parents to make parenting arrangements and resolve parenting disputes? This could be in relation to existing services or the family justice system more generally.
 - a. What's working well?
 - b. Improvements?
5. The Minister of Justice, Andrew Little, is currently reviewing the 2014 family law reforms. Our research findings will help to inform this review. What do you think are the key issues that need to be addressed?
6. Is there anything else you would like to raise about the current family justice system and/or the 2014 reforms?