Without Notice Applications in the Family Court

A research report prepared for the Ministry of Justice

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Introduction

1. In March 2014, the Government made significant changes to the family justice system. "The purpose of the reforms is to ensure a modern, accessible family justice system that is responsive to children and vulnerable people, and is efficient and effective" (Family Court Proceedings Reform Bill, p. 1).

2. The reforms changed the way in which the family justice system assists separating couples to reach agreement about care and contact arrangements for their children. The reforms shifted the focus from Court resolution of these disputes to encouraging parents to reach agreement themselves, where this is appropriate, and to prevent disputes from occurring or escalating.

3. Key changes were made to out-of-Court and in-Court processes:

    - The main out-of-Court changes introduced services that parents must attempt before applying for a parenting or guardianship order, unless an exemption applies, for example, if there had been violence. This included enhancing Parenting Through Separation (PTS), introducing Family Dispute Resolution (FDR) and Family Legal Advice Service (FLAS).

    - The main in-Court change saw the removal of lawyers from the initial stages of on notice applications under the Care of Children Act 2004[1] (COCA), unless an exception applies, with lawyers only able to represent parties when applications are made without notice,[2] there are previous related applications or the application is made concurrent to a different application type.[3]

4. Since the reforms, the number of COCA applications filed without notice has more than doubled and continues to climb, even though no change was made to the criteria to apply without notice. Before the reforms, there was a 70:30 split of with notice applications and without notice applications. This has now reversed. Interviewed family law professionals stated that this has significantly impacted on judicial and registry capacity, with resources having to be reallocated to manage without notice applications, reducing available resources to progress cases and hearing time for other types of applications.

Research aims

5. The primary aim of the research is to understand the causes of the increase in without notice COCA applications being filed in the Family Court since the reforms in March 2014. These are the key research questions:

    - What are the key drivers for applicants when choosing to file without notice applications?

    - What impact does filing a without notice application have on involved parties and processes?

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[1] A party must file an application themselves and appear at the initial Issues Conference. Parties are entitled to legal advice and support to complete forms through FLAS.

[2] Without notice applications to the Family Court are urgent applications. Rule 416H of the Family Court Rules 2002 provides for applications that may be made without notice.

[3] Some other changes relevant to without notice applications included:

- urgent applications filed via e-Duty introduced at the same time under a different legislative change
- rule 416HA of the Family Court Rules 2002 requiring lawyers to sign a certificate confirming the veracity of their client's without notice applications (previously, this was only the case for without notice applications for a protection order)
- section 46F of the Care of Children Act 2004 – judges are able to refer parties back to FDR after proceedings had commenced.

- To what extent have the Family Court reforms influenced the increase in without notice applications?

Methodology

6. The research employed a qualitative methodology in order to understand applicants' motivations and reasons for filing a without notice application. A total of 59 interviews were completed – 43 with individuals that made COCA applications, three with Family Court judges, eight with lawyers and five with Family Court staff. Interviews with applicants, lawyers and Court staff were undertaken in Christchurch and Wellington. The research was undertaken from 1 May to 30 June 2017.

7. Limitations: The qualitative research method was selected by the Ministry of Justice because the purpose of the research was to understand the applicants' reasons and motivations for making a without notice application. The purposive sampling method[4] and sample size mean the research findings cannot be generalised to all without notice applicants. Therefore, this research is indicative and refers only to without notice applicants interviewed.

Presentation of findings

8. This report amplifies and prioritises the views and perspectives of parents/Court applicants. It is their motivations and drivers that this research seeks to understand as well as their user experience of the Family Court. The perspectives and views of family law professionals (judges, lawyers and Family Court staff) are contrasted with applicant views in relation to motivations and drivers; however, family law professionals largely provide the detail in relation to Family Court law and processes.

What are the key drivers for applicants when choosing to file without notice applications?

9. Interviewed applicants identified three key drivers when choosing to file without notice applications: a desire for legal representation, urgent and time-sensitive issues and to initiate action towards a decision.

Legal representation

10. Interviewed applicants wanted a lawyer. They often lack confidence in their own knowledge and skills to represent themselves well and to achieve the desired outcome for the applicant and their children, given the complexity of the law and Family Court processes. Interviewed applicants view the Court process as daunting without legal assistance, particularly at a time when they are often emotionally vulnerable. Lawyers are seen by interviewed applicants as expert in the law, having the knowledge, skills and expertise to navigate the system, deal with legal and technical issues and represent the applicant well. Lawyers provide reassurance to applicants that matters will at a minimum be progressed, a decision will be made and ideally the issues will be resolved. Filing a without notice application means applicants can have a lawyer manage the application through the Court process.

Urgent and time-sensitive issues.

11. Interviewed applicants are filing a without notice application because, in their view, the matter is urgent. There are two dimensions to this urgency. One dimension is where there has been or is a risk of domestic violence or harm to the applicant and/or their children. The second dimension is where, from the applicant's perspective, the matter is time-sensitive and requiring a timely decision, which applicants believe is unlikely to occur speedily or in a timely manner with an on notice application on

[4] A purpose sampling method is used to identify and select information-rich cases or research participants related to the topic being researched.

the standard track. Time-sensitive issues include, for example, one parent wanting to move out of the area, enrolment in or change of school and medical treatment. A without notice application is seen as the quickest way to get before a judge and get matters heard.

To initiate action towards a decision

12. The Family Court is a place that applicants go to get help when they have been unable to resolve the issues themselves. Typically, the interviewed applicants have tried, often repeatedly, using counselling, parenting programmes, mediation, elders and church leaders to resolve the matter themselves. However, these attempts have not worked, with the relationship between parties often characterised by intransigence and a complete breakdown in communication. Interviewed applicants describe themselves as "stuck", and they go to the Family Court to "get unstuck", envisaging that the Court will be able to cut through the relationship and communication issues, bringing balance, perspective and independence to the issue so that a decision is reached, actions can be taken and progress can be made. The interviewed applicants believe that filing a without notice application is the fastest way to get before a judge, to get a decision and where they can utilise the services of a lawyer.

What impact does filing a without notice application have on involved parties and processes?

13. The Judges and Family Court staff interviewed in this research are of the view that the Court is less efficient. They believe that the volume of without notice applications and the related Court processes are placing considerable strain on the registry, Family Court staff and Court resources, and it is reported there has been no compensating resource to cover this increase. As a consequence, the interviewed judges and Family Court staff say that applications and cases are taking longer to process. They consider that the most urgent tasks are being attended to, but that in some cases this requires Family Court staff to work outside of their regular hours. At the same time, some less-urgent tasks such as filing of evidence and preparation of hearing files are not being completed on time. When this happens, judges' time and Court time is not fully utilised, and hearings and case management tasks have to be rescheduled, further adding to congestion in the Court.

14. Interviewed applicants, judges and lawyers say that there is reduced access to legal advice and representation for applicants. Interviewed applicants and judges state that parents are finding it difficult to get a lawyer. Interviewed lawyers and judges also say that lawyers are moving to other areas of the law and that more junior and less-experienced lawyers are now working in the Family Court. Given that the cases in the Family Court are now more complex with serious family issues, interviewed judges argue that the lack of experience is impacting on the quality of advice and representation for applicants.

15. The most significant impact of the reforms is on applicants. Prior to the reforms, applicants could have legal representation if they were filing an on notice application. This is no longer an option (except in later parts of the on notice process) and, as already noted, is a key factor driving without notice applications. Other impacts of the reforms on interviewed applicants include:

- increased expectation for applicants to do more and know more to work out their options, adding stress to an already stressful situation (even though applicants have access to FLAS);
- increased expectation for applicants to self-represent at the initial issues conference (and sometimes a settlement conference), adding stress and anxiety around not having the necessary expertise to represent themselves, their children and the issues sufficiently well to achieve the desired outcome.

16. Other impacts reported by the interviewed applicants and judges include:

- increased tension and conflict through the escalation of current or new issues, resurfacing of old issues and straining already tenuous relationships
- resolution can be more difficult to achieve as the issues and parties can become more entrenched and inflexible.

17. The tension and difficulties noted above are not uncommon in disputes that come before the Family Court and therefore not necessarily a direct impact of the reforms. However, interviewed applicants and judges said that the changes have increased the stress on applicants, exacerbating existing and new tensions and conflict with those parents having more intractable views. As a consequence, interviewed applicants and judges are of the view that issues can take longer to resolve, and the potential for harm for applicants and their children is increased.

How and in what way have the Family Court reforms influenced the increase of without notice applications?

18. Based on the interviews with the research participants, the reforms have significantly influenced the increase of without notice applications. Given the drivers of a desire for legal representation, urgent and time-sensitive issues and to initiate action towards a decision, their overwhelming preference is to make a without notice application. From the perspective of applicants, this is the only or most optimal way to address one, two or all three of their needs/key drivers.

19. In the main, this qualitative research suggests that a desire for legal representation is the key factor driving without notice applications, with urgent and time-sensitive issues and initiating action towards a decision being secondary drivers. Thirty-five of the 43 of applicants who participated in this research identified legal representation as one of their reasons for making a without notice application, with 26 indicating time-sensitive issues and 20 stating initiating action towards a decision. Some applicants suggested more than one reason.

20. Interviewed applicants, judges and lawyers spoke about the value in helping families to resolve their differences without having to go to Court, through the use of out-of-Court support and services. However, some applicants[5] in this research believe that FDR needs “more teeth” and suggest making FDR mandatory with consequences for non-attendance (for the non-complying party) and making the mediated agreement legally enforceable (at the time of the mediation, without having to apply to the Court for a Consent Order). Interviewed judges and lawyers suggest allowing lawyers to participate in FDR mediations because they add ‘a touch of reality’ to the mediation, emphasising the importance and seriousness of the process.

21. Some interviewed applicants and lawyers commented on the positive value of counselling (as distinct from pre-mediation and coaching). Interviewed applicants in particular recall accessing up to six counselling sessions. They acknowledge that, while it does not necessarily resolve differences, it helps parents to get to a state of equilibrium and assists them to be more ready to participate in mediation.

[5] Twenty-three of the 43 applicants indicated they had completed FDR. Note: that this may be an under-representation of FDR completion as the data was extracted from the qualitative interviews and it is likely that some the applicants will not have answered this question.

Without notice research

Introduction

22. In March 2014, the Government made significant changes to the family justice system. The purpose of these reforms is to ensure a modern, accessible family justice system that:

- is responsive to the needs of children and vulnerable people
- encourages individual responsibility, where appropriate
- is efficient and effective (Family Court Proceedings Reform Bill p.1).

23. Key changes were made to out-of-Court and in-Court processes, including:

Out-of-Court changes[6]

- Parenting Through Separation (PTS) was enhanced as part of the reforms and is a free information programme that helps families through separation. It provides parents with skills, tools and resources to help them stay focused on what is best for their children during separation.
- Family Dispute Resolution (FDR) supports separating families to reach an agreement about the care of children with the help of a mediator, without having to attend the Family Court. It is free for many people, with $448.50 per person being the maximum amount for those who do have to pay.
- Family Legal Advice Service (FLAS) provides initial advice to help people understand family justice processes, advise people of their rights and responsibilities, explain possible outcomes and assist with the completion of Court documentation. To be eligible for FLAS, people must meet the income thresholds related to civil legal aid.

In-Court changes

- Removal of lawyers from initial stages of on notice applications.
- Lawyers are able to represent parties when applications are made without notice, or the application is made concurrent to a different application type, or a judge directs parties to eb represented at a settlement conference, and other exceptions.
- Introduction of case tracks for proceedings under COCA.
- Section 46F of the Care of Children Act 2004 – judges are able to refer parties back to FDR after proceedings have commenced.
- Urgent applications filed via e-Duty[7] have introduced at the same time under a different legislative change.

24. The process for filing urgent applications was unchanged under the reforms.

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[6] Other changes of note reported by research participants included the removal of counselling (section 9).
[7] e-Duty is a technology initiative that links judges around the country so that a judge can immediately review and decide on urgent applications to the Family Court. Previously, local practices existed whereby applications were emailed to a nearby Court if there was no judge available in the Court of filing to deal with such an application immediately.

Background to the research

25. Prior to the reforms, the Family Court was the centre of the family justice system, especially for parents wanting to make care arrangements for children following separation. While most parents resolve matters themselves, help to do so, that is, through counselling, could only be accessed through an application to the Registrar of the Family Court regardless of whether parties wanted or ever intended to file Court proceedings.

26. The reforms changed the way in which the family justice system assists separating couples to reach agreement about care and contact arrangements for their children. The reforms shifted the focus from Court resolution of these disputes to encouraging parents to reach agreement themselves, where this is appropriate, and for the court to be used for the most serious or urgent matters.

27. Since the reforms, the number of applications filed without notice has more than doubled and continues to climb, even though no change was made to the without notice criteria. Prior to the reforms, the split of on notice applications to without notice applications was 70:30. This has now reversed (Table 1).

Table 1: Number and percentage of on notice and without notice Family Court applications

Family Court Applications filed under the Care of Children Act (excluding Hague)						
	Financial year totals					
	2011/12	**2012/13**	**2013/14**	**2014/15**	**2015/16**	**2016/17**
Total applications filed	25,375	22,496	22,474	18,755	19,098	18,702
Applications filed on notice	17,736	15,207	14,011	6,326	6,011	5,877
Applications filed without notice	7,639	7,289	8,463	12,429	13,087	12,825
Percentage filed without notice	30%	32%	38%	66%	69%	69%
Filed without notice - direction to proceed on notice			2,006	3,534	3,075	3,445
Percentage of without notice applications directed to proceed on notice			24%	28%	23%	27%

Source: Ministry of Justice, July 2017

28. According to the interviewed judges, lawyers and Court staff, this has significantly impacted on judicial and registry resources, reducing available resources to progress cases and hearing time for other types of applications.

Research purpose

29. The Ministry of Justice is seeking research into the causes of the increase in COCA without notice applications being filed in the Family Court since the Family Court reforms in March 2014.

30. The purpose of the research is to "provide information to the Ministry of Justice that will increase their ability to:

- explain what is driving this behavioural change
- explain the without notice trend to the Minister and other parties
- identify what the Ministry can do to influence this trend."[8]

[8] Ministry of Justice. (2017). Consultancy Service Order: Business and Finance Tier. Family Justice: Research into increase in urgent applications, p. 1.

31. First, the research seeks to understand the reasons driving applicants to make without notice applications since the reforms in March 2014; Second, the research examines the impact of the increase in without notice applications on involved parties (Court applicants, judges, lawyers and Family Court staff) and processes. Third, the research explores how and in what way the Family Court reforms have influenced the increase of without notice applications.

Research participants

32. In total, 59 participants contributed to this research. Participating applicants, lawyers and Court staff were based in two locations – Wellington and Christchurch (Table 2).

Table 2: Summary overview of research participants

	Wellington	Christchurch	Total
Applicants	20	23	43
Judges			3
Lawyers	3	5	8
Family Court staff	3	2	5
Total			**59**

33. Of the 43 applicants:

- 10 self-represented, while 33 used legal representation to file their most recent without notice application
- 15 had filed on notice applications prior to the reforms, and nine had filed on notice applications post the reforms
- 14 had filed without notice applications prior to the reforms, and 40 had filed without notice applications post the reforms
- 23[9] had completed FDR.

34. See Appendix 1 for a more detailed discussion of the research methodology.

Reading this report

35. This report sets out to amplify and prioritise the views and perspectives of parents/Court applicants. The perspectives and views of family law professionals (judges, lawyers and Family Court staff) are then contrasted with applicant views in relation to motivations and drivers. However, family law professionals largely provide the detail about the Family Court, law and processes for this report.

36. The report steps through the without notice process from the applicants' perspective. Court processes not visible to the applicant as well the impacts of without notice on family law professionals are discussed later in the report.

[9] Note that this may be an under-representation of FDR completion as the data was extracted from the qualitative interview and it is likely that some the applicants will not have answered this question.

Key findings

The role of the Family Court in helping parents resolve issues

37. In general, applicants use the Family Court processes to reach a resolution in their family-related disputes. It is the place parents go when other ways of resolving issues have failed.

38. Issues are generally focused around the day-to-day care of and contact with their children or, where they exist, seeking changes to existing orders.

39. All of the applicants in this research had variously attempted to resolve the issue(s) outside of the Court process, including some or all attending counselling, Parenting Through Separation, Family Dispute Resolution and talking with the other party where possible.

40. For most of the applicants in this research, a serious breakdown in communication between parents was evident, with in-person meetings or telephone conversations often not possible because of the stance of one or both parties. For most applicants, therefore, getting both parties 'around a table' on their own or with support to work things through was not an option. It had been tried before, and failed, or was not an option that one or both parties would currently entertain.

41. For participating applicants, the Family Court therefore is a place of last resort where applicants hope that issues will be resolved, a decision handed down and progress made.

> *The issues this time, the fourth or fifth, was just another matter in a long series of issues. Nothing had changed between us.. We are like boxers, squaring off in the corners, fighting for our kids … So Court was where we ended up, to get things sorted because we couldn't …* (Court applicant)

42. At the same time, the Family Court may be first choice of applicants, depending on the urgency of the matter and/or their perceived need for a judge to make a decision.

> *The advice from my lawyer was to get an order to keep my daughter from leaving the city... We (applicant and lawyer) talked through a range of options and some weren't applicable. It was about stopping the threat of my daughter being removed from the city.* (Court applicant)

> *I needed to apply without notice because my kids were invited to a wedding overseas and I needed to get permission to take them overseas. Making sure I met the cut-off date for sign-up for the kids was time critical. It would have been the experience of their life.* (Court applicant)

Key drivers to filing without notice applications

43. There are three key drivers that interviewed applicants identify as the reason they are motivated to file a without notice application. Judges, lawyers and Family Court staff also expressed similar views, largely concurring with these findings about applicants' motivations and reasons for filing a without notice application.

44. The three drivers identified by participating applicants are a desire for legal representation, urgent and time-sensitive issues and to initiate action towards a resolution.

Legal representation

45. Interviewed applicants wanted a lawyer to assist them to resolve issues through the Family Court. Most applicants did not believe they had the necessary knowledge and expertise to complete Court documents to a high standard, be able to speak well and coherently and be able to respond to questions appropriately. They wanted the services of a lawyer for multiple reasons.

46. Interviewed applicants expressed the following views:

- They lack an in-depth knowledge of the law and Family Court processes.

  I don't know my way around the law. I can't manipulate the circumstances to suit myself or work out what I need to do or can do because I just don't know the law and what my rights are … (Court applicant)

  I was naïve. I didn't know there was so much law involved in leaving someone when you have got kids. He went and filed a without notice, and I didn't even know that existed. I didn't even know I had to do any of that stuff, otherwise I would've done it when I left … I definitely think that the first one in gets the best say. (Court applicant)

- The law and Family Court processes are complex and difficult for a lay person to navigate.

  It was a foreign world to someone like me and probably to a lot of people. Understanding the language and what it means. It's a foreign language … But I think the big thing is you just don't know what to do and what is what, you know? … [and] it's like you stumble around in the dark, and the lights are always on low. (Court applicant)

  … the law, the Courts, lawyers, judges and how it all fits together, how it all works, and then you have the legal terminology – orders, directions, conferences. You hear it, or you read it, and you understand it [at] one level, but you don't really comprehend it, and you don't really know what it means. It's complex and a little overwhelming to be truthful. (Court applicant)

- They lack confidence in their ability to represent themselves well.

  I think it's really tough to think you can, well to expect you to be able to do the job of a lawyer. The [Family] Court staff give you the form and tell you what you need to, but you don't really know if you are filling it out right and putting in the right information … and then the decision goes against you … judge how well you did based on the outcome. (Court applicant)

  When it's about your kids, you want to do the best job, you know, because it's about your kids. But when you don't know the law and you don't know how the Family Court works and what judges are looking for and what you need to say or to put in the form, then you can't do the best job possible, you can't represent your kids well. (Court applicant)

- High levels of stress and feeling vulnerable emotionally make it difficult to do what is needed (i.e. represent themselves and their children well).

  I was a complete mess when I filled out that application, and as a result, my application was really incoherent. Not really to the point and it wasn't in order. I was trying to babysit the kids in the courthouse … [and] I wasn't in a good state of mind to be writing a focused thing like that with everything that was happening [at the time]. I was just trying to do what I needed to do. (Court applicant)

  It's difficult to distance your emotions from the process. It's emotional because it's about your kids, and it's emotional because it's about your life, your failed relationships all being laid bare

in the forms for someone else to read. And it's emotional because it's important … and so you're stressed to the max. (Court applicant)

- Emotions often run high, and a lawyer helps to keep their emotions in check and manage the process professionally.

  I've always opted for a lawyer. You need to take the emotion out of it and not let things get out of hand … and a lawyer's trained to do that. (Court applicant)

  So for me, a lawyer takes the emotion out of it. If my ex and I start in on each other, it just spirals into a slanging match, and it ends up going nowhere. So you need a lawyer to manage the whole process, to keep things professional and calm and not let the emotions run riot. (Court applicant)

- They are not always clear about what they want or what they should do, depending on what is happening for them and their children at any given time.

  I didn't know what I was going to do. Whether the [gang] was going to come back and whether I could even leave the house. I was considering whether I was even going to leave [the area] to get away from it all … when you're not clear about what you want, it's difficult to fill out the Court forms. (Court applicant)

  I think the process assumes or requires you to know what exactly you want there and then and going forward, which is probably fair enough … but I was in reaction mode, a bit all over the place really, and worried about my kids. So I don't think I did a good a job as I needed, because I just wasn't sure, hadn't thought things through … but we got there in the end. (Court applicant)

47. People who access the Family Court come from all walks of life and, as noted above, face a range of emotional and pragmatic barriers when interacting with the Family Court and Court processes. Given these rational and emotive factors, the interviewed applicants said they wanted the services of a lawyer to help them navigate the Court process and to help them put their "best foot forward".

48. Interviewed applicants consider lawyers to be the 'experts' and critical to getting the best result possible. Not only are they familiar with the Court system and legal processes, interviewed applicants said they bring a calm, confident and therefore reassuring persona to the situation. Lawyers are seen by applicants, Family Court staff and judges as effective navigators who can support applicants through the system.

49. In the case of self-represented applicants, interviewed judges, lawyers and Family Court staff said that it is challenging for these applicants to complete a without notice application and file it and manage it through the Court processes.

> *Education, confidence, emotions, vulnerabilities and day-to-day circumstances can put applicants at a disadvantage in the Family Court, well any Court for that matter. For example, it is likely that they will not have a good understanding of the technical aspects of the law, know what constitutes a good or high-quality application, let alone be able to assess the veracity of the other party's evidence beyond an emotive and reactionary response.* (Lawyer)
>
> *… how can we expect people to make good decisions for their kids when they are in this – not only the emotion of a separation – but "Shit, I am having to do this Court process myself, and you are asking me what my contact arrangements are going to be like. Are you dreaming?"* (Lawyer)

50. In most situations, lawyers were often the first port of call, based on applicants' past experiences with lawyers and advice from family members. The constraints on lawyers in on notice applications may further incentivise a without notice application.

Urgent and time-sensitive

51. Without notice applications by their very nature are urgent applications requiring a timely response. Interviewed applicants file without notice applications because, in their view, the matter is urgent and they need and want to reach a resolution as soon as possible.

> *Once I heard from my lawyer [about without notice], it was not the only option [but] it was what needed to happen because it was urgent.* (Court applicant)

52. Through the research with the 43 applicants, it became clear that there are two dimensions of without notice applications – serious safety issues and time-sensitive concerns.

53. On the one hand, there are without notice applications that specifically relate to safety and the risk of serious injury or harm to the applicant and/or their children. These applications usually involve issues of domestic violence, drugs may be an issue and often other agencies will be working with the applicant such as Police, Women's Refuge or Union of Fathers.

54. On the other hand, there are without notice applications that relate to time-sensitive cases that represent situations where there is not a risk of violence or serious harm, but there is a perceived need by the applicant for a timely decision to be made sooner rather than later.

> *I know from the last time we went through the [Family] Court that it took a while, and that was with lawyers helping you, which they are no longer allowed to do. So without notice was the only option as I needed something done now, well in the next week or so, not in [a] month or two months' time.* (Court applicant)

55. Children are typically an integral factor in these cases, and often one parent is unable to see their child(ren) until parenting orders are made or altered. This heightens applicants' desire for a quick decision as they desperately want to see their child(ren). Not being able to see their child(ren) is distressing. For these parents, they feel they are left with no choice but to seek resolution through the fastest legal avenue available, and they know this to be a without notice application.

56. Whatever the case may be, all of the participating applicants considered their situations to be urgent. This drives the applicant to the without notice application process, as it is the only option available through the Courts to deal with urgent cases.

To initiate action towards a decision

57. As noted above, the Family Court is a place applicants go to get help when they have been unable to resolve issues themselves. For the majority of participating applicants, they have tried a number of times to reach agreement. Indeed, most applicants maintained that Family Court was a last resort option to cut through relationship and communication barriers and/or issues of violence, drugs and alcohol.

58. More often than not, attempts have been made to solve problems through counselling and/or formal mediation. However, these have not worked, and there may be a complete breakdown in communication between the two parties.

59. Nevertheless, interviewed applicants speak of wanting to get on with their lives and "get unstuck". To do this, without notice is seen as the "quickest way to get in front of a judge", which, in turn, means decisions will be made, actions will be put in place and things will be progressed.

> *I needed the judge to make tough decisions. I didn't need mediation. Allegations had been thrown around for a long time. I didn't need to be brought together with my ex-partner … You know they made it that you couldn't get lawyers unless [it was] without notice? That's the difference.* (Court applicant)

60. When situations had reached a stalemate, as was the case with some of the applicants in this research, external intermediaries (and decision makers) were needed. Interviewed applicants, by their own admission, were no longer in a position to negotiate and communicate with their ex-partners to reach resolution. Interviewed applicants were typically in a state of high emotion that could include sadness, frustration and anger towards the ex-partner, particularly if they were acting in a way that was uncooperative. They said they saw lawyers and judges as suitable alternatives to setting action in place that would progress both parties towards a resolution.

> *We were stuck … We couldn't talk to one another except through another party, and that had always been through our lawyers … and that worked some of the time until things changed or something happened … and there was no trust between us … and even with our lawyers' help, we still couldn't agree on what should happen … Yes, so we need a referee who could make us see sense and make a ruling that we would have to stick to.* (Court applicant)

61. In summary, this research suggests that a desire for legal representation is the key factor driving without notice applications, with urgent and time-sensitive issues and initiating action towards a resolution being secondary drivers. Thirty-five of the 43 applicants who participated in this research identified legal representation as one of their reasons for making a without notice application, 26 indicated time-sensitive issues and 20 mentioned initiating action towards a resolution. Some applicants suggested more than one reason.

Process of choosing the without notice application

62. The three drivers – legal representation, urgent and time-sensitive cases and the motivation to initiate action towards a resolution – compelled participating applicants to seek out information about the Family Court and what their rights are. They do this based on:

- advice from lawyers
- Family Court information and resources including the Ministry website
- Information from Citizens Advice Bureau and Community Law Centres
- experience and familiarity with the Family Court system, specifically how long Court processes take and how much they cost.

63. From advice and information gained, applicants realise there are two main tracks: on notice and without notice. Table 3 sets out interviewed applicants' perceptions of on notice and without notice applications. It should be noted that not all applicants' perceptions are accurate or reflect the full range of actual options or processes.

Table 3: Applicants' perceptions of on notice and without notice process

On notice	Without notice
It is not possible to file straight away,	Applications can be filed immediately through e-Duty. Once filed, a response is often provided the same day or within 24 hours.
Must complete out-of-Court processes first[10] – PTS and FDR. FDR is free for most people, but there is a maximum cost of $448 per person if they have to pay. Participation is not mandatory nor are there consequences for non-participation, although applicants can get an exemption and then file.	
There is a cost of $220 to file the application. It is possible to file a fee waiver application if financial hardship applies.	There is a cost of $220 to file the application. It is possible to file a fee waiver application if financial hardship applies.
Applicants can only self-represent.[11]	Applicants can self-represent or have legal representation.
Orders are made on information from both parties – applicant and defendant.	Interim orders can be made based on one party's information.
There is a response time of 21 days (after the defendant is served).[12]	There is a response time for the defendant of three days (after the defendant is served).
	Possibility of legal aid support.

64. Interviewed applicants compared and contrasted the on notice and without notice options in the context of their personal situations. Once Family Court staff and/or lawyers explain the similarities and differences between the two options, the applicants weighed up the options. Based on their own needs (the drivers), interviewed applicants said that the choice is obvious. Given applicants' perceived urgency and/or seriousness of their case, the desire for legal representation and wanting to get some movement and make progress towards resolving care and contact issues, a without notice application is the only feasible choice they can make.

> *Well, there was really only one choice. When you weighed it all up without notice was, and you could have a lawyer … and you didn't have to do the mediation and you might be able to get legal aid. But really it was about having a lawyer and getting in front of a judge faster, getting a decision.* (Court applicant)

> *So say, for example, we have people come to the public counter here, one of the things the staff will give them is the proper forms, if they don't have them. Explain that it needs to be sworn or affirmed, and anything they want to attach to it needs to be annexed correctly as part of the affidavit swearing process. One of the things we must say to them is there are two ways you can do it – you can do it without notice or you can do it on notice. So on notice is normal and you have to attend FDR, and without notice is urgent and you need to satisfy the judge that there is a reason for it to be dealt with without hearing from the other person … So when you explain that to a lay person, they are just going to hear, "Oh, so that is done faster or that is urgent. Of course it is urgent, I want this or I want that."* (Family Court staff member)

[10] While parenting order applications and dispute between guardian applications usually require PTS and FDR to be completed first, it is possible to file such applications directly in the Family Court in combination with an application to be exempted from PTS and/or FDR as appropriate.
[11] Legal representation is possible following initial stages.
[12] It is also possible to file an application for the reduction of time for the respondent to reply within less than 21 days.

On notice requirements impacting on without notice applications

65. Most of the interviewed judges, lawyers and Family Court staff in this research believe the on notice application process and the prerequisite to complete FDR before commencing that process, is contributing to the increase in without notice applications. As illustrated in Table 3, the current system requires that all applicants who want to file through the Family Court must first attend FDR unless they apply for an exemption or choose the without notice track.

66. Interviewed applicants believe that a without notice application was timely because it bypassed FDR, had shorter response timeframes and was considered by a judge more quickly.

67. Applicants in this research who had sought legal advice from lawyers reported they were typically advised that they needed to complete PTS and FDR if they had not already done so (as a suggested first step), unless their case involved safety issues and the risk of violence or removal of a child from the country. However, in most cases, interviewed applicants were more interested in getting to Court to get a decision made.

68. Participating lawyers reinforced this view, commenting that advice around completing FDR was not always well received by applicants because of the perceived time delays and cost, especially if applicants thought their case was urgent.

69. A shared view among most of the interviewed judges, lawyers and Family Court staff is that cost is one of the major barriers for applicants in choosing not to complete FDR. As noted earlier, while FDR is free for most participants, for those who have to pay, there is a maximum cost of $448.

70. For applicants in this research, while cost is definitely an issue, they state that there are other factors – and some suggest stronger barriers – that need to be considered in relation to completing FDR. This includes there being no consequences for non-attendance (for the non-complying party), both parties needing to be reasonable, the final mediated agreement not being legally enforceable and the time taken to complete the FDR.

71. In addition, researchers are of the view that interviewed applicants did not always work out whether they will have to pay for FDR. At the time of making a decision, they are weighing up a number of factors including timeliness, getting in front of a judge, getting a decision, attending FDR as well as cost as part of a broader set of decision criteria. It is therefore not clear how significant a factor cost is in completing FDR.

Out-of-Court processes seen as valuable

72. In principle, interviewed applicants said they like the idea of not going to Court and ideally would like to be able to settle out of Court. In this regard, out-of-Court processes are seen as valuable. They recognise the benefits of mediation as a way to resolve conflict and reach a resolution, and they acknowledge that FDR has the potential to work well. However, from applicants' point of view, this is only the case where both parties behave reasonably and engage in the process with the intent to reach agreement and compromise. When this does not occur, lawyers (and by implication without notice) were seen as a better option.

73. Participating applicants identified these aspects for FDR to be effective:

- Attendance needs to be mandatory.

  I was going to do mediation, but [my ex-partner] was not interested. I wasn't sure what other options I had after that. It was an impossible situation. I went to mediation, he never turned up. (Court applicant)

You can't have a conversation with yourself, well you probably can. But you definitely can't mediate with yourself. So if we're serious about progressing things, getting to an agreement out of Court, then you need both sides to be attending (Court applicant)

- There needs to be consequences for non-attendance.

  At the beginning, counselling should be compulsory. The counsellor would get to the bottom of what's going on and make recommendations. Maybe then a parenting order would fit. There should be consequences for not turning up to mediation or the parenting programmes, otherwise what's the point? (Court applicant)

- Both parties need to be reasonable.

  [FDR] is good in principle because it can help you talk things through and maybe get things sorted without going to Court … [and] be helpful if you do end up in Court or before a judge. But that requires both parties to be reasonable and willing to enter into the spirit of the mediation with the best interests of the kids at heart. Sadly, that is not the case with my ex-partner. [My ex-partner] is inflexible, unreasonable … and not willing to compromise. So it was a complete waste of time, and we're on our way back to Court, which is where I knew we would end up anyway. (Court applicant)

- The mediated agreement needs to be enforceable without having to apply to the Family Court.[13]

  It was toothless. The agreement wasn't enforceable, and based on the pattern of behaviour, her behaviour, whatever we agreed to would be out of date the next week because she would have changed her mind, and sure enough she did … so it was a waste of time.

  I think for the time and cost involved, you want something that's enforceable. And being enforceable means that this is serious, we're not mucking around here and there are consequences … and you're kinda saying that this process has the mana of a Court, without having to go to Court. (Court applicant)

The role and influence of lawyers

74. Interviewed applicants say they feel reassured by the presence of lawyers who provide a cool head in what is very often a stressful and at times emotionally charged situation. Lawyers also help to create a level playing field addressing perceived power imbalances and are seen to have the knowledge and expertise to navigate the Court system and represent applicants well. Interviewed applicants said that they feel more reassured that the situation will get resolved and they will be able to make some positive forward progress with the involvement of a lawyer.

75. Overall, most interviewed applicants saw the without notice track as the more attractive option, and it was chosen because of its perceived ability to meet personal needs and drivers, having fewer hurdles and barriers, facilitating progress towards faster decisions and potentially being less expensive due to the possibly of obtaining legal aid.[14] "Better, faster, cheaper" is the phrase that colloquially captures the motivations and benefits of without notice applications.

[13] It is possible to apply to the Family Court to make the mediated agreement into a Consent Order.

[14] Legal aid is considered a loan and may be required to be paid back. The eligibility criteria for legal aid is linked to that of FDR and FLAS, therefore it is likely people can receive both these services for free if eligible for legal aid.

76. There is a sense by some interviewed Family Court staff that lawyers are, to some degree, influencing the uptake of without notice applications, which in turn is driving the increase in the number of without notice applications being filed in the Family Court.

77. However, participating lawyers say they are very clear about their ethical obligations to both abide by the law and serve the interests of their clients. Lawyers who did end up filing without notice applications indicate that the best interests of their client is what drives their actions, which may include filing a without notice application if that is the option that meets client needs.

> *Because we have got a huge obligation when we are certifying the without notice applications that they meet the criteria … We must adhere to the rules … and it's not just about the rules, it's about our professional reputation. You don't want to be hauled over the coals by the judge, by the Court.* (Lawyer)

78. Interviewed lawyers commented that, in the first instance, they advise clients about out-of-Court processes (and this is confirmed by applicants) and also explain the without notice threshold. This is not always met with much enthusiasm by clients because, as mentioned earlier, they are interested in getting a decision and resolving the matter as soon as possible and generally see their situation as one that needs to be treated with some urgency.

> *You explain the process to them and [the] clients, and they are trying to come up with more and more, "Right I want to get it over the threshold" and they will sit here arguing with you saying "No, no", and you know from their perspective it's all urgent and they want it dealt with. It's interesting that clients want to go to Court, they don't want to do FDR … they are trying to move it along.* (Lawyer)

79. Interviewed lawyers said that it is challenging to provide a responsive service that takes into account the needs and personal context of the client when there is a set of steps that must be adhered to prior to being able to act on behalf of the client.

> *The FLAS system feels like tick box lawyering. Because it doesn't matter what their problem is, you are still sending them down the same track … it is not a personalised service.* (Lawyer)

80. As discussed later in the this report, the shortage of family lawyers alleged by some applicants in this research, and the limited remuneration for such work that participating lawyers spoke about, suggests that family lawyers are not interested in producing increased without notice cases.

Process of filing

81. Applicants must first choose to self-represent (i.e. no lawyer) or obtain legal representation. This decision is commonly determined by the experience and familiarity the applicant has with the Family Court. In many cases, where applicants choose to self-represent, they are reasonably familiar with Court processes, are experienced in navigating and working through systems and feel confident enough about representing themselves.

82. Regardless of being self-represented or legally represented when filing a without notice application, a number of factors must be considered, the most salient being the threshold criteria that applications are based on.

83. Without notice applicants must clearly show that not applying without notice would or might entail serious injury or undue hardship or risk to the personal safety of the applicant or any child of the applicant, or both. Self-represented applicants, therefore, must understand what is required to put their best case forward.

84. Research participants highlighted the differences between self-represented and legally represented applications:

- Self-represented applicants do not understand threshold criteria and file substandard applications that do not provide clear factual information. Information is often emotionally loaded and not focused on recent events but provides a tirade of past insults and hurts. Applicants may feel disappointed, confused and/or angry when the judge does not accept the application and an interim order is not made.

  I had one and a half hours to fill out [the] application. I was upset and stressed. The application raised issues [the judge] couldn't justify as being urgent, so it went to on notice. I can see why I didn't give just cause, I wouldn't have given it to me either. Later, I looked online. I should have got advice from a lawyer. Law is about facts, and [the application] needs to be factual. I should have stepped back and made a good case rather than an emotional case. (Court applicant)

- Legally-represented applications are filed correctly and contain relevant information that clearly relates to each threshold criteria. Information is based on a summary of facts with dates and times that are recent. Lawyers are aware of all options within the law to maximise the value of a without notice application and get the best possible outcomes for their client.

85. All without notice applications are filed with the Court if required to be determined by a judge are processed via e-Duty. This is an email platform where judges who are rostered on throughout the country consider the applications. Applications and supporting documents are submitted onto the platform for consideration. Assessment is done electronically. Judges complete a memorandum having determined whether orders should be made. The memorandum identifies any orders made or other directions (such as appointment of lawyer for child, supervised contact) as well as reasons for the order not being granted. This is then emailed back to the Family Court case officer who will then distribute it to the parties involved.

86. To ensure that applications have the best possible chance of being dealt with on the same day, they must be filed earlier in the day to ensure they are received, processed and placed onto the e-Duty platform before 3.30 pm. There are two exceptions to this:

- Any application that is filed by the Ministry for Vulnerable Children, Oranga Tamariki due to the chance of a child being uplifted.

- An order preventing removal of a child from the country.

87. Interviewed Judges, Family Court staff and lawyers said that without notice applications need to be completed to a reasonably high standard to ensure that the case will be understood and responded to as required. Based on what has been said by the research participants, many applicants who self-represent are at a significant disadvantage, as they do not have the necessary knowledge or skills to file a high-quality without notice application.

> *… here they are [in the] legal process. You don't fly a plane yourself. You don't fix your car without a mechanic. What makes you think you can be a lawyer? … at the end of the day, they are not legally trained, and providing relevant evidence and all that kind of stuff is definitely [about] understanding the law.* (Family Court staff member)

88. Interviewed self-represented applicants whose applications had been denied supported this view, stating reasons of not having a clear understanding of the without notice process and what was required in the form.

Did I do a good job, did I present my case well? Probably not, no definitely not. The order was turned down so I didn't get what I wanted, even though I thought I had a good case … The judge makes the decision based on what you put in the form, and I probably didn't do so good there, and I really wasn't sure what went where and what I needed to include. (Court applicant)

Outcomes of without notice applications[15]

89. From the research, there appear to be two main types of without notice applications filed with the Family Court:

- Urgent cases where the applicant and/or their child(ren) are at risk of serious danger or harm.
- Non-urgent cases where the applicant and/or their child(ren) are not at risk of serious danger or harm but there are concerns of a time-sensitive nature that require a relatively quick response.

90. Depending on the applicant's situation and the context and factors of their application, a number of outcomes may occur.

Urgent – safety concerns

91. The without notice application is filed, threshold criteria are met and the without notice claim is accepted. A response is generally received the same day or within 24 hours, and in most cases, an interim order will be made. This ensures the safety, care and protection of all parties involved.

Not urgent – time-sensitive concerns

92. The applicant has a sense of urgency despite the fact that the application does not meet the threshold criteria of serious risk and safety concerns. However, from the applicant's perspective, there are pressing concerns that need to be dealt with promptly. What interviewed applicants state (and participating judges, lawyers and Family Court staff largely agree with) is that this type of without notice application is declined (i.e. no interim order). However, research participants also spoke of cases in which judges directed the application be placed on notice while remaining on the without notice track.

93. In cases where without notice applications are declined, the judge is still able to make a range of directions including directing applicants to complete FDR.

94. From the perspective of interviewed Family Court staff, directives by judges to complete FDR do not seem to be made often.

95. The three Judges interviewed in this research commented that FDR had merit and was a valuable tool to aid resolution of issues, but that there was also a stated preference to utilise directions conferences and only refer to FDR if they felt it is appropriate.

96. FDR was seen as one of the pathways towards dispute resolution. It appears from our limited engagement with the three Family Court judges during this research that they are highly aware of the responsibility that comes with their position, care deeply about the impact of decisions they make, consider the facts and needs of both parties and then decide on the most appropriate response.

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[15] This report has been structured to largely follow the process as experienced by the applicant. The work of Family Court staff in preparing applications is discussed later in this report.

Impact of increased without notice applications

97. Based on what has been said by participating judges, lawyers and Family Court staff, the increase of without notice applications has placed more stress and pressure on the judicial and registry resources of the Court. They consume more Court time and reduce available resources to progress cases for hearing time for other applications.

98. The research identified that one of the main impacts, as noted by judges, lawyers and Family Court staff, is what the researchers have termed a new 'middle ground' within the Family Court, where time-sensitive issues are expanding the scope or pushing out the boundaries of without notice applications. The other main impact of the increase in without notice applications noted by research participants is the increased workloads of judges and Family Court staff and a reduction in the number and availability of Family Court lawyers.

Time-sensitive issues are expanding the scope of without notice applications

99. As has been explained earlier, there are two main provisions for people who need to file applications in the Family Court – on notice and without notice. The on notice application is for non-urgent cases where there is no risk of harm or undue hardship. It requires both parties to present their case before an order is made and typically takes 21 days from the time it has been served. More importantly, the on notice track does not allow lawyers to be involved in initial stages.

100. Without notice applications are focused on issues of serious injury, undue harm, risk to the safety of the applicant and/or their children and the risk of children being removed from the country. It is possible to receive an interim order immediately, and lawyers are able to be involved.

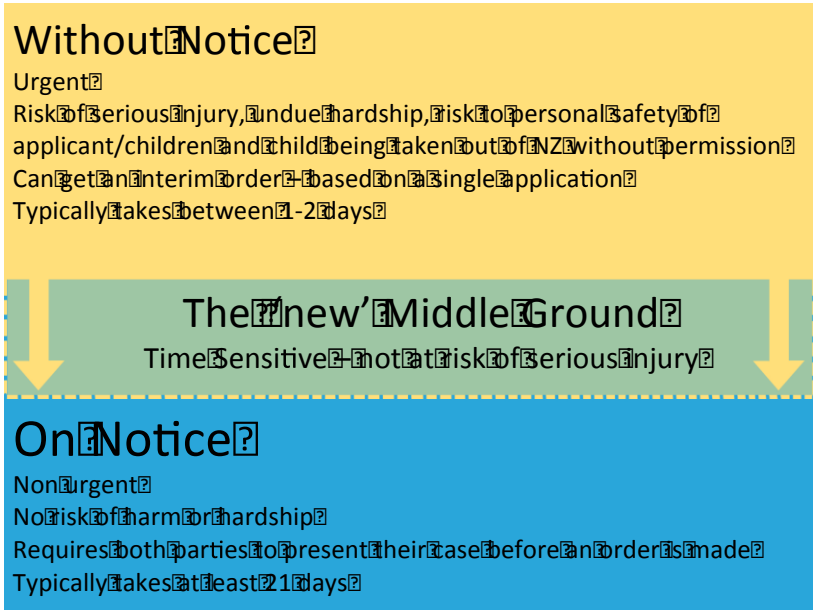
101. What we know from this research is that nearly most interviewed applicants consider their own situations as "urgent". A new middle ground has been created where time-sensitive issues – not at risk of serious injury – are being processed through the without notice process. In practice, we are seeing an expansion of the scope or parameters of without notice applications.

102. These cases need to be dealt with promptly but not urgently. From the applicant's perspective, based on the experience and knowledge of the Family Court and the advice they receive from their lawyer if represented, there is no other timely process in the current system.

103. This view is also shared by interviewed judges, lawyers and Family Court staff.

104. As a consequence, these time-sensitive issues are being progressed through the without notice track (Figure 1).

Figure 1: Expansion of without notice boundaries to include time-sensitive issues



105. Interviewed applicants see the benefit of this as it allows them to have their needs met, and it is a means to receiving legal support and potentially legal aid. It is acknowledged by all research participants that the without notice track can help applicants jump the queue (in front of on notice applications) and gets them "in front of a judge" faster.

106. It appears that lawyers and judges are facilitating the expanded scope of time-sensitive without notice applications because, in their view, they need to be progressed and there is no other timely mechanism within the current Court processes to do this. They do this in a number of ways:

- Lawyers use the 'undue hardship' provision to make a case and thus meet the threshold criteria.
- Lawyers file on notice with a memorandum for a reduction in time.
- Judges err on the side of caution, and the application is placed on notice while remaining on the without notice track.

This in effect largely gives applicants what they want: legal representation, timely consideration and a decision that progresses the issue.

Without notice applications have significantly increased Family Court staff workloads

107. As discussed above, the without notice application acts as a prioritisation mechanism that effectively allows applicants to jump the queue and get their cases heard faster. This appears to have had an impact on Family Court staff, their workload, stress levels and general feelings of job satisfaction.

108. Interviewed Family Court staff report currently managing between 110 to 130 case files[16]. Each one of these cases represents a family and may involve care of children, domestic violence, adoption and/or property matters. When a without notice application comes into the Family Court, staff immediately respond, and the without notice application takes priority because of the potential for harm.

[16] Cases loads vary across Family Courts and these figures pertain to Wellington and Christchurch Family Courts.

109. Interviewed Family Court staff said that without notice applications can take up to two hours to process, and usually there are four to five applications per day. Due to increased workload from the increased volume of without notice applications being filed, interviewed Family Court staff said that there are situations in which registry staff struggle to attend to their caseloads.

> *Because you are always putting out fires, perhaps even more than anecdotally that's certainly contributing to the overall age of the cases. Because files that need something done to them are essentially languishing because our focus is elsewhere.* (Family Court staff member)

110. Interviewed Family Court staff said that there are instances of staff having to work outside of their regular hours to complete filing without notice applications. If a directive from a judge is received between 4.30pm and 5.00pm, they are obliged to stay and complete the job, which will include making contact with applicants and/or lawyers to inform them of the decision. Interviewed Family Court staff said that they are sometimes working outside of their regular hours as they try to catch up with the work required by their caseloads. This is proving to be stressful as Family Court staff are under constant pressure, finding it very difficult to make progress.

> *You come in to work in the morning with a plan of what you are going to do and what you are going to try and achieve in a day, and it gets blown out of the water because you get without notice applications coming. So just that psychological effect of making any headway and always treading water is detrimental I think.* (Family Court staff member)

Impact on judges

111. One of the flow-on effects of the increase in without notice applications is that interviewed judges said that registry staff are struggling to deal with the case management of without notice applications. When tasks are not completed, judges' time is wasted, and hearings and other tasks have to be rescheduled, further adding to the congestion in the Court.

112. Interviewed judges also said that another impact of the increase in without notice applications that time spent on without notice applications means that judges are not available for other work. Interviewed judges said that there has been no additional judicial capacity to offset the increased volume of without notice applications, and both judges and Family Court staff state that it is taking longer for all matters to be processed through the Family Court.

113. Interviewed Judges and Family Court staff comment that lack of capacity is not solely attributable to the increase in without notice applications but in their view, is also a reflection of the long-term under-resourcing of the Family Court.

There are fewer Family Court lawyers

114. A number of interviewed applicants highlighted the difficulties they faced when trying to engage a lawyer to represent their case. Often multiple phone calls were made before finding a lawyer who was available and/or willing to represent them or the applicants had limited choice as to who could represent them as only one to two possibilities existed.

> *I rang up my old lawyer's firm, but he is no longing doing Family Court work. I had to ring four or five … lawyers before I even got to talk to someone who might be able to take me on … Yes, I think it took me about three or four weeks to get a lawyer.* (Court applicant)

115. Similar views were also expressed by interviewed lawyers and judges.

116. Interviewed judges and lawyers claim that one of the consequences of the reforms and changes to legal aid entitlement criteria is that the field of family law is now less attractive to lawyers and legal

firms. Participating lawyers said that it is not financially viable to practise family law given the level of remuneration (unless they use new and less experienced lawyers).

> *… we are seeing good lawyers dropping away because why would you want to only get $150 for what used to be six hours work? They have to still be incentivising good experienced lawyers to do this kind of stuff, otherwise really difficult cases are being done by people who don't know what they are doing.* (Lawyer)[17]

117. Based on what has been said by participants, there now appears to be fewer lawyers practising family law and now more difficulty for applicants to get legal advice.[18] This apparent loss of experienced family law practitioners means that the quality of legal advice and representation that some applicants are receiving is now below par.[19]

Capacity and workload pressure on Family Court staff increases the risk of harm to applicants

118. Interviewed Judges and lawyers are of the view that capacity issues are not just a result of the without notice application increase. As noted earlier, resource capacity has been stated as an issue for the judicial system, particularly the need for more judges. However, the increase in without notice applications appears to be exacerbating the resource issues. In the worst-case scenario, this could create a situation where serious harm could befall an applicant because the application was not seen in a timely manner.

119. It is important to point out that interviewed Family Court staff and lawyers did speak about alternative routes being taken in cases where there is the likelihood of serious harm and/or the risk of a child being removed from the country. Despite deadlines (e.g. e-Duty), a late application will be placed in front of a judge, and Police will be contacted if they are not involved already. Lawyers will often also ensure that safety plans are in place to ensure that the applicant and children (if applicable) are safe after the initial interim order has been served.

120. There are also a number of impacts that filing a without notice application have on proceedings, intended outcomes, resolution and other parties. These are largely dependent on whether the application has been filed by a self-represented or legally represented applicant.

Self-representation

121. When applicants are self-represented, participants said that this often demands more time of the Family Court staff and judges.

122. Despite information being available online and print information being available in the Courts and from a range of community organisations, interviewed Family Court staff say they still need to spend time explaining the procedure, terminology, Court processes and requirements to self-represented applicants.

123. Interviewed Family Court staff said they walk a fine line between providing information and giving legal advice. Parents and applicants try to elicit as much information as possible from Family Court

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[17] The reference to lawyers' pay appears to be in relation to the change in legal aid payments from hourly rates to fixed fees, which was not part of the 2014 Family Court reforms. The introduction of fixed fees, and the rate at which they are set, was a decision of the Legal Services Commissioner.

[18] There does not appear to be any significant decrease in the number of approved and available family legal aid lawyers. In July 2014 there were 1,139 family legal aid lawyers listed, and 1,031 as at July 2017. The small reduction was not unexpected due to the greater number of people using out-of-court alternatives.

[19] The Ministry regularly audits legal aid lawyers by reviewing the quality and value of their case files. There has been no trend showing a reduction in lawyer quality in the family area of law since 2014.

staff, who have to be careful to avoid breaching the offence provisions of the Lawyers and Conveyancers Act 2006. The Act prohibits a person who is not a lawyer carrying out the work of a lawyer such as giving advice.

> *One of the challenges for our staff is self-represented people are constantly asking for legal advice. Now they can't give legal advice. What they can do is explain the process and explain the options. And if someone says what should I do, they are not able to advise them. So that is the domain we have got to be very careful about. We can give them process advice and administrative advice, but we cannot stray into the area of legal advice. And that's often what self-represented parties are seeking when they present at the public counter or when they phone up.* (Family Court staff member)

124. Interviewed Judges said they need to manage the self-represented applicants, by 'hand-holding' them through the Court proceedings. This not only increases the amount of time in Court but also places the judges in a vicarious position where they could be seen to be non-objective and working in favour of the self-represented party.

125. Conversely, interviewed judges commented that legally represented cases can typically be heard and responded to in around five minutes due to the expertise and knowledge of lawyers. On the other hand, self-represented cases often extend beyond the 15-minute time allocation. With lawyers no longer being available through the on notice track (initially) and the option of self-representation for without notice applicants, lawyers are effectively being moved out of core parts of the system.

Legal representation

126. Generally, interviewed applicants said they felt they were under considerably less stress when lawyers supported them with getting the correct information together and the subsequent proceedings that followed. Although this came at a financial cost, it alleviated some of the emotional cost. In a few cases, applicants discussed how, without the lawyers from both parties, a resolution would not have been met, as all communication between themselves and their ex-partner had stopped.

> *You can't read or write – nervous wreck – it's so challenging – it's opening up a Pandora's box. Lawyers know what to do.* (Court Applicant)

127. Although interviewed applicants said they were not always happy with the outcome of the proceedings, a minority claimed that they understood and appreciated that everything within family law jurisdiction had been done to assist them.

128. Interviewed Judges also said that the involvement of lawyers in Court proceedings ensured that cases were heard in a timely fashion during the hearings and applications were clear and concise. The benefit of this for applicants is that their case is argued well.

129. One of the questions posed by some research participants, was whether lawyers are partly responsible for creating the increase in without notice applications. In a few instances, participants said there is a feeling that lawyers are acting in a way that borders on professional self-interest.

130. As stated previously, lawyers maintain that in the first instance they advise clients about out-of-Court processes. However, this is not always well received by clients, as they generally see the situation as urgent and therefore want to meet with a judge as soon as possible.

131. Interviewed Judges, lawyers and most Family Court staff were of the view that the best interests of their clients i.e. applicants is what drives Family Court lawyers.

Access to justice

132. According to a number of research participants, including applicants, access to justice is seen as:

- lawyers acting for you
- an even playing field – a fair, non-discriminatory system
- everyone's right to have their day in Court, if they wish, where a judge, as the voice of reason, common sense and logic, helps to progress towards a resolution.

133. A number of research participants question whether, in the current system, justice is being served:

- Only being able to have lawyers act for you when a without notice application is filed, means only being able to use lawyers when things have reached a level of urgency and crisis.

  There is this group that aren't getting what they need. And you say, yes, it could turn into without notice [but it isn't right now]. Then one throws a punch and then you know I feel like we are not servicing those clients in the way we should. Because they come in and we can't help them. That's how it feels. Just doesn't sit comfortably I think with all people who do this job because they want to help people. And then that's your outcome. Just horrible. (Lawyer)

- There is insufficient support for self-represented applicants. This leads to applications that are often filed with incorrect and irrelevant information.
- Self-representation in a system that is built upon procedures that are difficult for the lay person to understand results in situations where people are unlikely to represent themselves well.
- The ability to pay for legal advice is seen to provide an unfair advantage

  It is not a fair process. The system is divisive. It is not free, not available to everyone. It is a user-pays system. When the changes were made, whoever has the lawyer now wins. (Court Applicant)

  We have been told our job is to get you and your documents ready for Court and that's it. And obviously [there are] people who, if they are private paying, can have me sit outside the courtroom and tell them what they need to say. But they are the people who least need the help, and that's what gets me. (Lawyer)

134. Without notice applications can be viewed as a way for applicants to get access to justice. Indeed, without notice does become a legitimate option and avenue to work towards a resolution if a fair justice system equates to:

- being responsive to the needs of children and vulnerable people
- encouraging individual responsibility, but only where appropriate
- operating efficiently and effectively (which implies timeliness and meeting needs of clients).

  Access to justice is fundamental, but the new regime doesn't remove that, and that's where the without notice comes in and that's why everybody is using it … because at the end of day when you are in Court, things are going to get resolved. (Family Court staff member)

To what extent have the Family Court reforms influenced the increase in without notice applications?

135. The Family Court reforms have had a significant influence on the increase of without notice applications. Compared to pre-reform applications, the split of with notice to without notice COCA applications was 70:30. This has now reversed.

136. The critical factors influencing the increase identified in this research are the removal of lawyers from a substantive part of Family Court processes and the lack of a middle ground or pathway within the Court to hear time-sensitive issues as well as changes to out-of-Court processes.

Removal of lawyers

137. A key initiative of the 2014 reforms was the removal of lawyers in the initial stages of COCA proceedings on the on notice track. However, the without notice urgent application process was left unchanged and so applicants are using this process to secure legal representation. This has resulted in a significant influence on the increase in without notice applications.

138. Interviewed applicants in this research expressed a preference for settling out of Court. However, this was often not possible due to a range of factors such as past histories, inter-personal dynamics, and a breakdown in communications. When these types of factors apply, parents need the assistance and direction of the Family Court to reach an agreement.

139. Participants in this research spoke about the critical role of lawyers in the Family Court. Interviewed judges and lawyers commented that, in their view, the reforms removed lawyers from parts of the Family Court processes for reasons of cost and to promote a less adversarial Court process by promoting and supporting families to resolve their issues outside of the Court. Again, in the view of the research participants, an unstated assumption of the reforms was a perception of lawyers as contributing to the adversarial nature of Court proceedings and fuelling litigation for their own ends.

140. Interviewed judges, lawyers and Family Court staff see lawyers as a valuable part of the Family Court system.

> *I think the reason why it is very uncommon to see a judge not allow people to have lawyers [is] because having lawyers makes things so much easier for the process. We are often faced with illiterate people. Expecting them to fill in a form is completely unreasonable. And when you are wanting to get to the heart of the matter and cut through all the emotion and things, it's what lawyers do … because lawyers are a valuable part of the process.* (Family Court staff member)

141. All research participants believe there is a need for an increased role for lawyers within the Family Court system, and indeed some would like them fully returned to the Family Court system.

Quality assurance – risk management

142. Interviewed judges, lawyers and Family Court staff said that, prior to the reforms, there were a number of quality assurance measures in place, particularly with the involvement of lawyers in on notice and without notice applications and the triage system. They said that these components helped to manage risk and provided a number of opportunities for people to assess applications. In the opinion of some research participants, lawyers and triage also help to de-escalate or control situations that, if left unattended, may become a full-blown crisis.

> *I think that, because we lost that ability to triage applications under the old regime, we are now at a point where we are just trying to put out fires. You have to some degree lost the*

ability to prioritise. Because your priority has been dictated to you by applications that are filed without notice. Because you are always putting out fires – perhaps even more than anecdotally that's certainly contributing to the overall age of the cases. Because files that need something done to them are essentially languishing because our focus is elsewhere. (Family Court staff member)

143. Judges are now responsible for managing most of the risk around without notice applications. More often than not, judges manage this by placing cases of concern on notice while keeping them on the without notice track.

144. Currently, judges are the sole reviewer of all without notice applications. This was seen by some research participants as an expensive and poor use of judicial resources. Interviewed Family Court staff are of the view that it may be possible to identify those that are urgent, where applicants are at risk of serious harm, compared to those where there are time-sensitive concerns that need to be dealt with sooner than the on notice application process accommodates.

145. Interviewed Family Court staff did speak about how they used to play a role in the triage of applications, but currently their role does not involve this.

> *Dealing with a without notice application when it first comes in is a one-to-two hour job, where under the old system the application could come in, you would enter it, triage it and put it where it belongs … The new regime, it basically actively encourages people to litigate without notice in the first instance. And then once the dust has settled, we will take a step back and look at settlement. So I don't see that as necessarily bad. It is working. People are getting in to Court. But it doesn't need to be this top heavy.* (Family Court staff member)

146. A number of research participants draw an analogy with the health system, where patients are assessed within accident and emergency and then placed with the most suitable medical specialist or support system.

Out-of-Court processes

147. From the perspective of the interviewed applicants, out-of-Court processes add time and cost to their overall all goal of getting a decision and/or resolving the issue. In relation to FDR,[20] interviewed applicants[21] identified barriers such as parties that are unreasonable, refusal of one party to participate, the agreement requiring a separate Court process for it to be enforceable and the belief that FDR will be of little value given the personal history and current situation. Unintentionally, the out-of-Court changes are impelling applicants towards the without notice track.

> *And the without notice track allows you to skip [FDR and PTS] at least in the first instance and have your application considered by a Judge on the same day. Now without prompting them to take one decision or the other, because ultimately it is their choice, they can see from their point of view the most sensible option. And the most sensible option is the without notice. We can't prevent people from applying without notice.* (Family Court staff member)

148. As has been explained by a number of research participants, in many cases, people will continue to "muddle along", and the situation worsens to a state of crisis. Again, the health system is used as a useful analogy. People do not go to see a doctor because of cost or the belief that the doctor will have

[20] Of the 43 applicants, 23 indicated they had completed FDR.
[21] It should be noted that these comments are from without notice applicants (i.e. Family Court users) for whom FDR was not successful or who bypassed FDR. They therefore do not reflect the views of people for whom FDR helped to progress matters and/or resolved the dispute.

nothing valuable to say. Health deteriorates, and eventually they end up in accident and emergency with a serious health condition.

> *There are all sorts of reasons [for the increase in without notice]. One because the out of Court stuff is so difficult to access that people either don't access it or they give up while they are trying to access it. And because it is expensive … It's a bit like lots of people don't go to the doctor and you end up at A&E. Because something that could have been treated at the doctor has turned into a raging infection. And so I think that's in part why [without notice] has increased.* (Lawyer)

149. Despite perceived barriers, there is a sense amongst the majority of research participants that FDR could be of greater value and more effective if the barriers discussed earlier could be addressed or diminished.

> *He wouldn't pay for mediation so I said I would, just to try and get something happening. He still didn't turn up. What was the purpose of it all? Just more time and money?* (Court applicant)

Conclusions

150. This research identified three key drivers for the filing of without notice applications as:

- a desire for legal representation
- urgent and time-sensitive issues
- to initiate action towards a decision.

151. Based on what has been said by interviewed applicants, judges, lawyers and Family Court staff, there is a perception that the Family Court is less efficient since the reforms and there is reduced access to legal advice and representation for applicants. The most significant impact of the reforms is on applicants. Prior to the reforms, applicants could have legal representation from the outset if they were filing an on notice application. This is no longer an option, and interviewed applicants said that a desire for legal representation is the key factor driving them to make without notice applications.

152. Interviewed participants said that other impacts of the reforms include:

- an increased expectation for applicants to do more and know more to work out their options, adding stress to an already stressful situation
- an increased expectation for applicants to self-represent, adding stress and anxiety around not having the necessary expertise to represent themselves, their children and the issue sufficiently well to achieve the desired outcome.

153. Research participants said that the changes have increased the stress on applicants, exacerbating existing and new tensions and further entrenching the views of both parties. As a consequence, issues can take longer to resolve and the potential for harm for applicants and their children is increased.

154. Based on what has been said by applicants, judges, Family Court staff and lawyers who participated in this research, the 2014 Family Court reforms have significantly influenced the increase of COCA without notice applications. This research suggests that the removal of lawyers from the initial stages of on notice COCA applications and the lack of a middle ground or pathway within the Court to hear time-sensitive issues are the critical factors for this increase.

155. Interviewed applicants and family law professionals did speak about the importance of resolving family differences out of Court, where appropriate, and getting help to do this, but they emphasise that the Family Court is where New Zealand parents and families go when they need help to solve issues they cannot resolve themselves.

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Appendix 1: Research methodology

Research design

156. The research employed a qualitative design. Qualitative research is appropriate when the aim of the research is to understand the motivations and reasons for a particular behaviour or action – in this case, applicants' motivations and reasons for a without notice application.

157. The research utilised a purposive sampling approach. The research participants were selected because of their experience in the Family Court and without notice application process.

158. The research was iterative in nature. As insight and learning was gained through the research, emerging themes, understandings or puzzling aspects were tested or explored with research participants.

Research methods

159. The research employed two main qualitative methods: document review and individual interviews based on semi-structured interview guides.

Participants

160. In total, 59 participants contributed to this research. Participating applicants, lawyers and Court staff were based in two locations – Wellington and Christchurch – as outlined in Table 1 below.

Table 4: Summary overview of research participants

	Wellington	Christchurch	Total
Applicants	20	23	43
Judges			3
Lawyers	3	5	8
Family Court staff	3	2	5
Total			**59**

161. Of the 43 applicants:

- 10 self-represented, while 33 used legal representation to file their most recent without notice application
- 15 had filed on notice applications prior to the reforms, and nine had filed on notice applications post the reforms
- 14 had filed without notice applications prior to the reforms, and 40 had filed without notice applications post the reforms
- 23 had completed FDR.

Research preparation

162. An initial scoping teleconference was held with Ministry staff to discuss research inquiry areas, development of research tools, recruitment processes and reporting.

163. The document review focused on Family Court information and resources including Ministry website information. A rapid scan of research, evaluation and submissions on the Review of the Family Court and the Family Court Proceedings Reform Bill was undertaken to inform our overall understanding of the reforms and to inform both the design of the interview topic guides and the analysis framing.[22] During the course of the research, the research team stepped through the process of seeking information about on notice and without notice applications and, to the extent possible, reviewing and completing without notice documentation.

Recruitment of research participants

164. The Ministry sent a letter of invitation/information sheet (see Appendix 2: Research information sheets) to all research participants – lawyers, Family Court staff and applicants who had previously filed without notice applications through the Family Court. The invitation outlined the purpose of the research, introduced the research team and explained what taking part in the research would involve. Initial contact with Family Court judges was managed through the office of the Principal Family Court Judge, Judge Ryan. The research team then followed up with each judge individually. Three judges accepted the invitation to participate in the research.

165. Following the invitation being posted, a member of the research team undertook recruitment of all the research participants including applicants, from a list of possible participants provided by the Ministry. This involved reiterating the information included in the invitation and clarifying any questions people may have had. Participants were emailed a second information sheet and research consent form (see Appendix 3: Research consent forms). This ensured that participants clearly understood the research and the confidentiality processes in place to record and report their information. The list of applicant names and contact details will be destroyed by the research team on completion of this research.

Interviews

166. Interviews were based on semi-structured interview guides that were developed for applicants and the Family law professionals (see Appendix 4: Research interview guides).

167. Three key inquiry areas included:

- What are the key drivers for applicants when choosing to file without notice applications?
- What impact does filing a without notice application have on involved parties and processes?
- To what extent have the Family Court reforms influenced the increase in without notice applications?

168. Interviews were conducted from mid-May to mid-June. All interviews with judges, Family Court staff and lawyers were held face to face at their work premises. Interviews with applicants were a mix of face-to-face and telephone interviews as determined by the applicants – 26 interviews were conducted in person and 17 applicants were interviewed by phone. Most face-to-face interviews with applicants were carried out in their homes.

169. Interviews generally took around 60 minutes, with the occasional interview taking around two hours. The researchers took copies of the information sheet and consent forms to all face-to-face interviews. All research participants were taken through the informed consent process where the purposes and intended uses of the research were explained. They were also advised that:

[22] See the Bibliography on page 37 for a list of publications.

- participation in the research was completely voluntary, and they were not obliged to answer any questions they found difficult or compromising
- the information they gave would remain confidential to the research team, and they would not be personally identified nor would any information they shared be attributed to them
- they could terminate the interview at any time without giving a reason, and post interview, they could withdraw their information up to the report being finalised
- their participation would not affect their relationship with the Ministry, their organisation or entitlement to services.

170. The same process was employed for telephone interviews, the exception being that participants' consent was audio recorded, and as a back-up, we asked participants to email us the consent form.

171. Apart from one applicant, all research participants gave consent to audio record and transcribe their interviews. Audio files were uploaded to the research team laptops and deleted from the audio recorder. For security purposes, all the computers had face recognition and/or password security access.

172. Three research assistants were used to transcribe the audio files. All three signed a confidentiality agreement before being provided with access to the audio files. Audio files and transcripts of interviews were stored in a secure password-protected system. Audio files will be deleted from the shared drive on completion of the research. The transcripts will be retained for six months following completion of the research and then the electronic files and paper copies will be destroyed.

Data analysis and reporting

173. A three-stage data analysis approach was applied.

174. The first stage of data analysis involved a content and discourse analysis of transcripts and written notes to identify the key themes within each of the research participant groups – judges, lawyers, Family Court staff and applicants. Court applicant information was then analysed to identify similarities and differences of behaviour and perception amongst self-represented and lawyer-represented applicants. The themes from the judges, lawyers and Family Court staff were then aligned to the applicant information to corroborate their opinions and experiences. This was to prioritise a focus on the voice and views of those who have essentially caused the increase of without notice applications through their decision to file. This analysis was completed throughout the research iteratively.

175. During the second stage, the research team developed a PowerPoint presentation to share emergent findings with the Ministry in a sense-making workshop to improve interpretation and applicability (Maitlis & Christianson , 2013). A summary of key findings including points of interest or aspects that warranted further discussion was presented. At this point, the Ministry had input into the analysis and helped to make sense of the data.

176. Finally, in the third stage, the research team completed the analysis, incorporating feedback from the sense-making session, and a framework for presentation of the research findings and report structure was developed.

177. The Ministry commissioned independent researchers to undertake this study. The Ministry and key stakeholders reviewed the draft report, and the researchers incorporated technical and factual feedback. Where appropriate, the researchers included feedback pertaining to content.

Research limitations

178. The qualitative research method was selected by the Ministry because the purpose of the research was to understand applicants' reasons and motivations for making a without notice application. The purposive sampling method and sample size mean the research findings cannot be generalised to all without notice applicants.

Reporting formats

Use of quotes

179. Quotes have been selected to be representative of the research participant group named. To avoid identifying research participants, most verbatim quotes are attributed to a research participant group (e.g. Court applicant, judge, lawyer and Family Court staff member). We use the term 'family law professionals' when referring to judges, lawyers and Family Court staff.

Indicating number of participants holding a particular view

180. Qualitative research terminology referring to numbers of participants representing a particular view or experience is as follows:

- 'A few' refers to fewer than 6 people.
- 'Some' refers to between 6 and 19 people.
- Significant minority refers to between 20 and 30 people.
- 'The majority' refers to between 31 and 38 people.
- The 'vast majority refers' to between 39 and 53 people.
- 'Most' refers to between 54 and 59 people.

Appendix 2: Research information sheets

Court applicants

15 May 2017

Invitation to take part in Research into *Without Notice (i.e. urgent)* Applications being filed in the Family Court

About the research

In 2014 changes were made to the family justice system as part of a commitment to providing modern and accessible services that would be efficient, effective and allow the courts to focus on families most in need of assistance. Family Court reforms introduced services designed to resolve disputes outside of court where appropriate. The reforms also made changes to the how applications could be made to the court when further assistance was required.

The Ministry of Justice (the Ministry) is interested in understanding the impacts of the changes including the reasons for making *without notice* (i.e. urgent) applications. A team of independent researchers, Nan Wehipeihana, Shaun Akroyd and Kellie Spee, has been contracted to undertake the research.

The research team

Nan Wehipeihana is an independent researcher and evaluator with more than 20 years' experience. Nan's recent research experience includes work for the Ministries of Education, Justice and Vulnerable Children and the Office of the Children's Commissioner. Nan was involved in the evaluation of the Family Court reforms in 2015.

Shaun Akroyd is an independent research and evaluation consultant with over 17 years' experience. Since 2006, Shaun has been involved in six Justice sector reviews, research or evaluation projects, including the most recent ones: Offender employment research; Iwi Panels evaluation; and a review of Drug Treatment Units.

Kellie is an independent research and evaluation consultant with over 18 years' experience. Kellie's recent research experience includes work in the Education, Justice and Health sectors. Over a number of projects Kellie has worked alongside Ministry of Justice staff, clients, family/whanau, community groups and other external stakeholders.

Taking part in the research

Based on your involvement we would like to interview you about your experience in filing a *without notice* application; the reasons for choosing a *without notice* application, your expectations of the process, the value to you and any barriers. *We would really value your input.* We do not need to know about your dispute or arrangements. We just need to know what were the advantages and disadvantages for you in filing a *without notice* application and what this process involved for you. The information you provide will help the Ministry understand how the *without notice* application process is working. It will also assist the Ministry to see what changes might be made to improve the process.

What will the interview involve?

A member of the research team will make contact with you within the next two weeks to see whether you are interested in being involved. Taking part in the interview is completely voluntary; it is your choice. If you choose to take part, the interview will be at a time and place that suits you and the interviewer. You can bring a family member or friend to sit with you during the interview if you wish. The interview will take up to one hour. You can stop the interview at any time. If you decide that you want to withdraw from the research, you can do so up to one week after your interview – please email Shaun Akroyd (shaun@akroydresearch.co.nz) if you want to do this.

What will happen to your information?

Only researchers will see or hear what you say in the interview. What you say will not be passed on to the Family Court or to Family Dispute Resolution suppliers. Your answers will be combined with other people's answers in a report. What you say may be quoted in the report, but your name will not be used. Also, any other information that might identify you will not be used in the report.

With your permission, as well as notes being taken, the interview will be audio recorded.

All the information from the interview will be stored securely on the researchers' password protected laptops. The information will be destroyed two years after the research report is finalised.

Do you have questions about the research?

If you would like more information about the research please feel welcome to contact:

- Nan Wehipeihana, Independent Research Manager (021686766 nanw@clear.net.nz)
- Warren Wairau, Ministry of Justice (049188670 Warren.Wairau@justice.govt.nz)

Thank you for reading this information sheet – a researcher will contact you within the next two weeks about an interview.

Key informants: lawyers and Family Court staff

16 May 2017

Invitation to take part in the Research into *Without Notice* Applications being filed in the Family Court

Tēnā koe

About the research

In 2014 changes were made to the family justice system as part of a commitment to providing modern and accessible services that would be efficient, effective and allow the courts to focus on families most in need of assistance. Family Court reforms introduced services designed to resolve disputes outside of court where appropriate. The reforms also made changes to the how applications could be made to the court when further assistance was required.

The Ministry of Justice (the Ministry) is interested in understanding the impacts of the changes including the reasons for making *without notice* (i.e urgent) applications. A team of independent researchers, Nan Wehipeihana, Shaun Akroyd and Kellie Spee, has been contracted to undertake the research.

The research team

Nan Wehipeihana is an independent researcher and evaluator with more than 20 years' experience. Nan's recent research experience includes work for the Ministries of Education, Justice and Vulnerable Children and the Office of the Children's Commissioner. Nan was involved in the evaluation of the Family Court reforms in 2015.

Shaun Akroyd is an independent research and evaluation consultant with over 17 years' experience. Since 2006, Shaun has been involved in six Justice sector reviews, research or evaluation projects, including the most recent ones: Offender employment research; Iwi Panels evaluation; and a review of Drug Treatment Units.

Kellie is an independent research and evaluation consultant with over 18 years' experience. Kellie's recent research experience includes work in the Education, Justice and Health sectors. Over a number of projects Kellie has worked alongside Ministry of Justice staff, clients, family/whanau, community groups and other external stakeholders.

Taking part in the research

You are invited to take part in an interview because of your involvement with the *without notice* application process. The interview will cover how the *without notice* application process is working; and both the advantages and disadvantages since the reforms were introduced in 2014. The information you provide will help the Ministry understand the increase of *without notice* applications and how this process might be improved.

The interviews

A member of the research team will be contacting relevant Family Justice staff, along with other selected key stakeholder organisations, over the two weeks to arrange a time to talk. Interviews will take around 45-60 minutes, will be undertaken either in person or by phone, and during or outside of work hours at your preference. *Your input will be completely confidential.* You are welcome to include a colleague in the interview. Your participation in the interview is voluntary. You can stop the interview at any stage, or withdraw your answers up to one week after your interview.

What will happen to your information?

Only the researchers will see or hear your individual responses. Your responses will be combined with other participants' information in a report that will be used in discussions about how the *without notice* application process is working. Anonymised quotes from the interviews may be used verbatim in the report – information will be attributed to a 'legal professional' or a 'court professional' rather than an individual participant. The small number of key informants involved in the research means however that your anonymity cannot be guaranteed absolutely.

With your permission, as well as notes being taken, the interview will be audio recorded and transcribed for analysis purposes. Audio files, transcripts and research notes will be stored securely on the researchers' password protected laptops. These files, transcripts and notes will be destroyed two years after the research report is finalised.

Do you have questions about the research?

If you would like more information about the research please feel welcome to contact:

- Nan Wehipeihana, Independent Research Manager (021686766 nanw@clear.net.nz)
- Warren Wairau, Ministry of Justice (049188670 Warren.Wairau@justice.govt.nz)

Thank you for reading this information sheet and considering taking part in an interview.

Appendix 3: Research consent forms

Court applicants

Research about *Without Notice* Applications in the Family Court

Consent Form for *Without Notice* Court Applicants

The Ministry of Justice has commissioned Nan Wehipeihana, Shaun Akroyd and Kellie Speed to undertake research into the *without notice* application process. I have been given the information sheet on the research that the Ministry of Justice is doing, about this research and I have had the chance to read this information sheet and ask questions. Any questions I have had, have been answered to my satisfaction.

I agree to be interviewed about the *without notice* application process. I understand that:

- Taking part in the interview is completely voluntary and my choice
- I can stop the interview at any time
- I can choose not to answer particular questions
- I can withdraw my answers up to one week after my interview
- The information I provide will be used in a research report
- What I say may be quoted in the report, but I will not be able to be identified
- My decision to take part in this research will not affect my relationship with or access to services from Family Court or the Ministry of Justice.

All the information from the interview will be stored securely on the researchers' password protected laptops and will not identify me. The information will be destroyed two years after the research report is finalised.

I, [please write your name] _____ agree to take part in this interview

I agree to the interview being audio recorded Yes ☐ No ☐

I agree to the audio recording being transcribed Yes ☐ No ☐

Your signature: _____

Date: _____

I acknowledge receipt of $30 voucher (Petrol) Yes ☐ No ☐

Key informants: lawyers and Family Court staff

Research about *Without Notice* Applications in the Family Court

Key Informants Consent Form

I agree to be interviewed about the *without notice* application process in the Family Court, as outlined in the information provided to me by the Ministry of Justice. I understand that:

- My participation in the interview is voluntary and I can stop the interview at any stage
- I can withdraw my answers up to one week after my interview
- Individual responses will only be seen by researchers
- Findings from the interviews will be summarised together and presented in a report that will be used in discussions about how mandatory self-representation is working; this report may be published
- Anonymised quotes may be used verbatim in the report
- The small number of key informants involved in the research means that my anonymity cannot be guaranteed absolutely.

The interview with my permission will be audio recorded and transcribed.

Audio files, transcripts and research notes will be stored securely on the researchers' password protected laptops and will not identify me. These files, transcripts and notes will be destroyed two years after the research report is finalised.

I have read the information sheet and this consent form. I have been given the opportunity to ask questions and have had those questions answered to my satisfaction.

I give my consent to participate in this interview Yes ☐ No ☐

I agree to the interview being audio recorded Yes ☐ No ☐

I agree to the audio recording being transcribed Yes ☐ No ☐

Participant's signature: _____

Participant's name: _____

Date:

Appendix 4: Research interview guides

Court applicants

Without notice interview guide – court applicants

Introduction

- Whakawhānaungatanga – getting to know each other
- Clarify purposes of the research and the interview (briefly cover 2014 reforms)
- Confidentiality provisions and informed consent
- Independence of the research team
- Intended uses of data and feedback to research participants

Awareness of Family Justice system

- Was this your first experience of family court? If no, what services had you been involved with previously? What was your experience of these like?
- In your most recent experience, how did you find out about the options available to you? What did you find out about them?
- (***Only ask if applicants have filed applications pre and post reforms***) Were you aware of the Family Court changes that happened in 2014? If yes what is your understanding about any of the changes? Did you notice a difference between the two application processes?

  NB: (The reforms shift the focus from in court resolution of these disputes to encouraging parents to reach agreement themselves, where this is appropriate, and to prevent disputes from occurring or escalating).
- Have you heard of the following services:
  - Family Dispute Resolution
  - Parenting through Separation courses
  - Family Legal Advice Service
  - Without notice application
- What do you know about these services?
- If they have heard of any of the above services, how did they hear? Did they use it? Did it help to resolve childcare issues?
- Has this broken down? Requiring the Without notice application to occur?

Reasons for choosing the without notice application process

- What advice (and from whom) did you receive prior to filing the without notice application? (e.g. family, friends, lawyer, internet)
- Of the options that were presented to you (if any) why did you choose the without notice application process? **PROBE:**
  - legal representation available/required
  - easiest option at the time
  - best interest of myself and children (e.g. safety)
  - awareness of other options
  - importance/urgency of situation
- Before you started the without notice application process, what did you think it was going to be like? (explore full range of expectations)

Without notice process

- Tell me about your experience of the without notice application process?
- Did the without notice application work OK for you? **Check:**
  - Having Legal representation
  - Straightforward and streamlined process
  - Timeliness and responsiveness
  - Support and advice available throughout
  - Achieved results matched expectations
- Which aspects of the application process worked well for you (if any)?
  Probe:
  - Ability to do it yourself
  - Legal representation and support
  - Advice available
  - Ease of completing
  - Online system (including ability to email urgent applications)
  - Other
- Was there anything that you didn't like about the application process or found difficult?
  - If so, how was that resolved?

Outcomes

- Did the court make an order? Was it the order you expected? What else happened as part of the process (in particular, did your matter proceed to a settlement conference or hearing)?
- Did the without notice application help you get what you needed? Was anything unexpected?
- Was there anything that you expected to get from filing your application that you didn't achieve?
- Was the experience *overall* what you expected it to be? If not, in what ways? (e.g. have you had to submit any further applications to get what you needed?)
- What was the ongoing impact on your proceedings? Looking back, was it beneficial to you to file a without notice application? What was the response of the other party in your proceedings?

What were the barriers/risks and suggested improvements

- Were there any challenges for you throughout the without notice application process? (e.g. finding legal representation, finding support/advice)
- Do you have any suggestions about ways in which the experience of filing a without notice application might be improved?
- (*Reiterate confidentiality*) If you knew someone who was thinking about filing a without notice application, what advice would you give them?
- Would you recommend filing a without notice application? In what situations or for what reasons would you feel that filing a without notice application is the best option?

Final comments

- Are there any other comments that you'd like to make, or key issues you'd like to raise about without notice application or Family Justice services?

Thank and close

Key informants: lawyers and Family Court staff

1

Without notice interview guide – key informants

Introduction

- Whakawhānaungatanga – getting to know each other
- Clarify purposes of the research and the interview (*briefly discuss 2014 reform and need to review impacts, highlight the possible danger of high-risks cases being considered later rather than sooner due to volumes is a key concern, and one of the reasons for exploring this area*)
- Confidentiality provisions and informed consent
- Independence of the research team
- Intended uses of data and feedback to research participants

Role

- In relation to without notice application process, how long have you been in your role?

Without notice application – process

- What appear to be the main reasons why people file a without notice application?
- Do you think you are [applying for/receiving] more, or fewer, without notice applications since the 2014 reforms have been in place?
- How does the without notice application process support the parties you are helping to:
  - ✧ reach agreement?
  - ✧ reach resolution?
  - ✧ protect the situation/maintain the status quo?
- How does the without notice application process appear to impact on subsequent proceedings (e.g. existing orders or applications)?
- Do you think that seriously urgent/high-risk cases are able to be considered quickly enough?

Effectiveness

- Are there any aspects of the without notice process that get in the way of parties achieving what they want/need?
- How well do you feel that the without notice application components work?
  Probe:
  - ✧ Completing the forms/applications (including understanding what is required) for represented and unrepresented applicants
  - ✧ The courts processing of applications e.g. timeliness and thoroughness of processes
  - ✧ The involvement of lawyers (e.g. representation, appointed to act as lawyer for child)
  - ✧ Relationships and communications between personnel involved (e.g. family justice personnel and court applicants, lawyers and family justice personnel, judges and lawyers)

Outcomes and impacts (+ve and –ve)

- What are the impacts for applicants who file without notice applications? Probe: self-represented/represented applicants
- What are the impacts of without notice applications for the court? Probe: self-represented/represented applications
- What are the impacts of without notice applications for the legal profession?

Barriers / risks and improvements

- Are there any issues or challenges brought about by without notice applications? (e.g. resourcing; stresses)
- If so, how are those managed?
- Do you have any ideas about ways in which the without notice application process might be improved? Probe: applicants, lawyers, Courts staff, judges

Final comments

- Are there any other comments that you'd like to make, or key issues you'd like to raise about the without notice process or Family Justice System?

Thank and close

Judges

Without notice interview guide – Family Court judges

Introduction

- Whakawhānaungatanga – getting to know each other
- Clarify purposes of the research and the interview
- Confidentiality provisions and informed consent
- Independence of the research team
- Intended uses of data and feedback to research participants

Family justice system - reform

- Do you have any particular views on the 2014 reforms and whether these have led to better outcomes for parties?
- Under what circumstances would you direct parties to FDR services?
- Do you have any comments or observations on why you think there has been an increase in without notice COCA applications since the 2014 reforms?
- According to the Ministry, approximately one quarter of without notice applications are directed by judges to proceed on notice. Do you have any comments or observations on why these applications did not continue as without notice applications?
- Do you think that seriously urgent/high-risk cases are able to be considered (heard) quickly enough?
- Is there anything you think the Ministry can do to better help people who are thinking about making an application to the Family Court?

Final comments

- Are there any other comments that you'd like to make about the without notice application process or Family justice system?

Thank and close

Appendix 5: Reasons for without notice

Key driver 1 Lawyer	Key driver 2 Time-sensitive	Key driver 3 Initiate action	Most recent WN Represented	Most recent WN Self-represented
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1	1	1	1	
1		1	1	
35	**26**	**20**	**27**	**16**