



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

Family Justice Professionals' Perspectives – Research Summary June 2020

INTRODUCTION AND RESEARCH OVERVIEW

The family law reforms introduced on 31 March 2014 marked the most significant changes to New Zealand's family justice system since the establishment of the Family Court in 1981. They largely focused on Care of Children Act 2004 matters, which include issues relating to children's post-separation care arrangements such as day-to-day care and contact. The changes were intended to shift the emphasis away from resolving such parenting disputes within the Family Court to encouraging and supporting people to reach agreement themselves through access to out-of-court services including the Ministry of Justice website; the Ministry of Justice 0800 2 AGREE phone line; Parenting Through Separation (PTS); the Family Legal Advice Service (FLAS); and Family Dispute Resolution (FDR). The reforms also made changes to the way the Family Court operated with the aim of making it more efficient and effective.

In 2014, the New Zealand Law Foundation generously funded an independent two-phase research project to evaluate these reforms. Phase One (2014-2015)¹ 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 2018.² 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 PTS 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, 73% of whom were female, also participated in a telephone interview with a member of the research team. The majority were legal practitioners, however the proportion of mediators was higher than in the survey sample. Otherwise, the interview sub-sample was generally representative of the survey sample.

This research summary presents key findings from the online survey and interviews with the family justice professionals.³

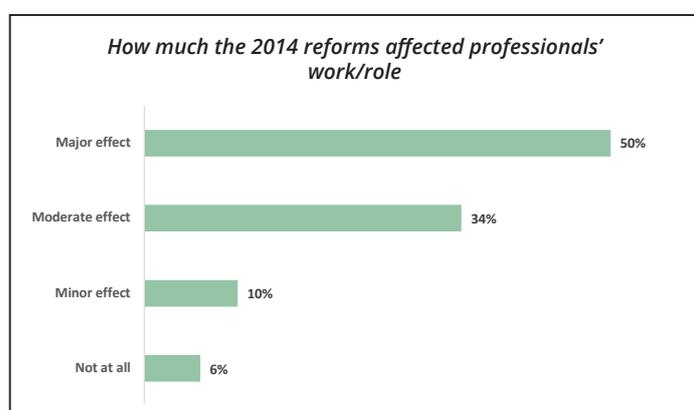
¹ See Gollop, M.M., Taylor, N.J., & Henaghan, R.M. (2015). *Evaluation of the 2014 family law reforms: Phase One*. Report to the New Zealand Law Foundation. Dunedin, New Zealand: Children's Issues Centre, University of Otago.

² 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. See Gollop, M., Taylor, N., Cameron, C., & Liebergreen, N. (2019). *Parenting Arrangements after Separation Study: Evaluating the 2014 Family Law Reforms – Parents' and caregivers' perspectives – Part 1*. Research Report for the New Zealand Law Foundation. Dunedin, New Zealand: Children's Issues Centre, University of Otago; Gollop, M., Taylor, N., & Liebergreen, N. (2020). *Parenting Arrangements after Separation Study: Evaluating the 2014 Family Law Reforms – Parents' and caregivers' perspectives – Part 2*. Research Report for the New Zealand Law Foundation. Dunedin, New Zealand: Children's Issues Centre, University of Otago.

³ For the full report see: Taylor, N.J., Gollop, M.M., & Liebergreen, N. (2019). *Parenting Arrangements after Separation Study: Evaluating the 2014 Family Law Reforms – Family justice professionals' perspectives*. Research Report for the New Zealand Law Foundation. Dunedin, New Zealand: Children's Issues Centre, University of Otago.

IMPACT OF THE REFORMS ON PROFESSIONALS' WORK

The 2014 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%) of the professionals, 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.



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%) found the cost 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

Professionals were asked for their views and experiences of the 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

Of those who answered 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.

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 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 15% indicating it was helpful or very helpful for separated parents/caregivers making parenting arrangements.

Comments about the 0800 2 AGREE phone line 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 positive comments about the phone line 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 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.

PTS was a highly regarded programme, with mixed views or concerns expressed by only a minority of 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 former 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 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 delivered 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.

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 professionals 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 professionals 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 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 a 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. Only 5% would not recommend it to separated parents/caregivers, while 70% indicated they would recommend FDR, and 25% 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 whether the mediation was private, through FDR, or court-referred, 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.

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 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 former 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 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 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.

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 section 7A. 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 harder and more complex. 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 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 or negative 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 expressed a strong preference for the pre-2014 counsel-led mediation and EIP processes. The most frequently expressed concern about Round Table Meetings 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 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 Family 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 timeframes; 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 former 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.

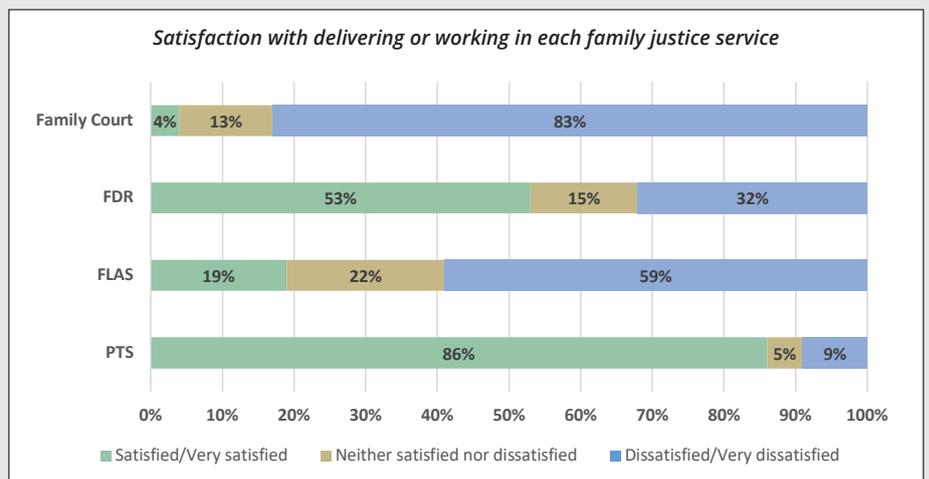
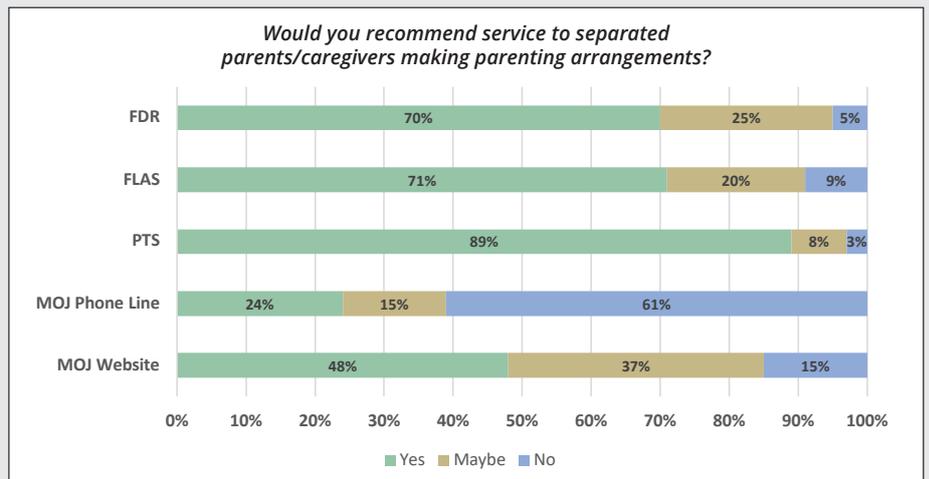
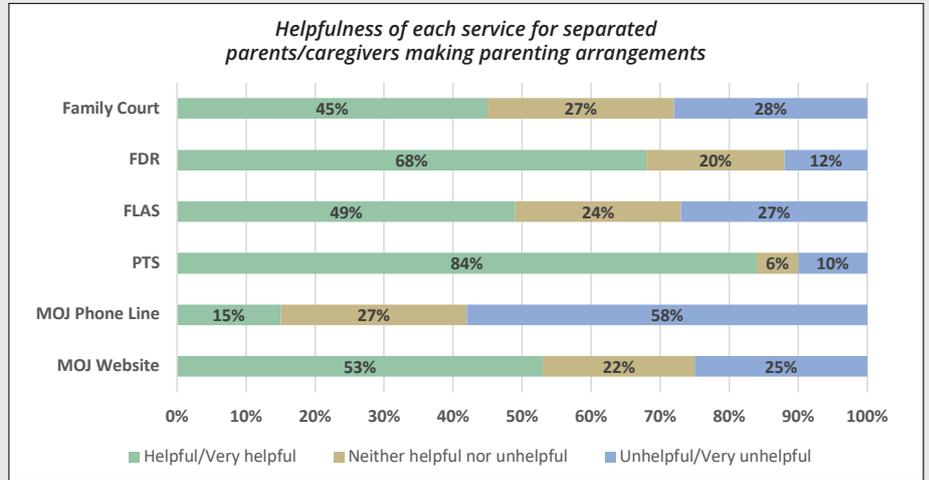
Ways in Which the Family Court Could Be Improved: Around three-quarters of the professionals completing the survey commented on how the Family Court could be improved in relation to the making of parenting arrangements. Their diverse range of suggestions varied from overarching or general statements to very specific and detailed recommendations about the 2014 reforms; legal representation/access to justice; judges; case management; delay; Family Court staffing; simplifying or scrapping the forms (for lawyers); 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' PERSPECTIVES ON FAMILY JUSTICE SERVICES

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 making parenting arrangements. However, the proportion rating the Family Court (45%) and FLAS (49%) as very helpful or helpful to parents was lower, and much lower for the 0800 2 AGREE phone line (15%).

The majority of professionals had referred or directed parents 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: 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 only 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:

- 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 also 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 or very dissatisfied than satisfied or very 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 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,”⁴ while 81% disagreed or strongly disagreed that this objective had been met.

We went from a Rolls Royce system ... now we've got a sort of Ford Prefect system. ... It's been so dismantled into a really second-class thing and, now, we're going to go back and reinvent the wheel.

(Lawyer, Lawyer for Child, FLAS Provider,
FDR Mediator)

I was excited when the changes came in because ... there are people who wouldn't ordinarily have access to out-of-court resolution processes who now do.

(FDR Mediator)

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”

Disagree/Strongly disagree	81%
Neither agree nor disagree	8%
Agree/Strongly agree	7%
Don't know	4%

Several other objectives of the 2014 reforms were also not considered to have been achieved. The majority of professionals indicated the following 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%.

⁴ The purpose of the reforms as stated in the General Policy Statement included in the Family Court Proceedings Reform Bill.

We didn't have a broken system. We had a system that struggled with capacity, but it wasn't broken. It's become broken.

(Counsellor, Psychologist, Specialist Report Writer)

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.

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.

(Lawyer, Lawyer for the Child, FLAS Provider)

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 (69%) of the professionals rated the New Zealand family justice system relating to post-separation care of children as somewhat worse (23%) or much worse (46%) than before the reforms. Only 17% rated it as somewhat improved (14%) or much improved (3%).

OVERALL, HAVE THE 2014 REFORMS IMPROVED NEW ZEALAND'S FAMILY JUSTICE SYSTEM RELATING TO POST-SEPARATION CARE OF CHILDREN? IT IS NOW ...

Much improved	3%
Somewhat improved	14%
Neither better nor worse	10%
Somewhat worse	23%
Much worse	46%
Don't know/Not sure	4%

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%).

SATISFACTION WITH NEW ZEALAND'S CURRENT FAMILY JUSTICE SYSTEM

Very dissatisfied	23%
Dissatisfied	46%
Neither satisfied nor dissatisfied	17%
Satisfied	12%
Very satisfied	0.6%
Don't know/Not sure	2%

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 also 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.⁵ 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.

⁵ Independent Panel. (2019, May). *Te Korowai Ture ā-Whānau: The final report of the Independent Panel examining the 2014 family justice reforms*. Wellington, New Zealand: Ministry of Justice.

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