Budget Sensitive

Office of the Minister of Justice

Cabinet Social Policy Committee

FAMILY COURT REVIEW – PROPOSALS FOR REFORM

CONTENTS PAGE

Budget Sensitive

Office of the Minister of Justice

Cabinet Social Policy Committee

FAMILY COURT REVIEW – PROPOSALS FOR REFORM

Proposal

1. This paper seeks Cabinet's decisions on a package of reforms to the family justice system resulting from the review of the Family Court. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982].*

Executive summary

2. This package of reforms is the most significant change to the family justice system since the establishment of the Family Court in 1981. The proposals respond to concerns that the Family Court (the Court):

    2.1. is not able to focus enough on the most serious cases;

    2.2. does not have clear processes, so it is difficult to understand and navigate; and

    2.3. has seen its costs greatly increase in recent years.

3. The proposals will refocus the role of the Court and ensure a modern, accessible family justice system that is responsive to children and vulnerable people, and is efficient and effective. In response to the judiciary's comment on the current operation of the Court, they will be given additional powers to deal with abuses of its processes.

4. The proposals largely focus on Care of Children Act 2004 matters. The Court's new role will focus on the needs of children rather than on couples with relationship problems. Proposals will encourage faster, less adversarial resolution of family disputes and improve responsiveness to children and vulnerable people by:

    4.1. providing better information to help parties settle disputes without going to court;

    4.2. requiring parties to participate in alternative dispute resolution and a parenting information programme before applying to the Court;

    4.3. making the operation of the Court more efficient and effective;

    4.4. *[Information withheld under section 9(2)(f)(iv) of the OIA 1982]*;

    4.5. having parties represent themselves in some court proceedings;

4.6. requiring more efficient use of professionals such as lawyer for child and specialist report writers by the Court; and

4.7. making targeted changes to the response to domestic violence.

5. I have considered the need for government funded counselling in light of what I am trying to achieve with the new out of court dispute resolution service. My decision is that, on balance, the best option is to retain some judge-directed counselling. Counselling would assist parties to care of children proceedings to improve their parenting relationship for the benefit of their children. It would complement the new dispute resolution service that is out of court.

6. These proposals largely align with those of the External Reference Group in its report to me on 27 April 2012. This group, made up of members of the professions working in the Court, supported and advised the Ministry during the development of policy for reform. Their proposals include providing family dispute resolution, parenting information courses and better information resources for separating parents. A summary of the External Reference Group's report is set out in Appendix A.

7. The Legal Assistance (Sustainability) Amendment Bill was deferred to allow proposals in that Bill to be considered in tandem with the Family Court Review. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*

8. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*.

9. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*

10. Subject to Cabinet agreement, proposals will be implemented through the Family Courts Reform Bill which has been accorded priority 4; to be referred to select committee in the 2012 legislative programme. I intend to report to Cabinet in:

10.1. mid-September 2012 with draft regulations to limit the number of government funded sessions for counselling (to provide for a transitional regime for family dispute resolution); and

10.2. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*.

11. Some proposals are likely to be contentious with certain groups. These risks are identified in the body of this paper, and discussed in detail at paragraphs 170-179.

Background

12. In April 2011, Cabinet directed the Ministry of Justice to undertake a review of the Family Court (the Review). The focus of the Review was to improve the Court to ensure it would be sustainable, efficient, cost-effective, and responsive to those who need to use it [CAB Min (11) 16/8A]. In September 2011, Cabinet invited the Minister of Justice to report back to Cabinet in May 2012 with policy options for reforming the Family Court [DOM Min (11) 16/1].

13. On 20 September 2011, the Government released a public consultation paper – *Reviewing the Family Court* – and an online questionnaire seeking court users' views on the issues facing the Family Court and possible areas for reform. The Ministry of Justice received 209 submissions on the consultation paper and 121 full responses to the questionnaire. These, and the input of an External Reference Group, have been used to inform the proposals I present in this paper.

Legal aid

14. In February 2012, Cabinet agreed to defer the Legal Assistance (Sustainability) Amendment Bill to enable legal aid reforms to be brought into line with upcoming changes from the Review *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*

14.1.

14.2.

15.

Structure of paper

16. This paper is divided into seven parts:

Part 1: The case for change. The Family Court is too often used for matters that could be resolved in other ways. Costs have increased significantly, without any clear evidence of improved outcomes for children and vulnerable people.

Part 2: Supporting self-resolution outside court. Reaching agreement outside of Court is better for children and reduces costs for parties and the State.

Part 3: Family Court issues and processes. For the people that do need to come to Court, cases should be resolved efficiently and effectively.

Part 4: The role of professionals in Care of Children Act cases. This section describes proposals that aim to provide a proportionate response to disputes and focus limited resources on the cases that most need them.

Part 5: Improving responsiveness to domestic violence. This section describes changes to improve responsiveness to victims of domestic violence.

Part 6: Other issues. Financial implications, implementation and risks are included, among other topics, in this part.

Part 7: Recommendations. Detailed recommendations are required to inform drafting instructions.

Part 1: The case for change

17. The Family Court is the centre of the family justice system and is increasingly used to resolve parenting disputes. While there is a role for a specialist Family Court to deal with family issues, the Court:

    17.1. is too often used for minor private matters that could be resolved without recourse to a judge;

    17.2. is adversarial, which can exacerbate conflict between parents and the risk of children being adversely affected by parental conflict;

    17.3. has complex processes and procedures, and incentives that cause delay; and

    17.4. has experienced sizeable growth in costs despite the total number of all types of applications remaining relatively stable.

Key themes from public consultation

18. The proposals have been shaped and informed by submissions and responses to the questionnaire. The proposals align with the general direction of submissions and the questionnaire.

19. Changes that court users, responding to the online questionnaire, support include:

    19.1. better information on how to resolve disputes;

    19.2. a non-adversarial, child focussed family justice system;

    19.3. greater transparency around court processes and accountability of court professionals, particularly lawyers;

    19.4. consequences for those who mislead the court or create delay; and

    19.5. increasing the skill and competency of family lawyers, particularly to improve their advice on options, court processes, costs and the probable consequences of certain decisions.

20. Submissions generally support:

    20.1. greater emphasis on out of court dispute resolution, unless there is family violence;

    20.2. stronger obligations on lawyers to try to reach agreement between the parties before going to Court;

    20.3. a professional, other than lawyer for child, obtaining the child's views; and

    20.4. standardised court processes and a questionnaire style affidavit.

21. There is also strong support for some aspects of the current system, particularly the provision of government funded counselling and the Parenting Through Separation information programme.

22. Further information on submissions is outlined in Appendix A.

Objectives of reform

23. In response to the issues facing the Court and public feedback during consultation, I propose a package of statutory and non-statutory reforms representing the biggest change to the family justice system since the Family Court was established in 1981.

24. The proposals seek to achieve a modern and accessible family justice system that:

    24.1. is responsive to children and vulnerable people;

    24.2. encourages individual responsibility, where appropriate; and

    24.3. is efficient and effective.

25. In a modern family justice system people should be able to readily access the information they need, understand the services provided, and navigate the system easily. It should also reflect current family structures in New Zealand.

26. The proposals target matters relating to the Care of Children Act 2004 (the Care of Children Act) as these are the largest single category of applications (approximately 39 percent) and are where costs are increasing the most.

27. The State will still assist people who cannot resolve issues themselves and continue to provide legal protection where family problems have serious impacts on children and vulnerable people.

Function and purpose of the new family justice system

28. Fundamental to the reform package is changing the function and purpose of the family justice system. When the Court was established in 1981, it was given a therapeutic function in addition to a court's traditional adjudicative function. The Court, lawyers and counsellors are obliged to promote reconciliation between couples and, if that is not possible, conciliation. Government funded counselling is provided through the Court for relationship issues and parenting disputes.

29. I consider a modern Family Court should focus on resolving disputes that need a judicial decision. The Court would, however, refer parties to counselling in some circumstances. A more targeted approach is appropriate because:

    29.1. *Judges' expertise is in adjudicating disputes*. Emphasising the Court's therapeutic function has led to more complex and confusing processes that contribute to delay in the resolution of disputes.

    29.2. *Government funded counselling assists parties, who may not have children and may be able to pay for it themselves.* This is inconsistent with

directing the Court's resources to where they are most needed – to assist children and vulnerable adults.

30. Reconciliation services have a place in resolving family disputes, for those who choose them, but that place is in the community, not in the Court.

31. I recommend repealing the legislative obligations to promote reconciliation or conciliation and that new legislation underpinning the reforms should state that the purpose of the family justice system is to:

    31.1. encourage parents to be responsible for reducing the negative impact their conflict is having on children;

    31.2. support (where appropriate) parties to resolve their dispute outside of court and/or to settle their dispute in court at the earliest opportunity;

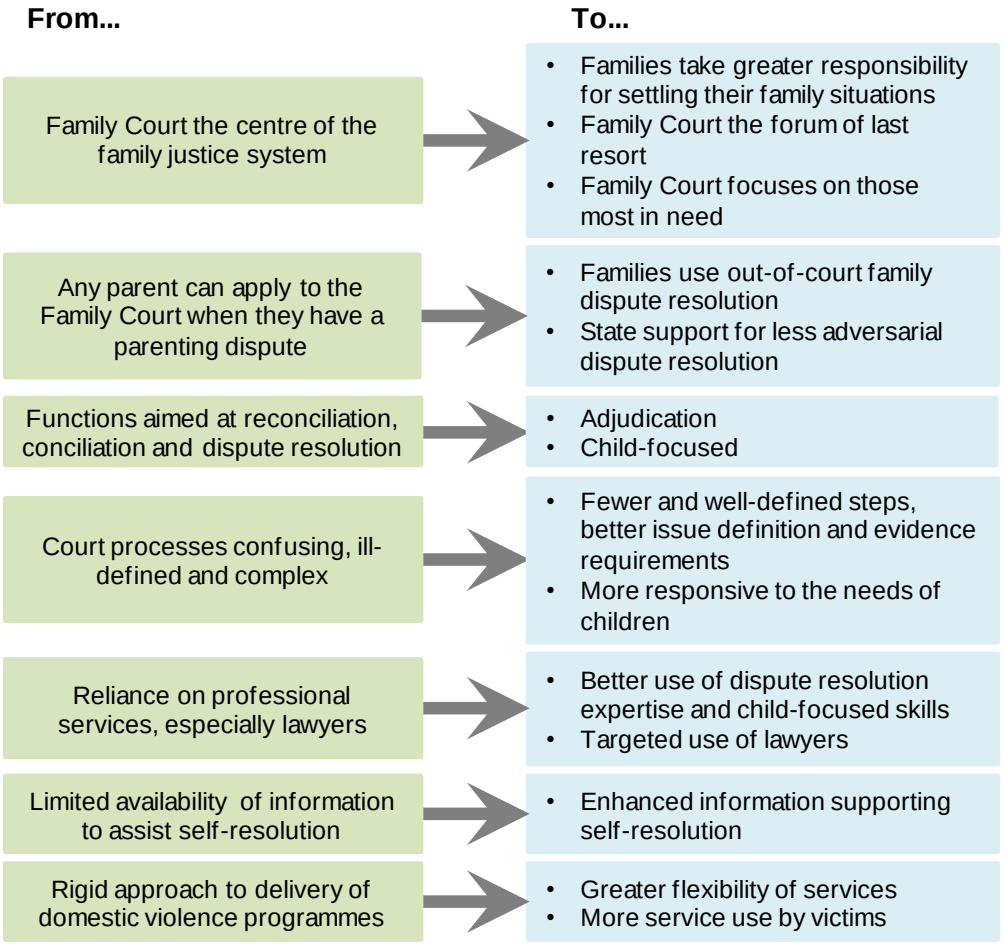
    31.3. ensure any out of court or in court proceedings focus on the needs of children and vulnerable parties, including keeping them safe from domestic violence; and

    31.4. ensure all court proceedings are understandable, simple, transparent, timely and proportionate to the dispute.

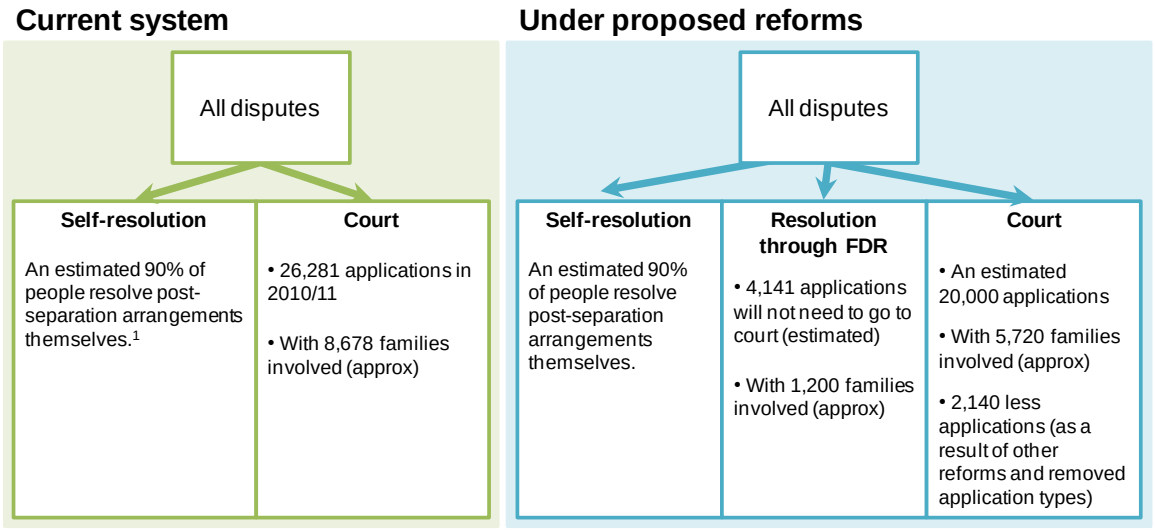
32. This purpose provision will be complemented by obligations on the Court, lawyers, other professionals and parties when either within or outside of court proceedings.

Summary of proposed reforms

33. The remainder of this paper details proposed changes to the family justice system. The table below demonstrates the pivotal shifts for the family justice system:



34. The most significant proposal is to introduce out of court dispute resolution (FDR). The estimated impact of FDR on the number of care of children/guardianship disputes coming to the Court is outlined below:



[1] A comparison is made with the United Kingdom, where research shows that only 10 percent of family disputes go to Court (Family Justice Review Interim Report (March 2011) 142).

35. The two examples below illustrate how the proposed family justice system will serve families.

36. Example 1: Out of court resolution

From...	**To...**
A separated parent applies to the Court for a parenting order determining the days and times each parent would care for their child. Parties do not use government funded counselling before applying to the Court. Once proceedings start, the Court directs the parties to attend counselling. This is unsuccessful and the Court directs the couple to attend counsel-led mediation. The mediation successfully results in a parenting agreement. The process takes four months from the start to finish of proceedings. Each party engages a lawyer to file proceedings and attend mediation at considerable cost (to themselves and the government, as one of the parties is legally aided). Counselling and counsel-led mediation costs are met by the Court.	The same two parties participate in a mandatory parenting information programme and attend FDR before they can go to court. The low income parent, having been means-tested, has their attendance at FDR paid for by the government. Only if FDR is unsuccessful could one of the parents apply to the Court for a parenting order. The out of court requirements increase the likelihood of a quicker, less costly, and more durable agreement occurring.

37. Example 2: Clarity of court process

From...	**To...**
A parent makes an application to the Court to decide which school the child should attend and what the day to day care arrangements for the child should be. After failing to reach agreement at counselling or mediation, the application is progressed through the Court. There are several adjournments, a number of judicial conferences and the parties are referred back to counselling. The parent has no idea how long the case may take, when they will get a hearing and what it will cost, due to the lack of clear processes.	A parent is expected to settle this dispute out of court at FDR. If FDR is unsuccessful an application may be made to the Court. Depending on the issues raised in the information required to be filed, the case is placed on the most appropriate case track. Clear processes set out in the Family Court Rules 2002 must be followed. Parties know what to expect. They do not need to engage a lawyer for some processes and, depending on their income, they pay an application fee.

Part 2: Supporting self-resolution outside of court

38. I recommend shifting the focus of the family justice system towards encouraging people to resolve their disputes without recourse to the Court. The most significant measure in the reform package is to introduce a formal approach to out of court dispute resolution.

39. Families, and most importantly children, will benefit if the State more actively empowers and enables people to resolve their family disputes before applying to the Court. Resolving a dispute outside of court allows individuals to get on with their lives more quickly and take ownership of the agreement reached.

Out of Court dispute resolution

40. The family justice system needs to adopt a more sophisticated and structured approach to resolving family disputes outside of the Court. I recommend setting up a process called Family Dispute Resolution (FDR). The objectives of FDR will be to:

    40.1. encourage parents to be responsible for reducing the negative impact their conflict is having on children;

    40.2. support, where appropriate, parties to resolve their dispute outside of court; and

    40.3. ensure, where appropriate, that family dispute resolution processes focus on the needs of children and vulnerable parties.

41. It would be mandatory for parties to attempt FDR before applying to Court. FDR would initially apply only to Care of Children Act proceedings and, in particular, parenting or guardianship disputes. I recommend that enabling the use of FDR for other case types, for example relationship property, be explored by the Ministry and, if suitable, included in the paper accompanying Cabinet's consideration of the draft Bill in October 2012.

42. FDR would include the following features.

    42.1. *Approved providers.* The Secretary for Justice would approve FDR providers based on high-level criteria set in regulation. Criteria could cover such matters as membership of a relevant professional body, and requisite skills and knowledge. More specific requirements could be set in contracts. This flexible approach would enable FDR practitioners to provide a diverse range of FDR processes, for example, a variety of culturally appropriate models.

    42.2. *Criteria for exempting parties from having to attempt FDR.* There are risks with requiring all parties to attempt FDR, especially where there are issues of safety. The Court may allow a person to file an application without attending FDR if satisfied on the evidence accompanying the application that:

        - the application is for a consent order;

- the application is about an alleged contravention of existing court orders;
- the application is made without notice;
- there are reasonable grounds to believe that there had been domestic violence;
- one or more of the parties cannot participate satisfactorily in FDR; or
- concurrent child protection proceedings are underway.

43. FDR providers would also need to screen parties to determine their suitability to undertake FDR. I recommend FDR providers use the following criteria as indicating a party is not suitable for FDR:

    43.1. a history of domestic violence or child abuse by one or more of the parties;

    43.2. a risk that a party's safety could be compromised by the FDR process;

    43.3. a power imbalance between the parties is likely to contribute to an unsatisfactory agreement; or

    43.4. incapacity to participate effectively (eg, due to illness or disability).

44. If FDR was unsuccessful or unsuitable, and one or both parties decided court action was necessary, then FDR practitioners would provide parties with a standard form advising the Court of the outcome. FDR discussions would be confidential, in line with dispute resolution practice. This will be reflected in the standard form. FDR will also be subject to privilege.

45. FDR providers need to be qualified and skilled. The Ministry will work with professional bodies representing individual providers to set up the service, ensure that their members have sufficient skills and to develop practice standards.

46. Ministry of Justice modelling based on existing Court processes involving alternative dispute resolution approaches indicates that FDR will divert at least 1,200 cases from the Court. This figure is conservative, and is expected to increase over time as FDR beds in and acceptance of it grows.

Targeted counselling service

47. If Cabinet accepts the proposal to adopt FDR and to change the function of the Court to focus on its adjudicative function, then it needs to determine the role, if any, of existing government funded therapeutic services. I propose that existing mediation in the Court be removed as this is clearly duplicated and improved upon by FDR.

48. A consequence of FDR and the refocused Court function is to reduce the need for government funded counselling. I consider that some form of counselling may from time to time be necessary for Care of Children Act proceedings. Counselling can help reduce the level of conflict between the parties to disputes about children and

increase the chance of those parties resolving the dispute without a hearing. A more amicable parenting relationship will also make any resolution more durable and is better for children.

49. Introducing FDR before Court will mean those disputes that come to Court are likely to be the most intractable. There is likely to be a high level of conflict between the parties, which impacts negatively on children. I therefore propose that a judge be able to refer parties to counselling once if the judge considers that counselling is necessary to tackle their parenting relationship and make the outcome more durable.

50. *[Information withheld under section 9(2)(j) of the Official Information Act 1982].* I envisage that the counselling service would be bulk-funded and provided through a single national provider. Bulk-funding will allow greater certainty of both provision and cost. Officials will advise me on whether it would be appropriate for parties to contribute to the cost of counselling.

51. Reducing the availability of counselling will be contentious, mainly because some stakeholders consider that:

    51.1. the State has a core role in assisting couples to stay together because society benefits from stable relationships;

    51.2. counselling helps to resolve disputes, which prevents the need for court adjudication; and

    51.3. because there would be less work for counsellors, although judge-directed counselling for care of children disputes would be retained and some would undertake FDR work.

52. The savings generated by altering government-funded counselling and removing mediation would amount to about $9.8 million a year. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*

53. Ministers may prefer to retain counselling and mediation services in their current form. While this would be less consistent with the direction of the reforms and partly duplicates the FDR process, it would be supported by the stakeholders referred to earlier. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*

Financial impacts of the FDR proposal

54. Parties would pay for FDR themselves. However, I recommend that the Government supports parties with limited incomes by subsidising their share of the cost of FDR. The subsidy amount will be determined, and promulgated, by the Secretary for Justice. The income thresholds for civil legal aid will be used to determine eligibility. Parties who do not meet the threshold would be expected to pay their share of the provider's costs. Parties will be able to seek an administrative (Ministry-based) review of subsidy eligibility decisions.

55. Officials estimate the cost of subsidising FDR to be $3.3 million in the first year and $4.4 million in subsequent years based on a fee of $780 (GST exclusive) per FDR case. The fee would reduce proportionately if not all parties met the threshold. A reduced fee would be paid if parties were screened and found to be unsuitable for FDR.

56. I anticipate that some FDR providers will perceive the proposed fee as insufficient. The Ministry of Justice will monitor provider response to the FDR subsidy scheme and inform me if significant difficulties arise.

57. Table 1 shows that $12.271 million in savings will result from the FDR proposal over four years, taking into account the effect of reducing payments for existing counselling and mediation services.

Table 1: Net financial impact of the FDR proposal ($ millions)

	Operating				
	2012/13	2013/14	2014/15	2015/16	Total
FDR subsidy	-	3.270	4.360	4.360	11.990
Reduced counselling and mediation services	-	(6.400)	(9.800)	(9.800)	(26.000)
FDR payment and provider administration	0.722	0.537	0.240	0.240	1.739
Total	**0.722**	**(2.593)**	**(5.200)**	**(5.200)**	**(12.271)**

Information and parenting information programmes

58. Good quality, accessible information and parenting information programmes are critical to bring about the behaviour change necessary to achieve the reform objectives and encourage a shift to more timely and consensual dispute resolution. Clear and comprehensive information about the Family Court is also needed to support parties to navigate court processes. I recommend that the Ministry of Justice improve the quality and depth of information available for family matters.

59. The government also funds a voluntary parenting information programme called Parenting Through Separation (PTS). The programme is attended by thousands of separated parents each year. It is widely regarded as an effective way to encourage parents to focus on the needs of their children.[3]

60. To increase the number of participants, I recommend making participating in a parenting information programme mandatory for people wishing to apply for a parenting order. Suitable parenting information programmes would be specified in regulation. Parenting Through Separation would initially be the only programme specified.

61. The Ministry will develop an interactive online version of PTS to accommodate the growth in demand and keep costs within existing PTS expenditure. People will still be able to attend in person.

62. An applicant will not need to participate in a parenting information programme if a Court registrar is satisfied:

[3] Robertson J and Pryor J, *Evaluation of the Parenting Through Separation Programme* (2009).

62.1. the application is without notice;

62.2. the participant cannot reasonably take part in the parenting information programme eg, due to language difficulties; or

62.3. the applicant had already attended a specified parenting information programme in the last two years.

63. I also propose expanding the delivery of PTS to allow people in parenting roles, but not in relation to their own children, to attend the programme.

64. Officials estimate that between $1.0-1.5 million will be needed per annum to provide information about the family justice system and services, and for PTS content and delivery changes. This can be funded from savings from other proposals in this reform package. Table 2 summarises the financial implications of the information proposals.

Table 2: Financial impacts from information proposals ($ millions)

	Operating				
	2012/13	2013/14	2014/15	2015/16	Total
Information provision and delivery	1.000	1.500	1.000	1.000	4.500
Total	**1.000**	**1.500**	**1.000**	**1.000**	**4.500**

Interim change to government funded counselling sessions

65. Government funds an extensive amount of counselling for relationship and parenting matters through the Court. Counselling on request is limited to six hours but parties may request additional funded hours from a court registrar. Court directed counselling is at the discretion of the judge.

66. It is possible to reduce the level of funding for counselling as soon as regulations can be made under existing powers to regulate payments.

67. Government funding could be reduced to cover one hour of pre-Court relationship counselling (section 9 Family Proceedings Act 1980) and a maximum of three hours funding for parent-related counselling (sections 10 and 19 Family Proceedings Act 1980 and section 65 Care of Children Act). Subject to Cabinet decisions, legislation enabling the reforms would replace these counselling provisions with targeted court-directed counselling for care of children cases.

68. This proposal would signal that the focus on therapeutic counselling for the reconciliation of relationship issues is to be replaced by a focus on resolving parenting disputes outside of court and reducing conflict for the benefit of children. It would also enable savings to meet the cost pressures in the Family Court and to assist with start up costs associated with the reforms.

69. The change would mean counsellors would need to take a shorter, outcome-focused approach. As with targeting counselling permanently, this proposal is likely to be contentious and for similar reasons. Ministers may decide that the status quo should be retained in the short-term. This decision would mean the potential savings outlined in the next paragraph would be lost.

70. Agreement to the proposal would result in a one-off saving of $3.8 million spread over two financial years until the wider reforms take effect. The split of savings over the two years is shown in Table 3 below.

Table 3: Financial impact of the interim change to counselling ($ millions)

	Operating				
	2012/13	2013/14	2014/15	2015/16	Total
Reduced funding for counselling (interim measure)	(2.850)	(0.950)	-	-	(3.800)
(Net savings) / shortfall	**(2.850)**	**(0.950)**	**-**	**-**	**(3.800)**

Part 3: Family Court issues and processes

71. When people need to come to the Court, cases should be dealt with efficiently and effectively. Judges need to be empowered to focus on the most serious cases, and to provide a proportionate response to cases that do come to the Court. I propose reforms to:

    71.1. clarify the principles relevant to children's welfare and best interests;

    71.2. improve court processes;

    71.3. simplify the process for dealing with allegations of violence in Care of Children Act proceedings;

    71.4. introduce clearer expectations on parties and lawyers;

    71.5. make court orders work and encourage compliance;

    71.6. reduce repeat applications;

    71.7. simplify the review of care and protection plans;

    71.8. make targeted improvements to relationship property cases; and

    71.9. *[Information withheld under section 9(2)(f)(iv) of the OIA 1982]*.

72. The proposals also need to be 'future proofed'. The Court needs flexibility to employ current (and new) technology solutions by the use of technology-neutral language in primary and secondary legislation.

Clarifying the principles relevant to children's welfare and best interests

73. The welfare and best interests of the child is the paramount consideration in Care of Children Act matters. The principles the Court uses to determine what is in a child's welfare and best interests need to be clarified to assist in efficient and effective decision-making.

74. The current principles are overly-detailed, imprecise and repetitive, which results in longer judgments and hearings. The most important principle, the need to protect children from violence, is not given the prominence it requires. Also, the Court seldom refers to parties' conduct, yet parties' conduct can expose children to conflict or delay resolution.

75. I recommend amending sections 4 and 5 of the Care of Children Act to:

    75.1. clarify that the Court may take into account parties' conduct to the extent it is relevant to a child's welfare and best interests, particularly where it is likely to exacerbate conflict or delay;

    75.2. re-order the principles so that the requirement to protect the child from all forms of violence is first and foremost;

75.3. simplify the remaining principles and divide them into the following key ideas (in addition to protection from violence):

- a child's parents and guardians should have the primary responsibility for their wellbeing and should work together cooperatively to make decisions about the child's care;
- continuity and stability of arrangements for a child's care;
- decisions should acknowledge the importance of maintaining a child's relationships with both parents in particular, but also wider family members, including whanau, hapū and iwi; and
- a child's identity (including culture, language and religion) should be preserved and strengthened.

Improving processes in the Family Court

76. The Family Court has no prescribed processes set out in the Family Court Rules 2002 (the Rules) that cases must follow. This is in contrast to the District and High Courts. The lack of clear processes has compromised the Court's efficiency and effectiveness and contributed to delay. Parties do not know how long their case is likely to take, what steps it will follow and what it will cost. Judges have asked for the Court to have greater powers to deal with abuses of its processes.

77. I recommend changing court processes to provide a more efficient system and an effective resolution of disputes for children and families. The Court should be given the flexibility to employ new technology, where appropriate, to minimise the need for parties and professionals to attend the Court. This means that enabling legislation must remain relevant and viable into the future. I therefore recommend that technology-neutral language is used in legislative changes arising from the reforms.

78. The proposals primarily involve changes to the Rules and are designed to be implemented as a package in Care of Children Act matters. Some of the proposals will apply across other Acts administered by the Court. As a package these changes will reduce delay and costs to parties and the Court.

Quality of initial court processes and evidence

79. Affidavits filed in the Court are often long and contain hearsay and inflammatory material. They do not always provide the Court with the information it needs and can exacerbate conflict between the parties. I seek Cabinet agreement to improve the quality of initial processes and evidence by:

79.1. introducing some new prescribed court forms, including a questionnaire affidavit, and making other court forms easier to use;

79.2. requiring that parties file information relevant to the dispute, focus on the children and give details about the outcomes sought;

79.3. clarifying the "any evidence" rule to make it clear that the Evidence Act 2006 applies in Care of Children Act and Children, Young Persons, and Their Families Act 1989 proceedings; and

79.4. confirming in Rules that the Court may obtain criminal records, and Police or Child, Youth and Family checks directly from the relevant agency, where this is necessary in proceedings (rather than the current slow practice of relying on the lawyer for the child to obtain this information).

80. Without notice applications can escalate conflict and damage the parenting relationship, especially if it is later shown that the circumstances did not justify an order being made.[4] I propose improving the quality of without notice applications by:

80.1. requiring applicants to confirm in their affidavits that they have met the requirements of a without notice application and requiring lawyers to certify all without notice applications;

80.2. requiring that hearsay evidence is subsequently supported by direct evidence, where this is possible; and

80.3. specifying that without notice orders are to be reviewed by the Court as soon as possible after an order is made.

Introduce clear and certain case tracks in the Court

81. Active case management by judges and registry staff reduces delay and allows a more proportionate response to applications. My proposals include strategies the Court already uses. Putting them in the Rules will mean that they are consistently followed.

82. Applications will continue to be assessed on filing by a registrar to ensure compliance with the Rules. Because of their seriousness, without notice applications will be automatically referred to a judge. Other applications where an exemption to attend FDR is being claimed (eg, because violence is alleged) will also be referred to a judge to determine whether to approve the exemption.

83. Introducing case tracks will give parties certainty and clarity. Some cases will automatically be placed on the simple track (eg, where no response is filed). Judges will be responsible for which track other cases are on once a response to an application is filed. To enable administrative efficiency, the default position will be that cases are assigned to the standard track, with any change to that made by a judge.

84. Tracks will initially apply to Care of Children Act cases, but may be extended to other cases at a later date. The following diagram outlines the features of the proposed case tracks:

[4] These applications are made in situations of urgency on the basis of the applicant's evidence alone. Between 2005/06 and 2010/11 approximately one third of without notice applications where an interim parenting order was granted were later recorded as discontinued, dismissed, lapsed, struck out or withdrawn.

Proposed new case tracks in the Family Court for care of children matters

Improved self-resolution services:

Parenting through Separation course
Required before applying to Court (unless exempted)

NEW FAMILY DISPUTE RESOLUTION
Services, eg,mediation, to support parties to resolve their disputes before applying to Court (unless exempted)

Better information services

Successful → **Self-resolution**

Unsuccessful

Can exit court process at any time if issues resolved

Court Process

Court application with questionnaire affidavit.
Must have completed FDR and PTS unless exemption applies (eg, without notice (urgent) applications).

Judges responsible for assigning simple and standard case tracks.
Without notice applications go to without notice track automatically.

Without notice track

Urgent applications (eg, application for a order for care of a child alleging abuse or violence).

Parties can use lawyers in this track.

Judge makes an order for day-to-day care and contact (including supervised contact where appropriate).

↓

Judicial Conference is held with both parties to review order within a short time period.

Directions are made for an urgent hearing.

↓

Hearing
Final order for day-to-day care and contact is made after short, focused hearing.

Legal aid is available.
Judge may appoint lawyer for child after defence is filed.

Simple track

To deal with simple or single-issue matters (eg, contact arrangements for children).

Hearing
Parties appear in court without lawyers.

The judge can decide whether to hear formal evidence from any party.

A judge may make an order (eg, on contact arrangements) after reading the papers or may speak with the parties in court and then make a decision.

Legal aid is not available.
Lawyer for child unlikely to be appointed.

Standard track

To deal with multiple or more serious issues (eg, application for day-to-day care and permission to take the children to live overseas).

Settlement hearing
(Cases that involve serious issues (eg, violence or abuse) may go straight to a final hearing.)

Parties appear in court without lawyers.

Parties talk through and try to resolve the issues with a judge.

The judge may make orders if both parties agree or on minor matters.

If matters are not resolved the case goes to a hearing.

↓

Hearing
Parties can use lawyers.

A focused hearing with restrictions on evidence.

A judge may make an order (eg, permission to take a child to live overseas).

Legal aid is available for hearing only.
Lawyer for child may be appointed after defence is filed if there are serious issues.

85. Processes for all cases in the Court would be supported by case management strategies similar to those in the District and High Courts, including:

    85.1. more specific judicial powers to manage proceedings;

    85.2. requiring the Court to promote co-operation between the parties;

    85.3. administrative case management and review by registrars;

    85.4. better use of telephone or audio visual technology; and

    85.5. a purpose provision in the Rules that supports the objectives of reform.

Dealing with allegations of violence in Care of Children Act proceedings

86. Sections 58-61 of the Care of Children Act set out the process for dealing with cases involving allegations of sexual or physical violence against children or a party to proceedings. Several stakeholders, including the New Zealand Law Society, Family Court judges and family law academics, have queried these provisions' effectiveness. They were carried over from the Guardianship Act 1968, and the process ensures that the Court considers allegations of sexual and physical abuse raised during proceedings. However, the Care of Children Act introduced section 5(e), which states that children must be protected from all forms of violence. This is a mandatory consideration for the Court.

87. I propose that the Ministry of Justice considers whether sections 58-61 of the Care of Children Act 2004 should be improved, or repealed and replaced with a new process. The Ministry will develop this process for inclusion in legislation and report to Cabinet on this in the paper accompanying Cabinet's consideration of the draft Bill in October 2012.

Clarifying expectations on parties and lawyers

88. Changes to the Court's processes must be supported by changes in the way parties and lawyers behave in resolving disputes. We want to encourage co-operation between all the participants. I recommend introducing obligations across the Acts administered by the Family Court, where appropriate, including:

    88.1. Lawyers and parties must work constructively and in a way that:

        - has regard to the welfare and best interests of the child;
        - promotes family relationships after resolution of the dispute; and
        - encourages settlement, where appropriate.

    88.2. Applicants must state what steps they have taken to try to reach agreement.

    88.3. Lawyers and parties must work together, for example, by filing joint memoranda when possible.

88.4. Lawyers must comply with procedural obligations within their control, including being prepared for court events.

89. The Court would be able to impose a financial penalty on parties or their lawyers for serious breaches of Court procedures. The Court would also be required to consider whether a costs order should be made in each case brought under acts that currently allow for such orders to be made.

Ensuring court orders work and are complied with

90. The Court currently helps parties achieve workable post-separation parenting arrangements by:

90.1. making interim orders so that parties can trial an arrangement;

90.2. making "predictive" orders that attempt to deal with potential changes to care arrangements; and

90.3. varying orders to meet a family's changing needs.

91. These orders can require parties to come back to Court repeatedly. Proposals to ensure orders are more responsive to families' needs include:

91.1. introducing an easier, more proportionate process for varying arrangements by consent;

91.2. making all orders final orders and enabling an order under the Care of Children Act or the Children, Young Persons and Their Families Act 1989 to be varied by consent without further investigation by the Court where the Court is not alerted to any welfare concerns; and

91.3. limiting the use of predictive orders to particular circumstances or preconditions (eg, future schooling, clear drug screens).

92. The Court already has options to encourage parties to comply with parenting orders including requiring a bond to be paid into Court and, ultimately, issuing a warrant. I propose these provisions also apply to breaches of guardianship orders. I also recommend that judges be given a general discretion to issue a warrant to enforce the role of providing day-to-day care for a child, when necessary. This will give judges flexibility when dealing with serious breaches of orders.

93. In addition, I propose setting out in legislation the nature and extent of the Court's power to punish a party for refusal to comply with a court order under its contempt jurisdiction. This would be based on recent case law clarifying this area.

Reducing repeat applications

94. Unmeritorious repeat applications are disruptive to children who need stability and certainty in arrangements for their care. I propose amending the Care of Children Act and the Children, Young Persons, and Their Families Act 1989 so that repeat applications or applications to vary (unless by consent) may be made only where there has been a material change in the child's circumstances. Any application

may also be dismissed if it is contrary to the welfare and best interests of the child, if it proposes only minor changes, or is without merit.

95. I also propose that leave (permission of a judge) be required to commence new proceedings (other than for a consent order) where an order has been made within the previous two years, costs have been awarded previously against the applicant in similar proceedings or a previous application has been dismissed.

Simplifying the review of care and protection plans

96. The White Paper on Vulnerable Children will consider aspects of cases under the Children, Young Persons, and Their Families Act 1989. An aspect of court procedure that can be clarified in advance is how reviews of plans for children in care should take place. Practices vary throughout the country. Sometimes a court hearing is required to review a plan, but this is not always necessary. I propose amending the Children, Young Persons, and Their Families Act to clarify that reviews of care and protection cases can occur on the papers when a judge considers it is in the welfare and interests of the child.

Targeting improvements to relationship property cases

97. I propose a number of targeted improvements to proceedings under the Property (Relationships) Act 1976. While there are a small number of relationship property applications (approximately three percent of applications in 2010/11), these take the longest time to resolve out of all application types in the Court. In 2010/11, the median time to resolve a relationship property application was 294 days.

98. At present, the Family Court may transfer a relationship property proceeding to the High Court if it is more appropriate due to the complexity of the case. This is a high threshold and the Family Court transfers few cases to the High Court – fewer than 30 in recent years. In some instances, the Family Court has decided not to transfer a case even though the transfer would allow the relationship property issues to be heard together with related trust or company issues in the High Court. I recommend changing the transfer power so that, regardless of complexity, a case must be transferred if it would more appropriately be dealt with in the High Court.

99. I also propose the following changes to improve the information available to parties prior to bringing proceedings and to reduce cost and delay:

    99.1. a new, more comprehensive affidavit of assets and liabilities;

    99.2. an obligation to disclose financial information and key documents prior to making an application, as far as is practicable, and once proceedings are commenced without a court order; and

    99.3. a rule that clearly explains the extent of parties' disclosure obligations, particularly in respect of trusts.

100. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*

101.

102.

Part 4: The role of professionals in Care of Children Act cases

103. Professionals involved delivering the Court's services include lawyers (for parties, for child, and to assist the court), counsellors, mediators and specialist report writers. My recommendations on the role and use of professionals aim to:

    103.1. better focus on the needs and interests of children;

    103.2. encourage parental autonomy and reduce parental conflict;

    103.3. provide a proportionate and less adversarial response to minor disputes; and

    103.4. target the use of scarce resources.

Lawyers for parties

104. Lawyers are costly. On average, disputes where one parent wishes to relocate their children domestically or internationally cost about $30,000 per party. Some relocation disputes incur costs of up to $200,000.[5] Reliance on legal representation is not necessary where the issues in dispute are primarily personal rather than legal in nature, and where court processes are clear and simple. Having parties represent themselves in care of children disputes encourages self-resolution and a less adversarial response to disputes. This is in the best interests of children.

105. I propose that in Care of Children Act cases parties represent themselves in simple track proceedings and up to and including settlement hearings in standard track proceedings. An exception would be made for cases relating to international child abduction.

106. This change reduces costs for the State and parties and will also address uneven representation (ie, one party legally represented while the other is not). However, I believe that legal representation is still necessary for:

    106.1. Applications filed without notice. These types of applications are often high risk, involve sensitive issues, or vulnerable parties; can be technical in nature; or require a lawyer to navigate the procedures quickly.

    106.2. Formal hearings for cases on the proposed standard track. Parties may choose to be represented because of the formality of the event.

107. This proposal is a significant change to the operation of the Family Court, and is likely to be met with opposition. While court users and professionals adapt to the change, there are likely to be implications, including that:

    107.1. Some parents may have difficulty completing forms and navigating the court process meaning that proceedings may take longer. Simpler court processes, improved information, self-help tools and questionnaire

[5] Taylor, N., Gollop, M., & Henaghan, M. (2010). Relocation following parental separation in New Zealand: Complexity and diversity. *International Family Law,* (March), 97-105.

affidavits will help. Court staff and non-governmental organisations are likely to provide increased assistance to court users.

107.2. Some parties may find it difficult to present their point of view to a judge or in front of their ex-partner. Encouraging the use of support people would assist in these situations.

107.3. More standard track cases may go to a hearing if parties are determined to seek legal representation. Judges and other professionals will play a key role in encouraging parents to focus on early dispute resolution in the interests of their children.

107.4. Changes to the involvement of lawyers will impact on an existing well-accepted source of revenue. If family lawyers are not able to find a supplementary income source, then there is a risk of provider exit.

108. Legal aid would be available for hearings in the standard track and all without notice applications. Parties would not be able to get legal aid for preparing and filing applications, responses and accompanying affidavits, except for without notice applications. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*

Lawyer for child

109. There are three main problems with the current role of the lawyer for child:

109.1. *Duplication of roles between lawyer for child and counsel to assist.* Where the child's views conflict with their lawyer's assessment of their welfare and best interests some courts appoint lawyer to assist to represent the child's best interests. This is not an efficient use of professional services and can be confusing for the child.

109.2. *No clear role definition of lawyer for child.* Lawyers for child undertake a wide range of tasks, some of which are the responsibility of parties. Little about the role is outlined in legislation.

109.3. *No clear direction on when to appoint lawyer for child*. The Care of Children Act states that the Court must appoint a lawyer for child "unless it is satisfied the appointment would serve no useful purpose". Lawyer for child is appointed in nearly all cases.

110. There were 9,051 lawyer for child appointments under the Care of Children Act in 2010/11, up from 5,599 in 2005/06. The cost of lawyer for child appointments made under the Care of Children Act has increased from $16.3 million in 2005/06 to $25.4 million in 2010/11. This level of expenditure is not sustainable.

111. To manage expenditure on lawyer for child while making sure that those children that are most vulnerable continue to have legal representation, I propose the following reforms.

111.1. Clarifying the role and duties of lawyer for child in all legislation[6] to include:

- taking responsibility for presenting both a child's views to the Court and advocating the child's welfare and best interests;
- explaining to a child, in a way the child understands, the purpose and contents of any Court ordered report and the effect of any order made by the Court; and
- where required, advising the child on the merits of an appeal.

111.2. Amending the Care of Children Act so that the Court can appoint lawyer for child where a child needs legal representation because of serious issues, such as violence and only after a defence has been filed. Guidance on what constitutes a 'serious' issue should be set out in the Rules and include where there are allegations of child abuse, alienation of a parent, mental health issues, or drug or alcohol abuse.

111.3. I also propose to enable the Secretary for Justice to manage fees and disbursements of lawyer for child in Care of Children Act cases by:

- setting a single hourly rate;[7]
- introducing maximum hours for which lawyer for child may be paid in each court track (varying from four hours for formal proof to sixteen and a half hours for a standard track case that proceeds to a hearing); and
- limiting the types of disbursements lawyers for child can claim (eg, photocopying or telephone or audiovisual link expenses).

112. Judges have a limited discretion to approve additional payments in exceptional circumstances or if it is essential for lawyer for child to attend the full length of the hearing, but only if it would affect the child's welfare and best interests.

113. Regulations may be made under the Care of Children Act, however, I do not consider that setting fees and hourly rates for professional services requires Executive oversight. The Ministry currently sets the fees for lawyer for child in consultation with the profession. Enabling the Secretary for Justice to continue to set the fees and other related decisions, and those decisions being deemed regulations, will ensure accountability and transparency in the process and consistency in payment rates.

114. Some lawyers may dispute the proposed payment regime and elect not to offer their services once the hourly rate and maximum hours paid per appointment change. However, these changes contribute to ensuring that resources are cost-effectively targeted to the most vulnerable.

[6] This includes the Care of Children Act 2004, the Children, Young Persons, and Their Families Act 1989, the Family Proceedings Act 1980, the Property (Relationships) Act 1976, and the Child Support Act 1991.
[7] There are currently three levels of remuneration, ranging from $130 to $170 per hour, excluding GST.

Lawyer to assist the Court

115. The Court may appoint lawyer to assist in proceedings before it. Since the introduction of lawyer-led mediation in 2010, lawyer to assist has been appointed to undertake mediation, at a cost of $1.9 million in 2010/11. However, after the introduction of FDR the Court will no longer provide mediation services.

116. I propose clearly defining the role of lawyer to assist, so that their appointment is appropriate, sustainable and not a proxy legal aid system for self-represented parties. In Care of Children Act cases, the Court would be able to appoint lawyer to assist:

    116.1. if the Court is dealing with a new or difficult area of law, or it requires a perspective not represented by parties;

    116.2. for other purposes specified in legislation; and

    116.3. if required in the interests of justice (a high threshold).

117. I also propose to enable the Secretary for Justice to manage fees and disbursements in cases involving lawyer to assist, through deemed regulations, by:

    117.1. setting a single hourly rate; and

    117.2. limiting the types of disbursements lawyer to assist can claim to those same expenses as outlined earlier for lawyer for child (eg, photocopying, telephone or audiovisual link expenses).

Specialist report writers

118. A judge may request a suitably qualified person to provide a cultural, medical, psychiatric, or psychological report about the child or children to assist their decision-making. Psychological reports about children are the most commonly obtained report.

119. There are concerns that reports are being obtained because they might be helpful, rather than because they are critical for deciding the case. Psychological reports can contribute to delays, with reports taking anywhere from six weeks to six months to prepare. It has also become increasingly common for a party to apply to the Court for another psychologist to critique the report of the Court-appointed psychologist, also adding to delay and hearing time.

120. I recommend amending the Care of Children Act so that the Court:

    120.1. may only request specialist evidence where it is necessary to decide the case and cannot be obtained from any other source; and

    120.2. must have regard to the impact of any resulting delay on the welfare and best interests of the child when requesting a specialist's report.

121. To reduce delay and manage the cost of specialist reports, I also recommend:

121.1. introducing a standard specialists' brief;

121.2. clarifying that specialists may be asked to obtain a child's views;

121.3. allowing specialists to see children with a parent outside the terms of an order; and

121.4. removing parties' ability to obtain a critique of a specialist's report so that parties may only question a specialist's methodology or conclusions through cross-examination.

122. I also propose to enable the Secretary for Justice to set a maximum fee for specialist reports, as a deemed regulation, based on the complexity of the case, and a maximum number of hours specialists can be paid to appear as a witness in court proceedings.

Contributions to professional services costs

123. Currently, the fees and expenses of lawyer for child, lawyer to assist and specialist report writers are government-funded. It is rare for the Court to order a party or parties to contribute.

124. The Legal Assistance (Sustainability) Amendment Bill requires parties to contribute to the cost of the lawyer for child services. Parties must contribute unless it would cause severe hardship, or it is a domestic violence or care and protection case.

125. I recommend introducing a default requirement in the Care of Children Act that parties contribute to the costs of lawyer to assist and specialist reports, unless it would cause severe hardship.

126. I expect that, as with lawyer for child, standard contributions would be one third of the cost from each party, with the State contributing the remaining third, unless the Court adjusts the portion paid by each party. Government agencies would not have to pay because cases involving the Crown generally involve especially vulnerable children.

127. Parties would not have to contribute to the cost of lawyer to assist, if that lawyer was appointed to assist the Court, rather than the parties (eg, to examine an emerging area of law).

128. There is some risk that judges will often overrule the default requirement out of concern for the growing cost burden on parties. However, a default contribution requirement provides an important incentive and reflects the principle that the State should not carry the full financial burden of professional services for private family disputes.

Financial implications of professionals in the Court proposals

129. Changing the roles of professionals as outlined in the previous sections will reduce expenditure on professional services. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982].*

Less revenue is anticipated from the lawyer for child contributions agreed by Cabinet last year as a result of there being fewer appointments, lower per case costs and delay in implementing the lawyer for child contribution regime.

Table 4: Financial impact of professionals in the Court proposals ($ millions)

	Operating				
	2012/13	2013/14	2014/15	2015/16	Total
[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]					
Targeted use of lawyer for child	-	(9.270)	(12.360)	(12.360)	(33.990)
Improved delivery of specialist reports		(0.450)	(0.600)	(0.600)	(1.650)
Contributions from parties to professional services costs (net of impairment)	-	(0.711)	(1.264)	(1.264)	(3.239)
Reduction in anticipated contributions to lawyer for child (net of impairment)	3.372	2.129	2.839	2.839	11.178
[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]					

Part 5: Improving responsiveness to domestic violence

130. A key aim of these reforms is to improve responsiveness to vulnerable people, such as victims of domestic violence. There are three components to the proposals to improve the response to domestic violence:

    130.1. increasing the flexibility of domestic violence programmes;

    130.2. streamlining enforcement of attendance at programmes; and

    130.3. increasing the penalty for breaching a protection order.

Increasing domestic violence programme flexibility

131. When a protection order is made, the respondent is required to attend a mandatory programme. Programmes are also available on a voluntary basis to the protected person and their children. These programmes are intended to reduce violence and the harm from violence. Unlike some services described earlier in the paper, it is my view that free delivery to the client is of high public value and must remain.

132. Currently, programme providers are restricted from delivering tailored responses as the format and delivery of programmes are heavily prescribed in regulation. Evidence suggests the best approach is an effective needs assessment supported by tailored response. I propose that the current legislative framework for domestic violence programmes is made more flexible and a mandatory needs assessment for respondents is introduced.

133. Domestic violence service providers would have delegated responsibility to decide the most appropriate response for the individual and their family. Providers would also be able to determine how to best target their funding to their clients, within the funding available to them, and while meeting legal requirements.

134. The proposed changes would:

    134.1. require respondents to undertake a minimum specified number of hours with an approved domestic violence programme provider, rather than a specified programme;

    134.2. require a mandatory needs assessment within those specified hours;

    134.3. allow input into protected persons' programmes from the respondent and/or protected person's whanau, where safe and appropriate, and consented to by the protected person; and

    134.4. allow input into respondents' programmes from the protected person and/or the respondent's whanau, where safe and appropriate, and consented to by all parties.

135. Further changes will be required to ensure domestic violence services can be delivered in a flexible way. I seek in principle Cabinet agreement that the Ministry continues to develop further changes to the regulation and funding framework to:

    135.1. encourage greater attendance at domestic violence programmes by protected people;

    135.2. require providers to design an individual plan for every respondent;

    135.3. make programme approvals processes, content, duration and delivery less restrictive;

    135.4. require providers to make appropriate referrals to other social services; and

    135.5. require providers to provide a final outcomes report on completion.

136. I will report to Cabinet by June 2013 to seek final agreement to the changes.

Streamlined enforcement of domestic violence programme attendance

137. Providing a more flexible approach to domestic violence services for respondents and less prescriptive judicial directions will reduce the risk of unintentional non-compliance with a direction to attend a stopping violence programme. This is because respondents will be better enabled to take a role in planning their engagement.

138. I seek Cabinet's agreement to amend the Domestic Violence Act 1995 (DVA) to streamline enforcement processes. This will give providers more responsibility to follow up when a respondent does not attend a programme, and reduce the role of the Family Court in warning respondents before referral for prosecution occurs.

139. Reducing the Family Court's enforcement role may also contribute to increasing its efficiency, by reducing court events and hearings.

Increasing the penalty for breaching a protection order

140. I recommend increasing the penalty for breaches of protection orders to a maximum of three years' imprisonment, in line with the commitment made in the Government's election manifesto. This extends changes made in 2009, which removed the tiered penalty structure and increased the maximum penalty for any breach to two years' imprisonment. The single penalty structure sends a clear message that any breach of a protection order is unacceptable, and is clearer and simpler for victims, defendants, lawyers and judges.

141. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982].*

142.

143.

Part 6: Other issues

Senior Family Court Registrars

144. In 2008 the Family Courts Matters Bill amended 12 family law Acts. Among these were amendments to the Care of Children Act and the Family Proceedings Act 1980 to provide for family mediation, and to the Family Courts Act 1980 to establish the role of Senior Family Court Registrars. These provisions were not implemented because they could not be funded within baseline.

145. As previously noted, family mediation provisions will be repealed and replaced by FDR. I also propose repealing the Senior Family Court Registrar provisions.

146. The purpose of the Senior Family Court Registrar was to reduce delays by reducing the amount of judge time spent on administrative matters and increasing judge sitting time. In 2009, it was estimated that the cost of establishing an initial eight Senior Family Court Registrar positions would be $1.416 million. Decisions about implementation were deferred pending the outcome of the Early Intervention Process, a judicial initiative to reduce court delays, and later the Family Court Review.

147. I recommend repealing the Senior Family Court Registrar provisions, as the proposed reforms will achieve the same purpose.

Response to proposal for a Child Protection Court

148. The Family Court plays a substantial role in dealing with children in need of care and protection. The proposals do not change this important role. The Ministry of Justice is working with the Ministry of Social Development (MSD) to ensure that care and protection issues in the context of the Care of Children Act are picked up and reflected in the White Paper on Vulnerable Children.

149. I considered whether to establish a separate Child Protection Court. This was recommended in *The Report Following an Inquiry into the Serious Abuse of a Nine Year Old Girl and Other Matters Relating to the Welfare, Safety and Protection of Children in New Zealand* released in 2011.

150. I do not recommend establishing a separate Child Protection Court. A strength of our Family Court is that it is a unified court that deals with all family matters in an integrated way. A separate Child Protection Court would fragment the delivery of justice services for children and, consequently, not adequately respond to the needs of children.

Court fees for permanent foster carers

151. The Ministry of Social Development is seeking an amendment to the new Family Court fees for applications relating to parenting orders. Where a permanent foster parent applies for parenting orders under the Care of Children Act 2004, MSD pays the legal expenses. As at 1 July 2012, legal expenses will include an application fee. It was never intended that one part of Government would charge these fees to another.

152. I recommend amending the Family Courts Fees Regulations 2009 to exempt permanent foster carers from paying fees for orders under the Care of Children Act. This change is consistent with focusing resources on vulnerable children.

Law Commission's Review of the Judicature Act 1908

153. The Law Commission is currently undertaking a review of the Judicature Act 1908. In February 2012, the Law Commission's Issues Paper proposed a new Courts Act to "establish in one place, in clear and modern terms, the institutional and architectural basis of each of the New Zealand courts of general jurisdiction" – these courts are the District Courts (including the specialist divisions of the Family Courts and the Youth Courts), the High Court, the Court of Appeal, and the Supreme Court. The Law Commission is currently reviewing public submissions, and expects to report to Government in November 2012.

154. The Law Commission's review does not consider major matters of policy. Although some of the recommendations resulting from that review may affect the structure and management of the Family Court – for example, the proposal to have a single national District Court will mean a single national Family Court – they are unlikely to affect the proposals in this paper.

Consultation

155. The Crown Law Office, Department of Corrections, Department of Internal Affairs, the Inland Revenue Department, the Ministry of Health, Ministry of Social Development, Ministry of Women's Affairs, New Zealand Police, Te Puni Kōkiri, and The Treasury were consulted. The Department of the Prime Minister and Cabinet was informed.

Financial implications

156. Table 5 itemises and summarises the cashable savings resulting from the package of proposals. The proposals result in cashable savings of $37.740 million from 2012/13 to 2015/16. There is a $3.1 million shortfall remaining in 2012/13. To alleviate this, I seek agreement to transfer this amount of funding from savings that will be generated in 2014/15.

Table 5: Net financial impact of the reform package ($ millions)

	2012/13	2013/14	2014/15	2015/16	4 Year Total
1. Improved information provision	1.000	1.500	1.000	1.000	4.500
2. Reduced counselling sessions (interim measure)	(2.850)	(0.950)	-	-	(3.800)
3. FDR subsidy payment	-	3.270	4.360	4.360	11.990
4. Reduced counselling and mediation	-	(6.400)	(9.800)	(9.800)	(26.000)
5. FDR payment and provider administration	0.722	0.537	0.240	0.240	1.739
6. Targeted use of lawyer for child	-	(9.270)	(12.360)	(12.360)	(33.990)
7. Improved delivery of specialist reports		(0.450)	(0.600)	(0.600)	(1.650)
8. Contributions from parties to professional services costs (net of impairment)	-	(0.711)	(1.264)	(1.264)	(3.239)

9. Implementation costs of the reform package	0.861	0.446	0.111	0.111	1.530
10. Reduction in anticipated contributions to lawyer for child (net of impairment)	3.372	2.129	2.839	2.839	11.178
Net savings identified (savings) / shortfall	**3.105**	**(9.898)**	**(15.474)**	**(15.474)**	**(37.740)**
Transfer of savings from 14/15 to fund 12/13 shortfall	(3.105)	-	3.105	-	-
Savings to address all pressures	**-**	**(9.898)**	**(12.369)**	**(15.474)**	**(37.740)**

157. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*

Table 6: *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*

158. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*

Table 7: *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*

159. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*

160. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*

161. I also seek agreement to a number of other financial proposals arising from the Review. These include the following.

161.1. The creation of a Non-Departmental Other Expense Appropriation to cover the payment of an FDR subsidy to low income participants. I recommend that the new appropriation be named *Family Dispute Resolution Services* and become part of Vote Justice. The appropriation scope would be limited to expenditure for approved family dispute resolution services.

161.2. Agreement to new capital funding of $1.054 million over two years. This funding is required for changing the Ministry of Justice's information technology infrastructure to support implementation of proposals. This amount can be met from within existing funding.

Human rights

162. New Zealand ratified the United Nations Convention on the Rights of the Child (UNCROC) in 1993. Two articles are particularly relevant to the Review, namely:

162.1. the best interests of the child should be the primary consideration in all matters affecting the child; and

162.2. all children have the right to an opinion and for that opinion to be heard in all contexts.

163. One of the aims of the proposed family justice system is to be responsive to children.

Crown Law comment

164. *[Information withheld under section 9(h) of the Official Information Act 1982]*

165. [8] [9] [10] [11] [12]

8

9

10

11

12

166.

167.

Implementation

168. Implementing the reforms will require considerable planning and on-going work. The Ministry of Justice will be required to:

168.1. assist the progress of the legislation through the House;

168.2. develop and progress the necessary regulations and rules;

168.3. design and develop new information resources, including an online version of the redesigned Parenting Through Separation programme;

168.4. work with potential FDR providers to establish FDR provider capacity, FDR practitioner approval and financial assistance processes;

168.5. design new, simplified court processes and procedures;

168.6. create new prescribed forms;

168.7. develop administrative structures for the future use of professionals in the Family Court;

168.8. *[Information withheld under section 9(2)(f)(iv) of the OIA 1982]*;

168.9. amend internal process materials; and

168.10. deliver training to court staff.

169. To be successfully implemented, the proposals for reform will also require behavioural change on the behalf of families, professionals who work in the Court (most particularly lawyers) and judges. To secure this necessary behavioural change, the implementation process must include consultation with all parties who use or work in the Court. This will involve the government widely distributing information about the new system.

Risks

170. Some proposals are likely to be opposed by certain professional groups or interest groups. The proposals likely to be of most concern include:

170.1. reducing government funding for counselling;

170.2. making FDR mandatory (unless exempted);

170.3. requiring parties to pay for FDR (unless they are eligible for financial assistance);

170.4. changing the role of lawyers so that parties represent themselves in some court events;

170.5. targeting the use of lawyers for children; and

170.6. imposing *[Information withheld under section 9(2)(f)(iv) of the OIA]*contributions from parties when the Court requests a lawyer to assist or a specialist's report.

171. I expect professional groups and the interest groups to raise the following specific concerns.

The legal profession

172. Lawyers are likely to raise concerns about the proposal for parties to represent themselves in court. They will note that:

172.1. lawyers frequently diffuse conflict between parties and encourage settlement; and

172.2. court processes will become inefficient and result in delay without a lawyer, lawyer for the child or other court professionals. These services save judges and the Court time and costs.

173. The legal profession may also argue that restricting the use of lawyer for child does not meet New Zealand's obligations under UNCROC, *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*.

174. I appreciate that many lawyers are aware that parental conflict is damaging to children, and work hard to ensure that the parents consider the impact of their dispute on their children. The new regime will encourage this behaviour. However, I am conscious of having to balance the need to ensure the State's resources are used to protect vulnerable people, against situations where use of the Family Court is not necessary.

175. Information and clear court processes will help parties to represent themselves. Current court processes are complex and confusing, requiring the assistance of a lawyer to navigate. Those people who cannot afford legal representation struggle to represent themselves. The proposed changes to court processes will give parties a Court system that is designed for them, and does not assume there will be legal representation in all cases. Fee and contribution waivers will ensure parties facing financial hardship receive the support they need.

176. I do not accept that New Zealand will not meet its obligations under UNCROC. UNCROC does not specify or limit the mechanisms by which a child's views may

be expressed. Compared to other countries, New Zealand has extensive state funded legal representation of children in family disputes.

Counsellors

177. Counsellors are not likely to agree to the proposed reduction in government funded counselling. They will also oppose the proposed interim measure to reduce government support for Family Court counselling. They may argue that relationship counselling should be retained because the State has a role in assisting couples to stay together because society benefits from stable relationships. Alternatively, they may consider that without government funded counselling before Court more applications will come to the Family Court. They will also argue that New Zealand has no history or culture of expecting people to pay for counselling.

178. I believe that government investment in FDR is a more efficient and effective use of taxpayer funds. If people cannot afford FDR, financial assistance is available.

Special interest groups

179. The following concerns may be raised by interest groups, including:

179.1. The domestic violence sector who may argue that the measures the government is undertaking do not sufficiently address the needs of victims of domestic violence. The focus of reform is on the Care of Children Act, leaving important protection for vulnerable people in place (eg, the Domestic Violence Act 1995 and the Children, Young Persons and Their Families Act 1989).

179.2. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*.

179.3. Men's groups who may argue that the reforms do not address their concerns about being alienated from their children. They may be disappointed that the reforms do not propose a principle of equal shared care. Research emerging from Australia and elsewhere advises against presuming equal shared care after separation is best for children as, depending on the circumstances, it can increase the mental health risks for children, particularly when parents are in conflict or when children are very young.

179.4. Some community groups which will oppose the removal of the obligation to promote reconciliation or conciliation, because they consider society benefits from stable relationships, and the State has a role in assisting couples to stay together. See paragraph 177 above.

Legislative implications

180. Subject to Cabinet agreement, the proposals will be implemented through the Family Courts Reform Bill, which has been accorded priority 4; to be referred to

Select Committee in 2012. Amendments are also required to regulations and rules, and I anticipate these amendments will be drafted in tandem with the Bill. Subject to Cabinet's decisions, I intend to report to Cabinet on the following matters:

180.1. Mid September 2012: regulations to limit the number of government funded sessions for counselling (a transitional regime for dispute resolution services, prior to the establishment of a Family Dispute Resolution (FDR) process)

180.2. Late October 2012: a draft Bill, and associated amendments to regulations and rules. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*.

181. Some of the proposed provisions may come into force immediately on enactment. Others may require information technology changes, the development of protocols or guidelines, and staff training, and will be brought into force at a later date.

182. Technical legislative amendments are likely to be required to some or all of the Acts within the jurisdiction of the Family Court as a consequence of the reform proposals. These amendments will not raise policy issues.

Regulatory impact analysis

183. A regulatory impact analysis is required for the proposals in this paper. A Regulatory Impact Statement (RIS) has been prepared and the Ministry of Justice has assessed it as meeting the quality assurance criteria.

Consistency with Government Statement on Regulation

184. I have considered the analysis and advice of my officials contained in the attached RIS and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:

184.1. are required in the public interest;

184.2. will deliver the highest net benefits of the practical options available; and

184.3. are consistent with the commitments in the Government Statement on Regulation.

Gender implications

185. The greater focus on children and vulnerable adults in the future Family Court will contribute to the protection, recovery and reduction in the rate of revictimisation for women experiencing or at risk of domestic violence.

186. *[Information withheld under s9(2)(f)(iv) of the OIA]*.

Disability perspective

187. The jurisdiction of the Family Court includes a number of Acts that may impact on people with physical and mental disabilities. These include the Alcoholism and Drug Addiction Act 1966, the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, Mental Health (Compulsory Assessment and Treatment) Act 1992, and the Protection of Personal and Property Rights Act 1988. The subjects of these Acts are typically vulnerable people lacking capacity to make their own decisions or manage their affairs.

188. The Family Court must remain responsive to meeting the safety and welfare needs of vulnerable people. The protections offered under these Acts is generally sufficient.

Publicity

189. I intend to hold a media conference on the proposed new family justice system after Cabinet has made its decision.

190. I also seek Cabinet's agreement to making this paper available on the Ministry of Justice's website with information withheld in a manner consistent with the provisions of the Official Information Act 1982.

Part 7: Recommendations

191. The Minister of Justice recommends that the Committee:

1. **note**, in September 2011, Cabinet invited the Minister of Justice to report to Cabinet in May 2012 with policy options for reforming the Family Court [DOM Min (11) 16/1];

2. **note**, in February 2012, Cabinet agreed to defer the Legal Assistance (Sustainability) Amendment Bill to enable the legal aid reforms to be brought into line with changes from the review of the Family Court [CAB Min (12) 16/2].

The function and purpose of a new family justice system

3. **agree** to repeal the obligations in the Family Proceedings Act 1980 on the Court, lawyers and counsellors to promote reconciliation or conciliation;

4. **agree** that the new legislation should have the following purposes:

    4.1. to encourage parents to be responsible for reducing the negative impact their conflict is having on children

    4.2. to support (where appropriate) parties to resolve their dispute outside of court and/or to settle their dispute in court at the earliest opportunity

    4.3. ensure any out of court or in court proceedings focus on the needs of children and vulnerable parties, including keeping them safe from domestic violence, and

    4.4. to make all court proceedings understandable, simple, transparent, timely and proportionate to the dispute;

5. **agree** to set out obligations on professionals, parties and the Court to give effect to the purpose provision of new legislation;

Supporting self-resolution outside of court

Out of court dispute resolution

6. **agree** to introduce Family Dispute Resolution (FDR) that parties are required to attend prior to applying to the Court for orders under the Care of Children Act 2004, unless they meet defined exemption criteria;

7. **note** that the objectives of the family dispute resolution process are:

7.5. Encourage parents to be responsible for reducing the negative impact their conflict is having on children

7.6. Support, where appropriate, parties to resolve their dispute outside of court, and

7.7. Ensure, where appropriate, that family dispute resolution processes focus on the needs of children and vulnerable parties;

8. **agree** that the use of FDR may be extended for other types of proceedings in the Family Court, for example the Property (Relationships) Act 1976, which will be identified in the LEG paper accompanying the draft Bill for Cabinet's consideration in October 2012;

9. **note** that reducing the availability of government funded counselling from the Family Court is consistent with FDR and the refocused Family Court;

10. **note** that reducing the availability of government funded Family Court counselling is likely to be contentious for some stakeholders;

11. **agree** that a judge may refer parties to proceedings under the Care of Children Act 2004 to counselling once if the judge considers that counselling is necessary to tackle their parenting relationship and make the outcome more durable;

12. **agree** that counselling will be provided by a bulk-funded national provider contract;

13. **agree** to repeal existing provisions for government funded counselling and mediation services (including Judge-led mediation) currently available either outside of, or during, Family Court proceedings under the Care of Children Act 2004 and the Family Proceedings Act 1980, including any provisions yet to be brought into force;

14. **agree** that if an applicant satisfies the Court that their case meets one or more of the following criteria, they need not attend FDR:

14.1. the application is for a consent order

14.2. the application relates to a contravention of existing court orders

14.3. the application is without notice

14.4. there are reasonable grounds to believe that domestic violence (as defined in the Domestic Violence Act 1995) against a party or his or her child has occurred, or is occurring, as a result of the actions of one of the parties

14.5. one or more of the parties is not able to participate satisfactorily in FDR, or

14.6. concurrent child protection proceedings are underway;

15. **agree** that parties may make an application to the Family Court when a FDR practitioner has provided documentation stating that either FDR had been attempted but resolution has not occurred or, in light of assessment against one or more of the following criteria, FDR should not be attempted or continued:

    15.1. a history of domestic violence or child abuse by one or more of the parties involved in the FDR process

    15.2. a risk that a party's safety could be compromised by the FDR process

    15.3. a power imbalance between parties that is likely to contribute to an unsatisfactory agreement, or

    15.4. incapacity to participate effectively (eg, due to illness or disability);

16. **agree** that FDR shall be confidential, and subject to the rules of privilege;

17. **agree** that the Secretary for Justice will approve FDR providers under high-level criteria specified in regulation;

18. **agree** that any necessary practice standards for FDR providers may be set by regulation;

19. **agree** that the Government fully subsidise the share of the cost of FDR for parties who meet the legal aid civil income threshold, at an amount set, and promulgated, by the Secretary for Justice;

Information and parenting information programmes

20. **direct** the Ministry of Justice to increase the quality and breadth of information available for family matters to coincide with the introduction of reforms to the family justice system;

21. **agree** that parties be required to attend a parenting information programme before applying for parenting orders in the Family Court unless the Registrar is satisfied that:

    21.1. the application is without notice

    21.2. the participant cannot reasonably take part in the parenting information programme (eg, due to language difficulties), and

    21.3. the applicant has attended the parenting information programme in the last two years;

22. **agree** that the Parenting Through Separation (PTS) parenting information programme be enhanced by:

22.1. widening eligibility to include caregivers other than parents and adapting the content accordingly, and

22.2. developing an interactive online version of PTS;

23. **agree** that the parenting information programme an applicant would need to undertake before applying to the Court be specified in regulation;

24. **agree** that any changes to the content or delivery of the parenting information programme can be made by the Secretary for Justice;

Interim change to government funding counselling sessions

25. **note** that limiting the number of government funded Family Court counselling sessions would signal a greater focus on resolving parenting disputes rather than reconciliation issues, *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*;

26. **note** that the reduction in government funded counselling sessions is likely to be contentious for some stakeholders;

27. **agree** to a transitional regime in 2012/13 that limits the number of Government funded sessions for existing relationship counselling (section 9 Family Proceedings Act 1980) and parental dispute counselling under the Family Proceedings Act 1980 and the Care of Children Act 2004 to one session and three sessions respectively;

28. **invite** the Minister of Justice to report to Cabinet with draft amendments in order to implement recommendation 27, if agreed to, by mid-September 2012

Family Court issues and processes

Clarifying the principles relevant to children's welfare and best interests

29. **agree** to amend section 4 of the Care of Children Act 2004 to make it clear that, when deciding parenting disputes, the Court may take into account parties' conduct to the extent it is relevant to a child's welfare and best interests, particularly if that conduct exacerbates conflict or causes delay;

30. **agree** to amend section 5 of the Care of Children Act 2004 so that protecting children from violence comes first in the list of section 5 principles, to give this principle prominence;

31. **agree** to simplify the wording of the principles used when determining a child's welfare and best interests by dividing them into the following key ideas:

31.1. protection from all forms of violence

31.2. a child's parents and guardians should have the primary responsibility for their wellbeing and should work together co-operatively to make decisions about the child's care

31.3. there should be continuity and stability in arrangements for a child's care

31.4. decisions should acknowledge the importance of maintaining a child's relationships with both parents in particular, but also wider family members including whanau, hapū and iwi, and

31.5. a child's identity (including culture, language and religion) should be preserved and strengthened;

Improving processes in the Family Court

32. **agree** to 'future proof' the Family Court by giving flexibility to employ current and new technology solutions by the use of technology-neutral language in primary and secondary legislation;

33. **agree** to revise the purpose provision of the Family Court Rules 2002 to support the objectives of reform;

34. **agree** to the targeted development of new forms and amendments to some existing forms in certain proceedings;

35. **agree** to introduce a questionnaire affidavit for applications under the Care of Children Act 2004;

36. **agree** that consideration be given to clarifying the "any evidence" rule;

37. **agree** that for all without notice applications:

    37.1. applicants must state in their affidavits that they have met the requirements of a without notice application

    37.2. lawyers must certify applications as they do currently under the Domestic Violence Act 1995

    37.3. hearsay evidence must subsequently be supported by direct evidence, where this is possible, and

    37.4. the Court must review orders as soon as possible after they are made;

38. **agree** to introduce simple, standard and without notice tracks for Care of Children Act 2004 proceedings in the Family Court (except cases relating to international child abduction);

39. **agree** that the use of simple and standard case tracks may be extended in rules to other proceedings in the Family Court, including the Property Relationships Act 1976, the Family Protection Act 1955 and the Law Reform (Testamentary Promises) Act 1949;

40. **agree** that applications are assessed on entry to decide whether an exemption should be granted;

41. **agree** to additional judicial powers to manage the progress of all proceedings including dealing with as many aspects of the case as is possible on a single occasion and limiting the use of adjournments;

42. **agree** to judges encouraging parental responsibility and parties resolving issues themselves, when appropriate;

43. **agree** that registrars may deal with matters administratively (no requirement for a registrar's list or appearance) in the Family Court;

44. **agree** to minimise the need for participants to attend court through better use of documents, telephone or audio visual technology, where appropriate;

Dealing with allegations of violence in Care of Children Act proceedings

45. **direct** the Ministry to consider whether sections 58-61 of the Care of Children Act 2004 should be improved, or repealed and replaced with a new process with proposals to be included in the paper for Cabinet's consideration of the draft Bill due in October 2012;

Clarifying expectations on parties and lawyers

46. **agree** to introduce obligations on lawyers and parties in the Care of Children Act 2004, requiring them to work constructively and in a way that has regard to the best interests of the child and the continuing relationship between a parent and child (where children are involved); that promotes family relationships after resolution of the dispute, where possible; and encourages parties to settle if appropriate;

47. **agree** to require parties to include in Care of Children Act 2004 applications what steps they have taken to try and reach agreement before making an application;

48. **agree** to require lawyers and parties to file joint memoranda when possible;

49. **agree** to introduce obligations on lawyers and parties to comply with procedural obligations within their control, including for example being prepared for court events, assisting the timely and cost-effective disposal of cases, and focussing on the issues genuinely in dispute;

50. **agree** to allow the Court to impose a financial penalty on parties or their lawyers for serious breaches of Court procedures, except where the circumstances of non-compliance are outside their control;

51. **agree** that the Court must consider whether a costs order should be made in every case brought under acts where the power to award costs already exists;

Ensuring court orders work and are complied with

52. **agree** to introduce easier, more proportionate processes for parents who wish to vary arrangements by consent and requiring parties to attend FDR before making an application to vary an order without consent;

53. **agree** to make all Care of Children Act orders final orders;

54. **agree** to enable an order under the Care of Children Act 2004 or the Children, Young Persons and Their Families Act 1989 to be varied by consent without further investigation by the Court (eg, be dealt with by a registrar where a judge has directed in the original order that a specified type of variation might be dealt with in this way and where the Court is not alerted to any welfare concerns);

55. **agree** that an applicant must show a material change of circumstances to obtain variation (other than for orders by consent);

56. **agree** to limiting use of predictive orders with the circumstances of their use described in rules, including for example, future schooling, holidays or preconditions such as clear drug screens;

57. **agree** to extend any provisions dealing with breach of parenting orders to apply to guardianship orders as well;

58. **agree** to include in parenting orders how parties will deal with changes in circumstances and resolving subsequent disputes;

59. **agree** to allow judges a general discretion to issue a warrant in Care of Children Act 2004 proceedings when it is considered necessary in the circumstances;

60. **agree** to set out in relevant legislation, including the Care of Children Act 2004 and the Children, Young Persons and Their Families Act 1989, the nature and extent of the Court's power to punish a party for refusal to comply with a court order under its contempt jurisdiction;

Reducing repeat applications

61. **agree** to amend sections 140 and 141 of the Care of Children Act 2004 and section 207 of the Children, Young Persons and Their Families Act 1989 so that repeat applications or applications to vary may be made only where there has been a material change in the child's circumstances, and any application may be dismissed if it is contrary to the welfare and best interests of the child, or if the Court considers the application proposes minor changes only, or is without merit;

62. **agree** to require leave to commence new proceedings, repeat applications or applications to vary (unless by consent), under the Care of Children Act 2004 and the Children, Young Persons, and Their Families Act 1989 (excluding

applications on behalf of the Chief Executive of the Ministry of Social Development), where an order has been made within the previous two years, or costs have been awarded previously against the applicant in similar proceedings or a previous application has been dismissed;

Simplifying the review of care and protection plans

63. **agree** to amend the Children, Young Persons, and Their Families Act 1989 to clarify that reviews of care and protection plans can occur on the papers when a judge is of the opinion that this approach is not contrary to the welfare and best interests of the child;

Targeting improvements to relationship property cases

64. **agree** to amend the existing transfer test in the Property (Relationships) Act 1976 so that cases must be transferred, regardless of complexity, if they would be more appropriately dealt with in the High Court;

65. **agree** to create a new affidavit of assets and liabilities to include more comprehensive information about the nature and extent of a party's property (including trusts) being claimed as relationship or separate property;

66. **agree** to introduce an obligation to disclose financial information and key documents, as far as is practicable regardless of whether proceedings have been filed without a court order;

67. **agree** to clarify the extent of parties' disclosure obligations, particularly in respect of trusts;

[Information withheld under section 9(2)(f)(iv) of the OIA 1982]

68. *[Information withheld under section 9(2)(f)(iv) of the OIA 1982]*:

69.

The role of professionals in Care of Children Act cases in the Family Court

Lawyers for parties

70. **agree** to change the role of lawyers for parties in Care of Children Act 2004 cases (except cases relating to international child abduction) in the Family Court so that:

    70.1. parties represent themselves in the proposed simple track proceedings, and

    70.2. parties represent themselves up to and including settlement hearings in standard track proceedings;

Lawyer for child

71. **agree** to clarify the role of lawyer for child in the Care of Children Act 2004, the Children, Young Persons, and Their Families Act 1989, the Family Proceedings Act 1980, the Property (Relationships) Act 1976, and the Child Support Act 1991;

72. **agree** to a targeted use of lawyer for child in Care of Children Act 2004 cases by:

    72.1. providing that lawyer for child is only appointed where there are serious factors in the case and the Court considers an appointment necessary, and only after a defence has been filed, and

    72.2. providing guidance in the Family Court Rules that the serious factors may include: where there are allegations of child abuse; likely alienation of a parent; serious drug or alcohol misuse or other anti-social behaviour; serious mental health issues; or neither party appears to be a suitable caregiver;

73. **agree** to introduce a statutory provision enabling the Secretary for Justice to:

    73.1. limit the types of disbursements lawyer for child can claim, for example, photocopying, telephone or audiovisual link expenses

    73.2. set a single hourly payment rate for lawyer for child, and

    73.3. limit the number of hours for which lawyer for child may be paid, based on the court track;

74. **agree** that decisions made by the Secretary for Justice under recommendations 73.1 to 73.3 will be deemed to be regulations for the

purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989;

75. **agree** that the Court would only be able to extend the maximum number of hours lawyer for child can be paid if exceptional circumstances are present or if it is essential to the child's welfare and best interests that lawyer for child attend the full length of the hearing;

Lawyer to assist the Court

76. **agree** to define the role of lawyer to assist in the Care of Children Act 2004 so that they may be appointed in the following circumstances:

    76.1. when the Court is dealing with a new or difficult area of law and there is no decided point on this issue or it requires a perspective not represented by the lawyers for the parties, or

    76.2. for other purposes specified in legislation, or

    76.3. if an appointment is required in the interests of justice;

77. **agree** to introduce a statutory provision in existing legislation providing for lawyer to assist, enabling the Secretary for Justice to:

    77.1. set out a maximum hourly fee for lawyer to assist, and

    77.2. limit the types of disbursements lawyer to assist can claim;

78. **agree** that decisions made by the Secretary for Justice under recommendations 77.1 to 77.2 will be deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989;

Specialist report writers

79. **agree** to amend the Care of Children Act 2004 to clarify that the Court may request specialist reports where specialist evidence is necessary to resolve the case, and cannot be obtained from another source, and require the Court to have regard to the impact of any resulting delay on the welfare and best interests of the child;

80. **agree** to amend the Care of Children Act 2004 to prohibit parties obtaining another specialist report to critique the report of the Court-appointed specialist;

81. **agree** to amend the legislative and regulatory framework to:

81.1. introduce a national standard brief for specialist report writers;

81.2. enable specialists to obtain children's views when undertaking a report, if they have not already been obtained from another professional and only if it is necessary to inform their report; and

81.3. enable specialists to see children outside the terms of an order, where necessary to avoid delay arising from waiting to see the child with the other parent;

82. **agree** to introduce a statutory provision enabling the Secretary for Justice to set a maximum fee for specialist report writers and for attending Court proceedings as a witness;

83. **agree** that decisions made by the Secretary for Justice under recommendation 82 will be deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989;

Contributions to professional services costs

84. **agree** to introduce a default requirement in the Care of Children Act 2004 that parties contribute to the cost of specialist report writers, excluding where there is severe hardship and excluding any Government agency because any such contribution would be a transfer between departments;

85. **agree** to introduce a default requirement in the Care of Children Act 2004 that parties contribute to the cost of lawyer to assist, excluding where there is severe hardship, or where counsel is appointed to assist the court rather than a party and excluding any Government agency because any such contribution would be a transfer between departments;

Improving responsiveness to domestic violence

Increasing domestic violence programme flexibility

86. **agree** to amend the legislative and regulatory framework for domestic violence programmes to provide for greater flexibility in programme delivery for respondents and protected people;

87. **agree** to changes to the Domestic Violence Act to:

87.1. enable more flexible domestic violence services for protected persons;

87.2. require respondents to undertake a minimum specified number of hours with an approved provider, as specified in regulation, rather than a specified programme;

87.3. require a mandatory needs assessment within those specified hours;

87.4. allow input into protected persons' programmes from the respondent and/or protected person's whanau, where safe and appropriate, and consented to by the protected person;

87.5. allow input into respondents' programmes from the protected person and/or the respondent's whanau, where safe and appropriate, and consented to by all parties;

88. **agree** that the Ministry continue to develop further changes to the regulation and funding framework to ensure:

88.1. greater attendance at domestic violence programmes by protected people

88.2. providers will be required to design an individual plan for every respondent

88.3. programme approvals processes, content, duration and delivery are made less restrictive

88.4. providers make appropriate referrals to other social services, and

88.5. providers will be required to provide a final outcomes report on completion;

89. **direct** the Ministry of Justice to report to Cabinet by June 2013 to seek agreement to the detailed amendments required;

Streamlined enforcement of domestic violence programme attendance

90. **agree** to amend the Domestic Violence Act 1995 to streamline enforcement processes: giving providers more of a responsibility to follow up when a respondent does not attend a programme, and reducing the role of the Family Court in warning respondents before referral for prosecution occurs;

Increasing the penalty for breaching a protection order

91. **note** that the Government's Post-Election Action Plan policy states that it will increase penalties for breaches of protection orders;

92. **note** that the Government made changes in 2009 that started a shift in this policy direction by establishing a single maximum penalty of two years' imprisonment for all convicted offenders;

93. **agree** to increase the maximum penalty in the Domestic Violence Act 1995 for breaches of a protection order from two years' to three years' imprisonment for all convicted offenders;

94. **note** that there will be an associated cost to the Vote: Corrections baseline;

Senior Family Court Registrars

95. **agree** to repeal the provisions in legislation that provide for Senior Family Court Registrars;

Court fees for permanent foster carers

96. **agree** to amend the Family Court Regulations to exempt Court fees for applications under the Care of Children Act 2004 when:

    96.1. the child who the application is about is, at the time of the application, subject to a custody order (including custody under a sole guardianship order) under Part 2 of the Children, Young Persons, and Their Families Act 1989; and

    96.2. the applicant is, at the time of the application, providing care for the child on behalf of the Ministry of Social Development, an Iwi Social Service or a Child and Family Support Service; and

    96.3. the application is for a parenting or guardianship order under the Care of Children Act 2004; and

    96.4. the custodian seeks discharge of the custody order made in their favour under the Children, Young Persons, and Their Families Act 1989;

Financial Implications

97. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*;

98. **note** that the Family Court Review proposals will have the following overall fiscal impact:

[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]					

99. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*;

100. **agree** to establish a new Non-Departmental Output Expense Appropriation "Family Dispute Resolution Services" in Vote Justice;

101. **agree** that the scope of this appropriation be "This appropriation is limited to approved family dispute resolution services";

102. **approve** the following fiscally neutral adjustments to provide for Family Dispute Resolution Service subsidies, with no impact on the operating balance:

	$m – increase/(decrease)				
Vote Courts **Minister for Courts**	**2012/13**	**2013/14**	**2014/15**	**2015/16**	**2016/17 & Outyears**
Non-Departmental Other Expense: Family Court Professional Services	-	(3.270)	(4.360)	(4.360)	(4.360)
Vote Justice **Minister of Justice** Non-Departmental Output Expense: Family Dispute Resolution Services	-	3.270	4.360	4.360	4.360

103. **approve** the following fiscally neutral adjustments to provide for development of improved information resources for parents with family disputes, with no impact on the operating balance:

	$m – increase/(decrease)				
	2012/13	**2013/14**	**2014/15**	**2015/16**	**2016/17 & Outyears**
Vote Courts **Minister for Courts** Non-Departmental Other Expense: Family Court Professional Services	(1.000)	(1.500)	(1.000)	(1.000)	(1.000)
Departmental Output Expense: District Court Services (funded by revenue Crown)	1.000	1.500	1.000	1.000	1.000

104. **approve** the following fiscally neutral adjustments to provide for a temporary reduction in the number of Family Court funded counselling sessions, with no impact on the operating balance:

	$m – increase/(decrease)				
Vote Courts **Minister for Courts**	**2012/13**	**2013/14**	**2014/15**	**2015/16**	**2016/17 & Outyears**
Non-Departmental Other Expense: Family Court Professional Services	(2.850)	(0.950)	-	-	-
Departmental Output Expense: District Court Services (funded by revenue Crown)	2.850	0.950	-	-	-

105. **approve** the following changes to appropriations to provide for administration of Family Dispute Resolution subsidy payments, with no impact on the operating balance:

	$m – increase/(decrease)				
	2012/13	**2013/14**	**2014/15**	**2015/16**	**2016/17 & Outyears**
Vote Courts **Minister for Courts** Non-Departmental Other Expense: Family Court Professional Services	(0.722)	(0.537)	(0.240)	(0.240)	(0.240)
Vote Justice **Minister of Justice** Departmental Output Expense: Administration of Legal Services (funded by revenue Crown)	0.722	0.537	0.240	0.240	0.240

106. **approve** the following fiscally neutral adjustments to provide for costs associated with implementing Family Court Review recommendations, with no impact on the operating balance:

	$m – increase/(decrease)				
Vote Courts **Minister for Courts**	**2012/13**	**2013/14**	**2014/15**	**2015/16**	**2016/17 & Outyears**
Non-Departmental Other Expense: Family Court Professional Services	(0.861)	(0.446)	(0.111)	(0.111)	(0.111)
Departmental Output Expense: District Court Services (funded by revenue Crown)	0.861	0.446	0.111	0.111	0.111

107. **approve** the following fiscally neutral adjustments to provide for reallocation of remaining savings from more targeted use of lawyer for child in proceedings, specialist reports and the reduction of counselling and mediation services, with no impact on the operating balance:

	$m – increase/(decrease)				
	2012/13	**2013/14**	**2014/15**	**2015/16**	**2016/17 & Outyears**
Vote Courts **Minister for Courts** Non-Departmental Other Expense: Family Court Professional Services	-	(9.898)	(12.369)	(15.474)	(15.474)
Departmental Output Expense: District Court Services (funded by revenue Crown)	-	9.898	10.000	10.000	10.000
[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]					

108. **approve** the following changes in appropriations to transfer savings from 2014/15 to provide for implementation operating expenses in 2012/13, with the following impact on the operating balance:

	$m – increase/(decrease)				
	2012/13	**2013/14**	**2014/15**	**2015/16**	**2016/17 & Outyears**
Vote Courts **Minister for Courts** Non-Departmental Other Expense: Family Court Professional Services	-	-	(3.105)	-	-
Departmental Output Expense: District Court Services (funded by revenue Crown)	3.105	-	-	-	-

109. **agree** that the revenue from contributions towards lawyer to assist and specialist reports is used to increase the Family Court Professional Services appropriation;

110. **note** the following changes to Crown revenue as a result of decisions requiring contributions from parties towards costs associated with lawyer for child, lawyer to assist and specialist reports, with the corresponding impact on the operating balance:

	$m – increase/(decrease)				
Vote Courts **Minister for Courts**	**2012/13**	**2013/14**	**2014/15**	**2015/16**	**2016/17 & Outyears**
Non-Tax Revenue: Contributions Lawyer for Child Costs	(4.215)	(2.661)	(3.549)	(3.549)	(3.549)
Contributions Lawyer to Assist	-	0.115	0.204	0.204	0.204
Contributions Specialist Reports	-	0.774	1.375	1.375	1.375
Total Operating	4.215	1.773	1.969	1.969	1.969

111. **approve** the following changes to appropriations as a result of the forecast changes in revenue above, with the corresponding impact on the operating balance:

	$m – increase/(decrease)				
	2012/13	**2013/14**	**2014/15**	**2015/16**	**2016/17 & Outyears**
Vote Courts					
Minister for Courts					
Non-Departmental Other Expenses:					
Family Court Professional Services	(3.372)	(1.418)	(1.575)	(1.575)	(1.575)
Impairment of Debt Established to Recognise Contributions towards Family Court Professional Services	(0.843)	(0.355)	(0.394)	(0.394)	(0.394)
Total Operating	**(4.215)**	**(1.773)**	**(1.969)**	**(1.969)**	**(1.969)**

112. *[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]*;

113. **agree** that the proposed changes to appropriations for 2012/13 above be included in the 2012/13 Supplementary Estimates and that, in the interim, the increased expenses be met from Imprest Supply;

Legislative Implications

114. **invite** the Minister of Justice to issue drafting instructions to Parliamentary Counsel Office for the purpose of preparing a Bill and for associated amendments to regulations and rules;

115. **invite** the Minister of Justice to report to Cabinet with a draft Family Courts Reform Bill and associated draft amendments to regulations and rules by late October 2012;

116. **authorise** the Minister of Justice, in consultation as appropriate with the Attorney-General and the Minister for Courts, to resolve outstanding policy issues arising from and associated with decisions made in the recommendations in this paper;

117. **authorise** the Minister of Justice to resolve minor policy and technical issues arising from and associated with decisions made in the recommendations of this paper;

Publicity

118. **note** that the Minister of Justice intends to publish this Cabinet paper and related Cabinet decisions online, subject to consideration of any deletions that would be justified if the information had been requested under the Official Information Act 1982;

119. **agree** that the Minister of Justice will announce the main features of the reform proposals agreed to by Cabinet, and the Government's intention at the end of 2012 to introduce implementing legislation.

Minister of Justice

Date signed:

Appendix A – Consultation on the review of the Family Court

1. Alongside consultation with a wide range of stakeholders (including academics, legal practitioners, professionals who work in the Family Court, government agencies, non-government organisations, and court users) the review of the Family Court has been informed by:

    1.1. 121 responses to an on-line questionnaire seeking comments from Family Court users;

    1.2. 209 submissions received in response to the public consultation paper – *Reviewing the Family Court*; and

    1.3. an Expert Reference Group comprising members of the professions working in the Family Court.

2. Advice has also been developed based on the input of experienced court staff.

Responses to the online questionnaire

3. Responses to the online questionnaire indicated that the following changes would improve outcomes and the court experience for court users:

    3.1. better information on how to resolve disputes;

    3.2. a non-adversarial, child focussed family justice system;

    3.3. increasing the skill and competency of family lawyers, particularly to improve their advice on options, court processes, costs and the probable consequences of certain decisions;

    3.4. greater transparency around court processes and accountability of court professionals, particularly lawyers; and

    3.5. consequences for those who mislead the court or create delay.

Submissions in response to the consultation paper

4. The following ideas for reform received support from submissions:

    4.1. greater emphasis on out of court dispute resolution, unless there is family violence;

    4.2. a professional, other than lawyer for child, to obtain the child's views;

    4.3. mandatory accreditation of family lawyers;

    4.4. stronger obligations on lawyers to try to reach agreement before going to Court; and

    4.5. standardised court processes and a questionnaire style affidavit.

5. There was also support for some aspects of the current system:

5.1. provision of free counselling (61 of 82 submitters that commented, approximately a third of whom were counsellors, thought that Family Court counselling should continue to be offered); and

5.2. the Parenting Through Separation programme (38 of 67 submitters believed that Parenting Through Separation should be compulsory; most others thought attendance should be encouraged).

Summary of the External Reference Group's report

6. In July 2011 the then Minister of Justice, Hon Simon Power, approved the establishment of an External Reference Group to support and advise the Ministry in the development of policy proposals for the review of the Family Court. The group comprised members from the professions that work in the Family Court:

6.1. Antony Mahon, (then) Chair of the Family Law Section of the New Zealand Law Society – also Chair of the reference group

6.2. Garry Collin, Acting Family Law Section Deputy Chair, New Zealand Law Society

6.3. Judge Ullrich, Family Court Judge, Wellington District Court

6.4. Professor Fred Seymour, Professor in Clinical Psychology, University of Auckland

6.5. Dr Suzanne Blackwell, Clinical Psychologist, Auckland

6.6. JoAnn Vivian, National Practice Manager, Relationship Services, Wellington

6.7. Deborah Clapshaw, Dispute Resolution Mediator, Auckland

6.8. Jonathan Loan, Chair of the New Zealand Association of Counsellors

6.9. Sharyn Otene, Lawyer, South Auckland.

7. The External Reference Group delivered a report to me on 27 April 2012. A summary of their key recommendations are:

7.1. more accessible information (including redesigning the Family Court website and establishing a helpline)

7.2. making attendance at a parent education programme a mandatory pre-condition of filing proceedings in the Family Court

7.3. establishing a Family Dispute Resolution (FDR) facilitation model to replace counselling and mediation, with a report provided at the conclusion

7.4. establishing a Family Dispute Coordination Office to deliver information and administer a FDR service

7.5. developing screening protocols to be introduced at various stages of the Family Court process to identify violence, drug and alcohol abuse and abuse of children

7.6. establishing a pilot programme before involving any children in FDR

7.7. providing that applications filed identify orders sought and supporting evidence is outlined in a questionnaire style affidavit

7.8. defining the role of lawyer for child in legislation

7.9. appointing lawyer for child later in the process, with judicial discretion to appoint a lawyer for child earlier if necessary in a particular case

7.10. implementing an improved data collection process, and

7.11. seeking greater contributions from parties towards some of the Family Court services.