waves
Waitakere Anti-Violence Essential Services

Te Korowai Ture ō Waitākere
Waitākere Community Law Service
Demystifying the Legal World
Free Legal Workshops

Family Court Review Workshop 29 November 2011, 1–3pm
At WAVES Trust, 7 Henderson Valley Rd, Henderson
With WAVES Trust and Waitakere Community Law Service

Summary of the Main Points of the Family Court Review Document

The review document addresses a number of concerns including:

- The number of applications to the court has not increased significantly since 2004 but the cost of addressing these applications has grown by 63% (p.11). This is partly due to an increase in the number of Care of Children Act (CoCA) cases and a significant increase in the professional services expenditure on these cases post 2004 (pp.20–2).
- That the number of adjournments in CoCA cases creates unnecessary delays that are not in children's interests (p.22)
- The court process is unwieldy and difficult for lay people to understand.
- It may not be meeting the needs of Maori, Pasifika, and ethnic communities (pp. 7–9).
- Societal changes and legislation affecting families may mean that there needs to be a review of the jurisdiction of the court (p.25).
- Professionals are being asked to fulfil roles for which they are not qualified (p.16), e.g. lawyer for child assessing child's best interests.

The Review asks us to consider how systems might be changed to better promote conciliation and avoid litigation. Some of the suggested options include:

1. Narrowing the jurisdiction of the Family Court by:
    a. transferring trusts- and property-related cases to the District or High Courts and Hague Convention cases to the High Court (pp.25–6)
    b. All family violence cases heard in the criminal jurisdiction of the District Court, should protection orders be applied for in the District Court also (p.26)
    c. Inclusion of truancy and school exclusions into the Family Court jurisdiction (p.26)
2. Changing the culture of Family Court professionals and to support conciliation/self-resolution and restrict access to the Court by:
    a. Exploring ways to have children's voices heard by parents (pp. 28–34)
    b. Requiring parents undertake mediation/conciliation meetings and/or parenting through separation courses prior to accepting applications to the court, similar to the Australian model (pp.35–7)
    c. Making private arrangements reached outside court enforceable (p.38)
    d. Requiring collaboration between parties (including lawyers) in the interest of children (p.39)

3. Focus on Alternative Dispute Resolution Services (ADR), what might these look like? considering:
    a. Whether the State have an obligation to provide ADR to families and should families be required to pay for the service? (pp.40–1)
    b. What services should be on offer and should these deal with social and emotional issues as well as legal (p.41)
    c. How might people access these services if not through the Court? (p.41)
    d. Should attending mediation be mandatory before parents are allowed to access court and should there be an exception for family violence and care and protection issues (p.42)
4. Limiting public access to the Family Court, by:
    a. Screening to divide applicants into two tracks:
        i. Standard => non-serious applications to child focused programs e.g. parenting and mediation
        ii. Serious => family violence or other care and protection issues sent to court and involving intensive case management (pp.46–7)
    b. Managing attempts to circumvent screening through urgent applications by reviewing application criteria and processes (p.47)
    c. Extending current certification requirements for without notice applications under the DV Act onto without notice applications under the CoCA. Consider imposing penalties on parties/lawyers who bring applications later found 'not to have merit' (p.48)
    d. Raising the 'standard' of evidence filed in court, possibly bringing in questionnaire affidavits such as used in Ontario (pp.48–9)
    e. Charging fees for lodging applications to offset court costs (there are no fees in Australia and England) and allowing court to waive fees if in the public interest (p.50)
        i. Or charging fees in relation to some case types e.g. Property (Relationship) Act cases (p.51)
    f. Charging fees for hearings and late adjournments to encourage out of court settlement (pp.51, 59)
5. Refining court pathways and processes by:
    a. Not using lawyers as mediators (p.53)
    b. Removing counselling and mediation from court processes and limiting court function to being a legal forum (p.53)
    c. Develop firmer links with social services sectors and MSD to allow referrals out of court processes, thereby limiting court's function only to when judicial decisions are needed (p.54)
    d. Standardising court processes and pathways and setting out duties of court to restrict the number of steps/events involved (p.54)
    e. Reduce numbers of interim orders, make transfer to final orders automatic, and put in place simpler less expensive processes for varying orders (p.58)
    f. Impose penalties for non-compliance on parties or lawyers, and for breaches of court orders (p.59)

g. Review section 60 of the CoCA to clarify effectiveness.[1]
h. Review use of specialist reports to reduce delays, expand the range of professionals able to provide those reports, including cultural providers, and consider limiting power to challenge reports (p.61)
i. Investigate how to make Hague Convention Cases quicker (p-.61)
j. Review plans for children in State or organisational care on papers not by hearing and limit reviews of plans for other children only at the direction of the court (p.62)
k. Clarify guardianship to allow Court to direct guardianship powers to caregivers of children in permanent care to share with natural parents (p.62)
l. Make attendance at stopping violence programmes for protection order respondents voluntary
m. Extend the range of programmes to families/whanau (including respondent where safe and extended family members) to improve safety/relationships (p.63)
n. Link programmes in (m) to other social services to address wider needs. Should such links be managed by the Courts or by MSD? (p.63)

[1] Section 60, CoCA requires the court not to grant day-to-day care or unsupervised access to children or review contact orders where an allegation of violence has been made against a caregiver.