

Notes from the *Family Court Review – Proposed changes at November 2012 Workshop*

Presented by Waitakere Community Law Service and WAVES Trust
at 7 Henderson Valley Rd, Henderson
28 November 2012, 9.30-11.30am

Participants:

Dominique Young, CYF	Jim Heays, Man Alive	Jeannie Colmar, AWC
Nicqui Kurzeja, Counsellor	Jaanine Harris, Age Concern	Davey Lucky, Grey Lynn Cty Trust
Irene Ho, Counsellor	Des Casey, Counsellor	Will Ruha, Westside Counselling
Flora Nazari, Counsellor	Andrea Pichler, Youthline	Brigitta Lorenz, Counsellor
Diana Neru, Auckland Council	Michelle Clayton, Family Action	
Barry Hayes, Barrister	Delwyn Lopez, Relationships Aotearoa	
Diane Woolson-Neville, Te Rito Rodney		
Deirdre Tollestrup, WAVES	Poto Williams, WAVES	Jo Richdale, WAVES
Shane Henderson, Waitakere Community Law Service		

Apologies: (to receive a copy of the notes)

Judith Surgenor, Barrister	Susan Armstrong, WAWC	Brenda Brady, Auckland Council
Sharyn Chow, Barnardos	Greg Noda, Waipareira Trust	

Background

This meeting was called to discuss ideas going forward to respond to the proposed changes arising from the Family Court Review process, on which submissions were presented in February 2012.

Up to 27 November 2012 the Minister for Justice and the Ministry had made several media releases about the changes they proposed making to the Family Court and this workshop intended to summarise those statements and seek comments from professionals who are stakeholders in the Family Court.

On 27 November the [Family Court Proceedings Reform Bill](#) was released. This meeting did not address the contents of the Bill, but rather the more general statements in the media.

Waitakere Community Law Services – Summary of the Proposals

Shane Henderson presented a short summary of the changes proposed by the Minister/Ministry in the following [presentation](#).

The changes primarily affect the following areas of the Family Court Jurisdiction:

- Removal of court-funded counselling and development of a new Family Dispute Resolution Service
- Processes around Family or Domestic Violence programmes
- Changes to court processes around Care of Children Act cases, introducing a three-track system:
 - Fast Track for serious cases, legal aid and lawyers available
 - Simple Track, no legal aid no lawyers
 - Standard Track for multiple issue cases, some access to legal aid, no lawyers

Group work:

Three groups in broad interest areas:

- Counselling
- Care of Children/Court Processes
- Family Violence

Jo Richdale from WAVES Trust provided some questions (in italics below) to prompt discussion (but not mandatory!).

Discussion:

Counselling:

What do you think about the user pays focus for FDR processes?

Potential to perpetuate power struggles and will keep some from engaging in FDR processes, may also create more problems/issues for couples ramping up cycles of stress, MH issues and impacting FV problems.

Concern they don't know what is meant by 'low income', would prefer at least a sliding scale of fees.

FDR could also mean loss of resources, experience and skills across the community and be less accessible to couples who need support, predict that there will be on-going issues related to the loss of the free service to the community.

Fear that the change is driven by government's economic concerns and lacks insight into the long term increases in costs elsewhere caused by removal of free easily accessible service.

Gains may simply be from attrition – couples without children will lose access to support

Will the new FDR reduce the numbers of applications to court in your opinion?

Worry that the FDR might underestimate violence or make it more visible (positive).

Interim plan for three counselling sessions not enough to plug the gap until FDR is up and running.

What should a new FDR process look like? Who should facilitate these processes? Is there a place for children in FDR?

Must include effective FV Screening processes – crucial

Potential to include family therapy with the agreement of both parents e.g. Jill Goldson's model

Child inclusive if possible so children's voices heard

Needs to have representation for children (and also in court) e.g. Lawyer or other professional for the child

Care of Children/Court Processes

How do the proposals impact NZ's commitment to UNCROC?

Breaches UNCROC for a raft of reasons including:

- Best interests being watered down
- Taking out objective party (lawyer for child)
- Reduced opportunities to pick up on safety concerns
- Only providing for children's voices when there are known safety concerns

Will removal of lawyers from all but the most complex cases facilitate the goal of achieving outcomes within children's timeframes?

Self-representation will delay rather than speed up cases

FDR will help but will depend on the complexity of the individual family issues

Are there better ways of facilitating hearing children's views than use of lawyers?

Yes, but need some balancing of legal and social perspectives:

- Lawyer for child need training to work with children
- Social workers need training to understand how the Family Court works
- Who else is available to support children? CYF not available all the time

Will mandatory PTS help families resolve issues themselves? What changes might need to be made to PTS to facilitate that goal?

May be good for some reasons e.g. encourages parties to focus on their kids over themselves

But who will be addressing safety issues? Is there going to be a FV screening or assessment done in PTS sessions?

Is the Fast Track process for FV adequate? What other measures are needed to address FV in the Family Court?

Query about the Ministry's statements around interim orders, will they become final after 12 months?

In your view will Simple Track cases remain simple without the use of lawyers or legal aid? What other changes might better facilitate the disposal of these cases?

Don't think it will actually happen very often, people who resort to court do not have simple issues.

Same for Standard Track

Lawyers are needed and play a vital role; people representing themselves may be overwhelmed and forget to bring up important issues.

Who decides what's important for people?

Rich clients will consult with lawyers anyway but the other parent may not, encourages power imbalances

Reproduces power and control issues in the court, assumes an equality between parents that may not exist

Family Violence

How helpful are the changes to FV programme provider framework?

Could be helpful because:

- Current regulations too tight for programmes
- Programme approval takes too long and is expensive for services
- New developments in FV programmes are not allowed under current regs e.g. Men's and women's programme providers talking to each other, use of restorative justice processes
- Too often providers are 'reinventing the wheel'
- Expands opportunities for culturally appropriate and family focused programmes

But must continue to have good safeguards around victim safety

When allegations of violence are made, should contact arrangements for children be reviewed wherever court orders exist?

Yes, this intersects with the White Paper's focus on keeping children safe. Processes need to be child focused and matters settled within children's timeframes

When where and by whom would FV screening be best conducted?

Should be multiple opportunities for screening throughout the journey through Family Court including in FDR – which should be delivered by qualified counsellors and mediators

Court staff and judges still need training around recognising FV

Programme screening for convicted offenders is also an issue; need to make on-referrals easier and quicker

What other changes regarding FV would you like to see?

Protection order changes meaningless if policing of protection orders is still inadequate, need to revoke the solicitor-general's arrest guidelines for FV and in particular PO breaches

Non-attendance of sentenced individuals at programmes is also an issue, these need to be better policed and held to account

Other issues?

Removal of lawyers from Simple and Standard Track cases brings significant opportunities for revictimisation by perpetrators. Where does FV sit within the three track system?

Closing comments and way forward:

WAVES and WCLS thank the participants for supporting this workshop today. We hope that this session has improved their understanding of the proposed changes to the Family Court and we thank participants for their comments and questions which help us understand how these changes might impact Court users.

Going forward, WAVES will be summarising the Bill and making comments on its implications for the FV sector. We will keep our submissions page up to date with information and links to other sites to keep everyone informed and for use by those interested in writing their own submissions, see our webpage: <http://www.waves.org.nz/network-services/submissions/in-process/family-court-review/>

Because the Bill is substantial and appears to cover some matters that were not flagged in the 2011 Review discussion document, we will be convening other opportunities to discuss submissions. These discussions are likely to be on specific themes, some examples of themes might be: FV screening across court processes, welfare and best interests' definitions in the Care of Children Act. WAVES will continue to communicate with participants via their email addresses about these opportunities and send information and updates where appropriate.

In the meantime feel free to contact either Shane at Waitakere Community Law Service email: shane@waitakerelaw.org.nz or Jo at WAVES Trust jo@waves.org.nz if you want to discuss any matters relating to the Family Court Review.