

# A qualitative study on behalf of the Independent Panel examining the 2014 family justice system reforms

**[Main report]**

April 2019



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For all participants we recognise that this was challenging and your willingness to share was greatly appreciated. Your honesty and openness have provided invaluable insights and lessons regarding the family justice systems reforms in 2014.

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And for the insights and input provided from 'Expert Reference Group' members; Associate Professor Nicola Taylor and Jill Goldson, specialist mediator and Director of the Family Matters Centre in Auckland.

We also thank the community organisations who assisted us in contacting participants from the disabled community - Auckland Disability Law, the Disabled Persons Assembly (NZ) and Blind Citizens New Zealand.

## Disclaimer

This is qualitative research. It should be noted that while qualitative research can be used to identify a range of issues and assess the intensity with which views are held, quantitative research is necessary to establish with certainty the extent to which views expressed are held throughout all parents and children/ young people who have experienced the family justice system reforms since 2014. This research does, however, deliver a detailed summary of the experiences and perspectives of the participants who took part in this research.

# Executive summary

## 1.1 Introduction

### Background and context setting

In August 2018, the Minister of Justice asked an Independent Panel to examine the impacts of a package of reforms made to the family justice system in 2014. The 2014 reforms changed the services and processes available to help separating couples agreeing on the care and contact arrangements for their children.

The Independent Panel's Terms of Reference require it to consult widely with those using and working in the family justice system to understand the overall effect of the 2014 changes, and particularly whether they are achieving outcomes that focus on the welfare and best interests of each child.

The Panel has conducted two phases of public consultation with parents, professionals and peak bodies and was interested in hearing from children/ young people, and parents who may not otherwise engage with mainstream feedback loops (Māori parents, Pasifika parents, new migrant/ refugee parents<sup>1</sup> and parents with disabilities).

Research was commissioned to gather feedback and personal experiences of the family justice system changes made in 2014 from these specific groups.

### Research objectives

The primary objectives of this research were to explore and understand the experiences of the post-2014 services for resolving disputes about care including experiences of both out of court and in-court processes and more specifically to:

- Identify what is working well and what could be improved.
- Identify any unintended consequences of the 2014 family justice system reforms.

### Target respondents

The target respondents for this research were:

- Māori parents
- Pasifika parents
- Parents with disabilities
- Children and young people
- Parents generally.

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<sup>1</sup> During the research development it proved difficult to identify parents from new migrant and refugee backgrounds who had experienced the 2014 reforms within the research timeframe. We were also concerned about the impact of participation on vulnerable participants. Consequently, new migrant and refugee parents were not included in this research. We note that this may still be needed at some stage.

## Method - Qualitative approach

The research employed a qualitative methodology in order to understand participant's experiences with the family justice system 2014 reforms. A total of 47 in-depth interviews were conducted; 34 with parents and 13 with children/ young people between the ages of 11 and 18 years. Interviews were undertaken in a range of locations - both in urban and provincial centres. Note we have not indicated specific locations in this report to protect participant's confidentiality. The research was undertaken from mid-January - early March 2019.

As stated in the disclaimer, this report includes a detailed summary of the experiences and perspectives of the participants *who took part in this research*. However, quantitative research is necessary to establish with certainty the extent to which views expressed are held throughout all parents and children/ young people who have experienced the family justice system reforms since 2014.

Also, the research does not include families who considered the family justice system but who were incentivised (or simply decided) to sort the matter out themselves, or with the help of their communities, social services, and wider whānau.

## 1.2 Main research findings

### 1.2.1 Children/ young people's experience

**Overall experiences of parenting arrangement discussions** - The family justice system journey can be an emotional roller coaster for children/ young people. Even those whose parents, to all intents and purposes, have largely sheltered or protected them from the process, memories and emotions tend towards the negative. Children/ young people describe feeling scared, guilty, torn, confused, sad, shocked, pressurised, depressed, responsible, overwhelmed, in danger and lonely.

Some continue to feel these emotions afterwards, as life remains difficult and/or care arrangements are not what they initially asked or wished for.

Older children (16+ years) are most negative, though it can be difficult to distinguish their attitudes towards the family justice system from their memories and experiences of their parents splitting up and their home life and relationships during and preceding this (e.g. family violence).

Children/ young people appreciate being asked for their input but when this is ignored or misinterpreted, they feel cheated and powerless. Sometimes they worry and feel guilty and disloyal about telling the truth if there is a chance this will impact negatively on them personally or one or either parent. Older teenagers feel this most acutely, so the opportunity to talk candidly and in confidence e.g. with a counsellor or specialist, can be helpful.

For a few children/ young people, the family justice system experience is positive and empowering, and more so when the outcomes are consistent with their views.

**What made the process easier and harder** - The process is made easier when children/ young people are kept informed, and when they can maintain a sense of normality and routine (constancy) in a calm, non-stressful household. Also important are parents who behave responsibly and support from neutral or independent outsiders and friends.

Empowering children to talk and ask questions, transparency (including evidence that all views have been listened to and considered) and a more timely and less adversarial process also helps children/ young people and their families.

The passage of time enables children/ young people to gain a better understanding and perspective of their experience, though some (older) teenagers' views and emotions have become more entrenched and negative over time.

The process is harder when parents behave poorly and when there is little or no communication. Families can be divided, children/ young people can miss their other parent (family) and teenagers are also dealing with the stress of school, exams, peer pressure, etc.

**Experience of professionals** - Positive interactions with outside professionals provide an opportunity for children/ young people to speak honestly and freely with a neutral and independent and non-judgemental person. Professionals can be a good sounding board and explain process and procedures in age-appropriate language.

Children/ young people generally find that meetings with **psychologists, social workers, counsellors** etc. are helpful, as they are given space and privacy to talk freely and to process things.

However, counselling can be painful and awkward, and children/ young people can feel embarrassed, guilty they might be accused of taking sides and worried that what they say will be shared. Reassurance of their privacy and confidentiality is critical.

Older teenagers who have not received counselling (and some who have), feel they might benefit more from this now they are older and have a better understanding of the process and their feelings.

Some teenagers feel they would have benefited from meeting the **judge** or participating in some way in the court process. Not having this opportunity has undermined their trust in the system and their belief their views were considered.

**Views considered** - Many children/ young people are given and welcome the opportunity to have an input into decision-making around their care arrangements and to have their views considered. When decisions reflect these views, this is empowering and enhances their confidence and self-worth.

However, asking children/ young people for their views and then disregarding these (in their eyes) can damage their trust and, for older children/ teenagers, leave them angry and disillusioned with the process.

Independent, unbiased professionals, such as Lawyer for Child, counsellors etc. are generally good listeners, though children/ young people can find talking to and opening up to them hard. Friends, teachers, siblings and other family members can also be good listeners, though people who are too closely involved in the situation can let their own views and emotions override their ability to remain independent and rational.

**Feeling safe** - Feeling and being safe is multi-dimensional, and includes physical and emotional safety, safe places, people and activities. Having a quiet, calm, private, alone space where they can think, reflect and escape household tensions, is critical for children/ young people. Children/ young people often referred to their safe place being 'my room'.

### 1.2.2 Parent's experiences overall

In general, the family justice system for many parents is long, stressful, arduous, and unfair, where parents' lack of material wealth, their gender, their race/ culture or their disability can significantly impact on their overall experience by increasing the financial and emotional burden.

With the benefit of hindsight, parents are able to reflect where the system went wrong for them and where improvements might be possible but their strongest advice to other parents centred on being personally strong and not giving up, and being prepared for a system which will be long and difficult and which will test their emotional resilience.

A significant majority of participants emphasised the need to have a lawyer in place early and for many this had been their first action. Also important is 'educating' yourself, doing the research, and setting clear goals and outcomes from the start.

It is also important to recognise that the family justice system can be a very lonely process, so parents need to surround themselves with a support network to sustain emotional well-being and to maintain focus.

**Family Legal Advice Service (FLAS)** - This is a useful service for those who use it. However, few parents in this research had used the service. Some parents had gained early information from registry staff, while others had preferred to seek information from Auckland Disability Law or their Local Community Law Centre or Citizens Advice Bureau.

**Parenting Through Separation (PTS)** - PTS was valuable for some parents who appreciated the key message 'to focus on the children and to recognise how their actions towards their ex-partner affected their children'. Hearing the experiences of others was also widely valued.

However, participation by either or both partners is random - some parents participated, while others did not - which raised the question of how compulsory attendance at PTS is? We understand that it is only a requirement for the applicant to attend, but parents did not know this.

A minority of participants viewed PTS as another delay in the process. And for some the lessons in PTS were not anything new.



The practicalities of attending PTS can be difficult, so some logistical improvements were suggested. Specifically, timetabling was problematic for some solo parents, so online learning could be included. Thought and attention also needs to be given to ensuring premises are accessible (physical disabilities) and learning tools are available for those with sensory and learning disabilities.

**Preparation for mediation** - Few participants had used or could recall using this service. However, the few that did find this service useful regarded it highly. To maximise value, Family Dispute Resolution (FDR) needs to follow within a month of attendance, so learnings are not forgotten.

**Family Disputes Resolution (FDR)** - For a small number of participants, FDR worked well and there is a place for mediation if both parties are willing to make it work by being open-minded and willing to compromise.

Key things that worked well included good facilitation and an opportunity to be heard with an independent mediator, the involvement of family support and a beneficial outcome; i.e. obtaining a more flexible parenting agreement.

Unfortunately, for many participants, FDR has not worked well and has added more time and expense to the process and simply delayed the inevitable i.e. going to court and having lawyers more involved.

**Forms and affidavits** - For participants going through the family justice system for the first time and for those who were unfamiliar with the legal system and uncomfortable filling in forms, the paperwork is onerous and scary. This drove many to seek the input and support of a lawyer to ensure that forms and affidavits were completed correctly. Participants were afraid that incorrectly completed forms would place them at a disadvantage and jeopardise their day-to-day care and contact arrangements.

The notification of 'Papers' being served in itself increased anxiety for many participants and while registry staff did their best to support parents, some advance notice where appropriate, would alleviate some of the associated stress. Experience helps, with those parents who have been through the family court system before being better prepared.

**In-court process** - Participant's experiences of the in-court process echoed their overall experiences, and most described the process as a highly emotional and stressful time, that is time-consuming and *unfair*. Researchers strongly suspect that some parents will deem any decision which did not give them the result they hope for, unfair. However, for other parents 'unfairness' was a more in relation to the unfamiliar in- court process, not having legal representation or the cost burden. It is a concern that several participants considered they were pressured into coming to agreement at a conference meeting and looking back a few years later regretted not leaving it to the judge to make the decision. When pressed they felt that a judge may have ruled differently and that they had compromised too much.

A very small number of participants were pleasantly surprised by the in-court process. These cases were generally less fraught and more likely to focus on access or there were whānau and extended family involved, where participants were more likely to try and work together. In this small study, these cases were Māori and Pasifika families; that is not to say that wider family participation has not helped European / Pākehā parents, but none were included in this study.

**Case for appointing a lawyer** - Most parents could not contemplate navigating the family justice system without the support of a lawyer. Lawyers are knowledgeable professionals, who help to reduce parents fear and stress and allow them to focus on their own and their families' emotional well-being.

**Case for representing yourself** - Representing yourself saves money and can make parents feel empowered and in control. However, being in-court can be a confronting and lonely process, so it is not for the faint-hearted, or for parents who are apt to get overly emotional or who have difficulty expressing themselves verbally. Parents without legal representation are sometimes disadvantaged by their vulnerability and limited experience/ knowledge and even more so when their ex-partner has a lawyer.

**Professionals involved** - Judges are generally well regarded and respected for their legal knowledge, wisdom and their authoritative and attentive manner, though a small number of parents were disappointed when they perceived the judge had not been as impartial as they expected.

Lawyers for Child have mostly engaged well with children, have had their best interests as their focus and have provided rational and unbiased professional oversight. However, some have seemed busy and distracted and were less good at dealing with children and understanding the complexities of individual cases.

Specialists (counsellors/ psychologists/ social workers) have generally had the best interest of the child as their focus and their reports have contained important and insightful findings. Findings can be distressing and sometimes inconsistent, which has made some parents question their validity.

For some families, counselling had provided a safe, private and supportive space for children and adults to talk and express their feelings. It was acknowledged that sessions could be difficult at times. Some parents criticised the restricted access to and limited number of sessions of counselling available, as some children/ young people missed out who would clearly have benefited from counselling. A key concern was that on-going counselling was not available which did not recognise that a family's (children's) problems did not end once the court case was finished or the emotional trauma that many children/ young people experienced during their interactions with the family justice system.

The cost burden is significant for parents with a disability, who may be required to pay for assistants, interpreters, mobility taxis, professionals to oversee day to day visits and for people to read and explain documents to them, on top of standard court costs.

Parents with a disability also face many logistical (access) challenges attending courses, court meetings/ conferences and other professional appointments.

Finding experienced and knowledgeable lawyers and other professionals, who they feel confident and comfortable working with, is critical for parents with a disability. However, it can be very difficult and expensive finding professionals (lawyers, counsellors etc.) with the right specialist skill set and knowledge.

#### 1.2.5 Māori parents

Māori participants can find it hard to understand and operate in the Pākehā justice system. There is a strong sense that the system stigmatises and can discriminate against them, which makes it hard for some Māori parents to trust the justice system. Feeling scared, lesser, an alien and that people are looking down on you were some Māori participant's experiences of the family justice system.

It was important that those working in the justice system took some time to understand the Māori world and understand what for Māori is normal and genuinely be conscious of the Māori perspective, morally, spiritually and generationally.

Some Māori participants felt that attempts have been made to be inclusive and understanding of Māori, but these can appear as tokenism or lip-service if not done well.

The financial cost of going through the family justice system is one that Māori parents can ill-afford and many recounted the financial hardship they faced when embarking on the process. The cost of getting to meetings, the cost of mediation and other programmes all added to the stress for participants.

#### 1.2.4 Pasifika parents

For Pasifika participants, the extended family is very important, and the layers of family need to be recognised and included in any discussions and decision-making. This in practice may mean that extended family have a role to play in parental 'day-to-day care and contact' arrangements.

A few Pasifika participants spoke of the importance of talking and supporting the male members of the family to understand the process and focus on the future of the children. Having a Pasifika advocate and possibly someone who has been through the process before may help to calm things down.

The in-court process can be harsh for Pasifika families, as it pits extended family members against each other in the best interests of the children/ young people, which adds to the stress during an already difficult time. Keeping the process out of court can work well, as it can be less emotional, confrontational and 'public', as they can talk things through in private with a skilled mediator.

Notwithstanding, Pasifika families are not generally wealthy, so there is also a reliance on free legal support - so access to services such as Community Law, is incredibly important.

Having access to Pasifika advocates/ support people who understand Pasifika culture and the 'layers of family dynamic' is important i.e. who can help to explain the process to both parents and extended family and reassure and calm everyone down.

'Reading' and interpreting the English language and legal terminology is not always that easy for some Pasifika parents, so form filling can be difficult. They rely on lawyers/ legal support people to interpret and complete these.

### 1.2.3 Parents with a disability

Parents with disabilities<sup>2</sup> experiences of the family justice system reflected 'all parents' in that it is slow, expensive and stressful. However, this is exacerbated for parents with a disability, who to a greater or lesser extent, believe they have been manipulated, belittled and taken advantage of by a system which is blinkered and stacked against them.

- Parents with a disability spoke of other parents with a disability who refused to leave abusive relationships, for fear of losing their children.
- Disabled fathers feel particularly disadvantaged; there is apparently little, if any, support for disabled fathers.
- It can be difficult to find and sustain employment, which can lead to financial difficulties; renting a property and paying maintenance.
- It is difficult to find affordable, accessible and safe housing.
- Unconscious bias is evident in many decisions and conversations; people are kind but condescending.
- Disabled people feel vulnerable when they know that even complete strangers are questioning their ability to care for themselves, let alone their children.
- Their view is that the court process does not discriminate against people specifically but that it does discriminate against circumstances; circumstances which many disabled people are in.

They experience overt discrimination when their disability (condition, health, medication) is used against them in the family justice system. Being suddenly required to prove their worth and ability to parent, when previously this was not questioned, is infuriating and demeaning and adds to the time and cost burden.

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<sup>2</sup> The reader is reminded of the limitations of this qualitative study. The research did not include any parents with an intellectual or cognitive disability or who were suffering from a mental health condition. The findings are restricted to the experiences of the parents who took part.

# Key insights and recommendations to consider

## Family justice system overall

**Insight 1:** The process is complicated (and individual), unknown and hard to prepare for; and at the heart of it a commitment to parent which drives participants to want a lawyer early on to ensure that mistakes are not made.

**Insight 17:** <sup>(3)</sup> The legal system is powerful and complex. A lawyer is generally considered to be an essential 'team member', in a high stakes game, where players (parents) do not necessarily know the rules or the penalties for breaking those rules.

**Insight 18:** Parents without legal representation are disadvantaged by their vulnerability and limited experience/ knowledge and even more so when the other party has a lawyer.

## Recommendations

1. Clear information on the overall process and what to expect.

### Process information

- Simple process outlines, flow charts and diagrams demonstrating the key steps, actions and impacts of decisions made at each of these steps.
- Bite sized chunks of information, as it is too hard to take everything in at once.
- What is happening now and what will happen next if I do A, B or C.
- What parents' role is; what they have to do.
- Realistic (approximate) timelines for each step and what might slow the process down; being prepared for a 'long' journey - key milestones with expected timing identified.
- Realistic costs.

### 'Personal' information

- Real, but anonymised case studies, using real parent's voices, including exemplars and cases which have gone well and not so well.
- Including children's voices, feelings and experiences to demonstrate the impact on children of their parent's actions.
- Good news stories; demonstrating that the system can (and does) work.
- Parents with a disability suggested a 'disability platform'/ tool kit/ website, as a go to resource for parents facing additional stress and burden. Again, including case studies and real-life examples.
- Parents need to be reminded to 'look after themselves' and to make sure they have a support network.

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<sup>3</sup> The Insights are clustered by theme. However, the numbering system reflects their order in the main body of the report, which means they are not all in sequential order.

## Family justice system overall

### Recommendations (cont.)

2. An initial 'triage/assessment' stage may help to personalise and streamline the process by omitting stages which will likely fail. For example, when it is clear that mediation will not work (when one partner is uncooperative) or when PTS is unnecessary (as both parents are already proactively putting the needs and welfare of their child/ren at the fore).
3. Improved access to McKenzie Friends (or similar); many participants in this research did not know they existed.
4. Access to someone relatable i.e. from own culture or community (for Māori, Pasifika and parents with a disability) to explain the whole process including options and timeframes. Include the extended family in explanations and support for Pasifika and Māori.
5. For children/ young people, having an (older child) mentor (who has been through the process before), who they can relate to and share their experiences with, either in person or by distance, may help those who feel very alone and in fear of speaking 'the truth'.
6. Having access to lawyers, or to a recognised legal advocate early on, may need to be addressed.

### Financial cost

**Insight 2:** It is costly and more so for those who are disabled and low socio-economic status. Sometimes parents do not own cars, so rely on public transport or taxis, they have low paying jobs and / or no holiday available, so are forced to take leave without pay. They may be required to attend court appearances or child visits in different cities (on different Islands), so must find money for air fares or fuel, on top of taking leave without pay.

These participants struggled (both time-wise and cost-wise) to work their way through the process and consequently found it unfair and at times discriminatory.

**Insight 12:** For parents with a disability there were substantial increased costs and the ensuing stress that followed with requirements for additional professional supervision to show proof of being a safe parent, extra transportation costs to get to and from court and translation/ reading of court documents that were not readily accessible for those who were blind (or had a sensory disability).

### Recommendation

7. Recognise the significant financial burden on those who are disabled and low socio-economic status.

### Compulsory attendance expectations for Parenting though Separation (for applicants)

**Insight 4:** A key prerequisite for parents to fully participate in and benefit from PTS, was that they needed to attend with an open mind. Unfortunately, this was not always possible as PTS had occurred quite early in the process, when emotions were still running high. Participants said it had been difficult to listen and learn dispassionately, while still hurting and resenting their ex-partner.

**Insight 5:** Participants who had attended PTS sometimes queried its value when approaching mediation, if the other partner had not attended and was not open to the possibilities as much as the partner who had attended.

**Insight 6:** While parents generally understood the intent of the course and agreed that it makes sense on one level to attend PTS if it helps to facilitate this, on another level, participants recognise that they are going to work out what works for them regardless of whether they attend PTS or not.

**Compulsory attendance expectations for Parenting through Separation (for applicants)**

**Recommendation**

See recommendation 2 - initial triage/assessment to assess benefit of Parenting through Separation.

- 8. Address the compulsory expectation of attendance for all parties, to alleviate bad feeling and anger resulting from applicants’ misconceptions that attendance is compulsory for **both** parents.

**Compulsory attendance at Family Dispute Resolution**

**Insight 7:** Mediation is predicated on participants’ willingness to compromise and to attend with an open-mind. Unfortunately, for many, the process is early in the separation and many parents found it hard to compromise or stated their ex-partner showed no willingness to compromise.

**Insight 8:** There was a place for FDR if there were willing parties e.g. who were more open-minded, willing to compromise and where there was less conflict among the parties. Improved marketing, using exemplars and case studies, to illustrate what can be achieved, may be also helpful for parties who are sceptical, but not totally dismissive.

**Insight 9:** However, for some couples, mediation will not work. As one participant stated - sometimes there is a need to meet and agree that mediation is not going to work, rather than attending mediation to reach the same conclusion afterwards.

**Recommendation**

See recommendation 2 - initial triage/ assessment to assess benefit of Family Dispute Resolution.

**Form filling and affidavit completion is not easy**

**Insight 10:** Very few found the form and affidavit completion process a simple one. In part this was the result of participant’s concern/s that so much of the decision-making relies on the content of the affidavit; so, they were fearful of not completing these correctly or of not using the right terminology. A lawyer’s input was crucial for final completion with most participants not confident in their own abilities.

**Recommendations**

- 9. Provide more guidelines, explanations of key terms and legal jargon, exemplars.
- 10. Recognise that for some parents the process is fraught, and they are too nervous to complete on their own-may need help from a lawyer or advocate.

**In-court process was challenging for some**

**Insight 11:** Being in-court was a difficult and stressful process for the majority and many could not imagine being there without their lawyer. The trial-like cross -examination was a surprise for many; even though their lawyer and the judge may intervene; the experience was daunting.

**Insight 13:** The requirement for additional reports from professionals such as Lawyer for Child, psychologists and professional supervision; lengthened the overall process considerably as often meetings and assessments could not be scheduled efficiently or there were waiting lists for assessments/ meetings.

**Insight 14:** For parents for whom English is not their first language, who have dyslexia or who just find reading and interpreting information difficult, help to read, process and understand court documents is necessary.



## In-court process was challenging for some

### Recommendation

11. Training for lawyers working in the family justice system to include:
  - Lawyers need to be pragmatic, solution focused and able to understand and appreciate fragile family dynamics. Sometimes lawyers are too adversarial, which makes situations worse.
  - They must take care to explain, guide and support parents to understand the family justice system, their actions and the potential impacts of these. Parents do not always take in what is said to them, so writing things down is important.
12. Improved access to specialist Māori/ Pasifika lawyers or lawyers with disability training and experience is important.
13. There must be more patience, guidance and support for parents who are disadvantaged without legal representation, especially for those whose ex-partners in court do have this. Specifically, help completing forms and affidavits correctly and including all relevant information and making sure they are not 'bullied' or 'attacked' in court.

## The role of conference/ meetings was not clear

**Insight 15:** The different conference types overcomplicate things for participants with no participants recalling the 'type' of conference(s) they had participated in. Notwithstanding, they did value the opportunity to engage in round table discussions and separate meetings out of the court setting.

**Insight 16:** It is a concern that several participants considered they were pressured into coming to agreement at a conference meeting and looking back a few years later regretted not leaving it to the judge to make the decision. When pressed they felt that a judge may have ruled differently and that they had compromised too much.

### Recommendation

- 14 A simpler conference system is required that makes sense to parents operating during a stressful period in their lives.
- 15 A fuller explanation of the outcomes of agreements and what redress parents have may be needed or a cooling down period to reflect on agreements made during a conference meeting prior to being finalised.



**The quality of professionals working with children/ young people can be variable, more so for Lawyer for Child**

**Insight 19:** Professionals play a crucial role in supporting a fair and evidence-based family justice system. While there are strong indications that some professionals are working well in the family justice system from the perspective of both parents and children/ young people there is room for improvement.

**Recommendation**

16. Some training for professionals working with children/ young people in the family justice system is indicated:
- Awareness of appropriate locations to meet.
  - Provides clear and child-friendly explanations of their role.
  - Be clear about confidentiality; be transparent about who will read what they share.
  - Do not over promise – make it clear that children / young people’s views will be considered, but they might not get what they ask for.
  - Child and youth appropriate language and communication.
  - Actively listen; check on interpretation of what children/ young people are saying.
  - Dresses appropriately; sometimes suits and briefcases are too formal and intimidating.
  - Take the time to establish trust.

**Terminology used frequently in parenting agreements needs to be well understood and interpreted consistently**

**Insight 20:** Feeling and being safe encompasses many different aspects of children/ young people’s lives and includes emotional safety, safe places, people and activities. These are not discrete entities but together create a holistic sense of safety and well-being. Having a safe, private, space for alone time and to ‘escape’ life and household tensions is critical.

And importantly the factors for ‘feeling safe’ need be visible in both households a child/ young person resides in.

**Insight 21:** Both ‘the welfare of the child’ and in ‘the best interests of the child’ included the core elements of ‘feeling safe’ - both physical and emotional safety. However, as decisions were often couched in terms of taking these both into account - participants also intimated that the wishes of their children/ young person should be considered and accounted for.

**Recommendation**

17. Clarify and consider parents and children’s views of feeling safe and what this means to them.

Clarify and consider parents views of what ‘welfare of the child’ and ‘in the best interests of the child’ when basing decisions regarding the parenting agreement.

**The emotional trauma that children/ young people experience should not be underestimated**

**Insight 22:** Not unexpectedly, children/ young people’s experiences were overwhelmingly emotionally draining with lasting impressions left on them.

**Recommendation**

18. Recognise the need for counselling support for children/ young people and consider:

- Increased focus on individual circumstances and access to short and long-term counselling for all those who need it.
- More options for accessible (free or low cost) counselling.
- Follow-up counselling that can support children and young people as they move through different life stages and to address any ongoing issues that arose from the decisions made and, if required, providing additional help and support.

## Keeping children/ young people well informed and managing expectations on how their views will be considered is important

**Insight 23:** Children/ young people need to be communicated with about what is happening; otherwise they feel confused and disconnected from the ongoing family changes.

Older teenagers can be more critical and demonstrate feelings of powerless over the situation - this can lead them to be more disconnected and disillusioned when their expectations are not met regarding key decisions.

**Insight 24:** More open communication and inclusion was a recurring theme throughout the conversations with children/ young people.

**Insight 25:** Children/ young people must be encouraged and supported to speak candidly and without fear of reprisals, to ensure their voices are heard and their views are considered. Notwithstanding, if those views are ignored or misrepresented, or if children/ young people have unrealistic expectations of how much weight their views hold in decision making, they can become cynical, distrustful and unwilling to tell the truth in future.

### Recommendation

19. Maintain open and balanced communication with children/ young people throughout the process. Ensure that children/ young people's views are considered and rationale for decisions made explained.

## Support needs for children/ young people

**Insight 26:** Children/ young people recognised their need for support and someone to talk to outside of their family. Teenagers especially could see how crucial this was and reiterated the need to seek this out (with the benefit of hindsight and experience they wanted others to know how important this was)

### Recommendation

20. Some children/ young people might also welcome the opportunity to share their experiences and learn from others via a support - face to face or online - network.
21. It would be beneficial to have follow-up and support post-judgements to ensure that both parties were working amicably and successfully together. Equally important was follow-up on how the children/ young people were managing. (See also follow-up counselling recommendation 15)

## Discriminatory behaviour

**Insight 3:** Disabled, Māori, Pasifika, low socio-economic parents and those with a lack of formal education or poor literacy skills, can feel alienated and discriminated against by the justice system. Many have experienced unconscious and intentional bias, which has undermined their status, confidence and parenting abilities. Parents' disabilities have been used against them, to prolong/ stall proceedings

### Recommendation

22. Training and raising awareness among those who work in the family justice system that some participants do feel discriminated against and treated unfairly. More care is needed to ensure the family justice system is fair and unbiased and does not discriminate on gender, race, disability or social status.

# Introduction

## 3.1 Background

In August 2018, the Minister of Justice asked an Independent Panel to examine the impacts of a package of reforms made to the family justice system in 2014. The 2014 reforms changed the services and processes available to help separating couples agreeing on the care and contact arrangements for their children.

The Independent Panel's Terms of Reference require it to consult widely with those using and working in the family justice system to understand the overall effect of the 2014 changes, and particularly whether they are achieving outcomes that focus on the welfare and best interests of each child.

The Panel has conducted two phases of public consultation with parents, professionals and peak bodies but was particularly interested in hearing from children/ young people, and parents who may not otherwise engage with mainstream feedback loops (Māori parents, Pasifika parents, new migrant/ refugee parents<sup>4</sup> and parents with disabilities).

Research was commissioned to gather feedback and personal experiences of the family justice system changes made in 2014 from these specific groups.

## 3.2 Objectives

The primary objectives are to explore and understand the experiences of the post-2014 services for resolving disputes about care including experiences of both out-of-court and in-court processes and more specifically to:

- Identify what is working well and what could be improved.
- Identify any unintended consequences of the 2014 family justice system reforms.

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<sup>4</sup> During the research development it proved difficult to identify parents from new migrant and refugee backgrounds who had experienced the 2014 reforms within the research timeframe. We were also concerned about the impact of participation on vulnerable participants. Consequently, new migrant and refugee parents were not included in this research. We note that this may still be needed at some stage.

### 3.3 Audiences

The key audiences for this research were:

- Māori parents
- Pasifika parents
- Parents with disabilities
- Children and young people
- Parents generally.

### 3.4 Methodology

#### Qualitative approach

At the onset it was agreed that a qualitative approach would be appropriate to explore with participants their own personal experiences of the 2014 reforms and to understand the individual context that each participant operated within. The research was undertaken from December 2018 - March 2019.

- The qualitative method used was individual depth interviews. This approach ensured participant confidentiality and a safe environment for participants to talk about their personal and individual experiences of the 2014 reforms. Participants chose where the interviews took place and whether they wanted a support person with them.
- The approach taken for including children and young people aged 10 years to 18 years was to conduct parent and child interviews concurrently with two researchers.
- All participants had some involvement with the 2014 family justice system reforms; although a small proportion may have commenced their parental 'day-to-day care and contact' process prior to the 2014 reforms.
- The research approach enabled researchers to explore with participant's their own personal and individual journey through the family justice system services. Qualitative research enabled participants to voice their reasons, opinions and motivations within a discursive approach. This was especially important for the interviews with children and young people.

#### Recruitment of research participants

- To identify potential participants the following approach was used.
  - i. The Secretariat to the Independent Panel operating out of the Ministry of Justice identified a potential sample of participants using two internal databases.
  - ii. All potential participants were sent an invitation letter from the Ministry of Justice outlining the objectives of the research, what the interviews would focus on, confidentiality, the research company responsible for conducting the interviews and who to contact for further information. Included with the invitation letter was a consent form permitting the Ministry of Justice to share contact details with the research company UMR.
  - iii. The Ministry of Justice also followed up with potential participants who had not responded to the initial invitation letter to ascertain their willingness to participate.
  - iv. If consent had been obtained, UMR scheduled the appointments.

## Informed consent and confidentiality

- As mentioned previously all participants had received information from the Ministry of Justice regarding the research and consent obtained to share contact details with UMR.
- Participants were reassured on confidentiality:
  - All names and contact details of participants will be destroyed by UMR following the completion of the research and within two years.
  - Any notes or transcripts would be stored securely by UMR and destroyed at the completion of the research and within two years.
  - UMR also obtained written consent from all adult participants to take part in the depth interview stage. Written consent was also obtained from parents of children and young people aged 10 years to 17 years to take part.
- Prior to providing written consent to UMR, the researchers explained the research objectives, confidentiality and the approach, including recording and reporting their information to all participants. The following points were explained:
  - The research was an independent study commissioned by an Independent Panel appointed by the Minister of Justice, and that UMR researchers are responsible for the collection and analysis of all information.
  - Taking part was completely voluntary and they could stop the interview at any time.
  - They could choose to not answer questions, and could change or withdraw their responses following the interview.
  - The individual information they provide would remain confidential to the research team and only common themes would be reported on; no information they shared would be specifically attributed to them.

## Study sample

In total 47 depth interviews have been completed.

The tables overleaf outline the breakdowns of the key audiences.

## Discussion guide development

Separate discussion guides and prompts were developed for parents and children/ young people. Some prompts for children were developed specifically for the younger participants. Guidance and input from members of the Expert Reference Group were invaluable in the development of the children/ young people discussion guides. Members of Panel's secretariat, operating out of the Ministry of Justice, also provided input to the discussion guides and prompts.

Table 1: Sample

CHILDREN/ YOUNG PEOPLE INTERVIEWS - N=13							
Gender		Ethnicity		Location		Age	
Male	6	NZ Euro	5	Urban	9	10-12	5
		Māori	3			13-14	3
Female	7	Pasifika	4	Provincial	4	15-17	3
		Asian	1			18+	2

PARENT INTERVIEWS - N=34									
Relationship to child		Ethnicity		Location		Disabled		In-Court / Out of Court Services	
Mother	17	NZ Euro	16	Urban	25	Yes	5	In-Court	28
		Māori (Main)	8						
Father	14	Pasifika (Main)	8	Provincial	9	No	29	Out of Court	6
Other (Aunty/ Uncle/ Grandmother)	3	Asian	2						

## Interviews

Interviews followed a semi-structured approach with the discussion guides used to guide the discussion. Participants also had the opportunity to voice what was important to them.

For parents the main inquiry areas included:

- Experience of the out of court process changes.
- Experience of the in-court process changes.
- Experience of the professionals involved.
- How well were the voice/s of their children heard?
- What it means to feel safe?

For children/ young people the main inquiry areas included:

- Overall experience of that time when their parents were working through parental 'day-to-day care and contact' arrangements.
- Experience of key professionals.
- What it means to feel safe?

Interviews were conducted from mid-January 2019 - early March 2019. All interviews were held face to face. Most interviews with participants took place at their homes or at a location chosen by the participant. All parent and children/ young people interviews took place at their custodial parent's home at the time.

Interviews generally took around one hour, with some interviews taking up to two hours. As mentioned previously researchers went through the informed consent process prior to commencing the interview.

All participants agreed to have their interviews recorded. Audio files were uploaded to UMR's secure server and 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 two years following the completion of the research and then the electronic and papers copies will be destroyed.

## Data analysis and reporting

This stage has included:

- Content and narrative analysis of transcripts and written notes to identify the key themes among parents and children/ young people.
- Review of the key themes identified, and a report structure developed.

Verbatim quotes are included in this report. They have been selected to represent the key audiences that form the basis of the research and to highlight the key findings using the 'voice of the parents, children and young people'. To avoid identifying research participants most verbatim quotes have been attributed to a key audience only - no location or gender information has been included.



# Parents overall experience

## 4.1 Top of mind experience

Prior to exploring experiences in depth parents were first asked to describe in a few words their overall experience of the family justice system services. This provided an unprompted view of their overall experiences and gave an insight into the strength of their feelings surrounding their experience.

### Key findings - Top of mind experience

- In general, for many was a long, arduous, and unfair process.
- Some felt their lack of material wealth, their gender or their disability also significantly impacted on their overall experience by increasing the financial and emotional burden.

### Overall sense of powerlessness and that the process is discriminatory

Many participants spoke of overwhelming feelings of powerlessness and often described this in terms of *'being treated unfairly'*. Many felt that a narrative had been built up against them that they were unprepared for and could not address within the current system. The whole family justice system seemed unfair as they had little understanding of the process (and steps within it) and little support to withstand the court processes and ensure they had a fair hearing.

*To be honest terrifying. I did find it slightly unfair as well. I felt that my ex got a voice when we did sit in front of a judge and I never got the opportunity to explain anything.*  
(European / Pākehā Parent)

Participants talked about a one-sided and blinkered experience of the family justice system. Many went so far as to describe it as sh\*t or cr\*p. Participants were intimidated facing what they considered an inhumane system; a mechanical process that did not account for personal circumstances in a real way and which showed little understanding of individual circumstances.

*I think it's sh\*t. [Tell me why?] Because I think it failed me particularly. ... just because I was on the benefit didn't mean that I wasn't giving her what she needed. She still went to school every day, she still had her lunch, she still had her uniform and everything that she needed. I couldn't understand why I was getting looked at like I am not good enough to have my own child.* (Māori parent)

Some participants felt discriminated against based on their gender as a parent, their disability, poverty and to some extent their ethnicity.

*It wasn't looked at holistically. Yes, I have a disability, I am all for children being safe, I am the first person - but just to have an old-world medicalised view.* (Disabled parent)

Some **Māori participants** voiced concerns that they felt lesser within the system because they were poor. They described feeling like an alien in the court system and feeling like people were looking down on them. Others stated that the system was biased towards those who had money and could afford a good lawyer. They were wary and suspicious of the justice system, believing they were disadvantaged, and finding it hard to understand and operate in a Pākehā space. There was a stigma attached to the justice system which makes it harder for Māori parents to trust it. One participant was very wary of the Pākehā justice system and would rather settle out of court than go through it – they were really worried that they would get the wrong result.

[Do you think for Māori it is harder to trust that the judges and lawyers are there to help you?]  
*Yes. I definitely know that. My (parent) is very tangata whenua, very indigenous I would say, (he/she) has very strong opinions about that issue and I guess it is just when you are born and hear this opinion around you it becomes solid in your structure and so I wouldn't say that they see them as bad people but the idea of foreigners and people who aren't family really scares Māori people. They do prefer for things to be dealt with in their own family and because they have so many cultural differences, what a European person might find important and just could be completely different for a Māori person. Some people might see the conditions that someone is living in and think that they are completely amok and you deserve to be shamed upon but really they don't know it from another's perspective. I think Māori people would find it hard to believe that people can see their perspective in life. (Māori family member)*

*I was the only Māori in that room. (Ex-partner) is Pākehā, (their partner) is Pākehā. The whole court room was full of Pākehā. [How did that make you feel?] It made me feel that they were looking down on me. The whole lot of them were looking down on me. I went into that court case and I thought I had pretty good odds considering the fact (ex-partner) was pretty much throwing her at me and I still lost. How is it, (ex-partner) legitimately said I do not want her. ... I wanted her, (ex-partner) didn't - they should have just done the paperwork. Realistically their job isn't to sit there and tell us what we need to do. Their job is to sign a piece of paper on what we agree on and that was something we agreed on ... I have never been done for drugs, alcohol, I have got no charges, no criminal activity in my life or background. I have never been through the system so why is it that they were like that, I don't get it. I did everything I possibly could for that court case, My house was practically empty because I had sold everything in it just so I could get to my visitations. I am not someone that needs material shit, I need my children. (Māori family member)*

It was important that those working in the justice system took some time to understand the Māori world and understand what for Māori is normal and genuinely be conscious of the Māori perspective, morally, spiritually and generationally.

*I think it is harder when you know your children are going to a stranger obviously. But I think specifically for Māori it is almost tapu I guess because that is your blood. I would say that just having an understanding of life in general, the Māori world its culture but it is also just what they find normal. About understanding different norms and people have different morals and values. What you might consider to be good or bad could be completely different. ... Not saying that nobody understands but I think just being able to see from our perspective not just today and yesterday but generationally, morally, spiritually especially what we value. (Māori family member)*

**Parents with disabilities** also felt disadvantaged and 'judged' by a system whereby they were required, at their own expense, to prove their parenting skills, despite this not having been raised as an issue when still in a relationship with their ex-partner.

*Manipulative. One-sided and very much have got blinkers on. The approach is not very open-minded. (Disabled parent)*

*So, I looked at it and when I have got three kids that are already doing beautifully well, one of them I raised completely on my own, the other one's half custody over the last five years, why would it even be a question about am I capable of being a (parent). I think just all the standard things should have happened. Unless there is a reason to question the safety of the child why did my disability even come into it? (Disabled parent)*

## Expensive

The cost of lawyers and attending court proceedings and associated meetings was a financial burden for many with sums of \$20,000-\$40,000 mentioned. One rural participant, living on the opposite Island to their ex-partner, spoke of the lack of understanding by lawyers and the court of the costs for attending meetings and conferences and the financial hardship experienced. Requests for a Skype call or video/ teleconferencing were refused.

*... was explained to me what the process might entail, for instance, the judge said this could go on for a very long time and it could get extremely expensive. It wasn't just expensive but very, very expensive. ... you just know you have to go right through the process until the bitter end to see what is going to happen. (European / Pākehā parent)*

*That whole year was frustrating, time consuming, expensive and a waste of time and it put a heck of a lot of pressure on everyone. (European / Pākehā parent)*

In addition, for **parents with a disability** the cost of transport and professional supervision services to attend meetings and provide evidence of their ability to parent was a cost that was borne by them personally with no recognition or support from the justice system. Participants with sight impairment were required to pay for neutral or independent parties to read private court documents to them, as these could not be sent electronically.

*Even just the extra barriers, you have to go to the psychologist, you have to go here and there and all these meetings and do all of this stuff. I quite often have to have an assistant to come with me. Plus, if I am on pain killers I don't drive I use mobility taxis. So, you are expected to be at a psychologist in [Location] at 4 o'clock on a Wednesday, the amount of money that involves, support staff are \$22 an hour, a mobility taxi is another \$180 if you can even get one because they might be all on school runs. So, then you do not attend, you don't attend an appointment because you couldn't get a mobility taxi. It just goes down on your paperwork that you failed to do an action. Even doing your actions it just costs so much more money and it is so much harder. And there is no funding anywhere. (Disabled parent)*

Among **Pasifika** parents, there was a reliance on free legal support - so access to services such as Community Law is incredibly important.

**Māori** parents also recounted the financial hardship they faced when embarking on the process. The cost of getting to meetings, the cost of mediation and other programmes all added to the stress for participants.

*[Name] has always had a partner so two incomes whereas [Name2] hasn't. So, [Name2] had to come up with the money and that is the other issue, it might only be a couple of hundred dollars, but it is still a couple of hundred dollars that [Name2] hasn't got to progress things. I think even lodging at the court was a cost too. (Māori support person)*

*Everything costs. I think it was only \$70 but that is still \$70. (Māori parent)*

*I couldn't hold a job and then make it to all of these conferences and visitations. There was no way I was able to hold the court case and hold a job. I sold my house in the end and when I sold the house I got a hell of a lot less than what I needed and legal aid pretty much took all of my profit. When I sold that house, I should have been able to do something for my kids but instead my legal aid costs got paid before I did. So, I was left with about \$7000. [How much did you have to pay legal aid?] \$33,000 - that is a lot of money. That was said at the beginning, if my house ever sells they get blah, blah, blah. So, they got \$33,000 and I got \$7,000. (Māori parent)*

## Complicated

The process and paperwork was complicated and even more so during a time when people were not always thinking rationally or clearly. Language and terminology were new and confusing, and people did not always understand or anticipate the consequences of their actions.

One parent described the process as being like in a river, riding rapids and being swept along (with little control). Another talked about driving on a road that was not direct and had lots of side roads and not knowing the right direction or whether you were on the right road.

*I spent 11 months battling away when I first got the process rolling. The first time I went up to the Family Court to get the paperwork going I thought this should be over ... by that Christmas. I don't know if that is average or high or low that amount of time but every single piece of paper that needs signing takes two months to get that organised - but it was like coming in the mail every second week. Massive amount of paperwork that gets sent to me and half of it might as well be written in Russian. (European / Pākehā parent)*

*[What makes it complicated?] It is like when you take a road from here to (city), here is the road, the Family Court says here is the road but you could take this road or you could take this road. There is all of this other stuff that affects it. Human Rights, rights of the child, caregivers. There are all these other tentacles hanging off that you had to take into account. It is not a straight forward process because you have got Lawyer for Child and the ex over here and their family and grandparents. Child Youth and Family, I can't think of the name of it now, Work and Income ... The process just trying to navigate it I can see some people looking at it and thinking I am not going to get through this. (Disabled parent)*

Several parents suggested that a more simple - visual, summary or overview of the overall process and the steps along the way, might have helped them to have a better understanding and feel more confident.

[The court process?] *It wasn't that easy. [What makes it hard?] They actually did draw a picture on the board at one stage and said this is what will happen but you kind of see it once. It needed to be reinforced for me. It probably would have helped if someone had said this is what is going to happen next. For your particular case this is what will happen. I guess because it is the first time that I have had to go through the court process I am just not familiar with it.* (Māori parent)

*Maybe a flow chart of the process or something without having to go back around in circles. How you can move on if you can't.* (Māori parent)

*I am real big on visual, simple English and flow charts ... If you had a flow chart, really simple and visual, Step 1, Step 2, Step 3 so you have to do all of these steps to get here. Then you could expand out each diagram if you wanted to know more. One, to be able to feel like you are making progress and two, to understand really simply without the need for too many words what is going to happen here and why does it have to happen.* (Disabled parent)

## Too long

The process was long and, for many, a torturous time; with proceedings often purposely drawn out by the ex-partner. The process seemed needlessly long-winded, which prompted calls for tighter deadlines and time limits that were enforced i.e. some form of penalty for the partner 'dragging their feet'. The impact on families and children with the long drawn out process was immense with anxious parents and children adding to an already stressful time. The long, sometimes repetitive process, added to the cost burden (and further added to participant's stress levels.)

*Long winded. Discriminatory. Room for improvement.* (Disabled parent)

*The time it took was just horrendous. Five years. In some degree my ex-partner was probably drawing that out. Being a (parent) and a person with a disability there should be a time within which things get settled. Certain procedures and things in place. I am a lot better now but it has taken me years to calm down from that.* (Disabled parent)

Participants explained how they had felt stuck in a state of limbo; unable to make plans or move forward with their lives. And, even when the process was over, many had court orders which were only valid for two years, so knew they may have to go through it all again. These sentiments were also voiced by children/ young people who described feeling worn out and exhausted by the process.

Mediation (Family Dispute Resolution) was also seen to drag out the process when there was no hope of compromise. The refusal of one party to attend or cooperate added needlessly to the timeline.

For a minority, knowing the process was long, could take two years, provided a level of comfort that decisions would not be made in haste; that things could be slowed down and provide some time to reflect on decisions made. Also, in some cases, the passage of time provided an opportunity for relationships and emotions to stabilise, and for participants to take a more impartial and rational view.

## Stressful

The family justice system was stressful during an already traumatic and emotionally charged time in peoples' lives.

All participants agreed it was a stressful time and used additional adjectives such as harrowing, terrifying, infuriating and overwhelming to describe their experience. Underlying this was a basic distrust in the system and feelings of unfairness. Furthermore, participant's lack of understanding of the process, meant they felt undermined and disadvantaged.

*Because I have not been in that position before you don't know what you don't know. So, at the very start I knew nothing at all. For example, my ex-partner would say we are going to court next week and I am going to get the kids and I am going to go ... type of thing so that was really worrying and because I didn't know that you have to do this, this and that - you don't just rock up to the judge and say make a decision. But all of these things were not apparent to me at the beginning and how to do things. What is an affidavit I don't even know, why do you need to do it, are the Police going to do whatever? Is this going to end up on the internet and all of these sorts of thing. [So, lots of worries?] Yes. There is lots of anxiety and you don't know how bad it can get. (Māori parent)*

*I think the wellness and the well-being of mum and dad going through this process needs people to take more notice of it. Because if mum has a nervous breakdown then she might have been able to be an awesome mum but the thought of losing her kids is too much for her. Or if dad has been clean and sober for 10 years but then he hits the booze or the heroin again because he has been told by his ex-wife that he is never going to see his kid again because he doesn't love her. (Disabled parent)*

## Journeying into the unknown

The process was in the main a new experience and most parents said they knew nothing when they started. While some participants had done considerable research and two participants had legal experience, they also confirmed it would have helped to have someone (who had been through it and someone they could trust) to talk through the process and help link them into support agencies at the onset.

Some participants had been surprised by just how unprepared and 'naïve' they had been; the family justice system was like stepping into another world, where nothing was familiar, yet whatever you said and did might have serious consequences later.

*When you go through the court system and they are talking all this shit, I don't even know what they are saying half the time, you don't even know what you have just agreed to sometimes ... And even if they could have an advocate that could dumb it down and make it easier. (Māori parent)*

## A small minority found the process worked well for them

A small number of participants found their overall experience was more positive. The common thread for these participants was that they were more likely to be whānau seeking 'day-to-day care and contact' or access arrangements, for example, an Aunty/ Uncle seeking 'day-to-day care and contact' or a grandmother seeking access.

Some were pleasantly surprised that their views were listened to and acted on, which reinforced their belief in a system which focused on the well-being of the child. Their experiences were still drawn out and gruelling though and required commitment and tenacity to see it through.

*It definitely worked for me. You have faith in the system when you know that some professionals can do their job really well and some can't. (Māori family member)*

*I think that some reasonable decisions were made when they did make them ... as far as fairness goes, I think they were reasonably fair in our case. I wouldn't be able to speak for anyone else. They allowed it to be more family orientated. (Māori family member)*

It was also apparent their expectations were lower regarding outcomes and there was a willingness to compromise in the best interests of the child. This might have been because they were not simultaneously involved in a relationship breakdown or a 'battle' with a previous partner, so were less emotionally involved and influenced. This contrasted with parents, who not only were working through parental 'day-to-day care and contact' arrangements but relationship property, child support and a different future.

## 4.2 Advice to other parents about to embark on parental 'day-to-day care and contact' arrangements

Toward the end of the interview, participants were asked if they had any words of advice for parents like themselves going through the family justice system.

### Key findings - Advice to other parents

- Participants had very clear advice to other parents and this centred on being strong and not giving up as they recognised that the process was long and arduous.
- For a significant majority, participants reiterated the need to have a lawyer in place early and for many this was their first action.
- Doing the research and setting clear goals and outcomes from the start was equally important.
- It was also important to recognise that this was a lonely process so surround yourself with a support network to sustain emotional well-being and to maintain focus.



## Be persistent and don't give up

The majority of participants stated that other parents should be warned the family justice system is long and can be emotionally draining. Parents needed to be prepared for a drawn out and stressful process, but that they needed to 'hang in there' and not give up.

Participants reiterated that the process could be disempowering and that others might seek to undermine their motives, their confidence and their parenting abilities. It would be very hard, but parents needed to stay positive and to focus on the end goal, not to get side-tracked and to remember .... *they loved their children more than they hated their ex.* (Disabled parent)

[If you were talking to another parent who was about to embark on the same process what would be your advice knowing what you know now?] *Just be prepared for a long, difficult process. There were times when I nearly gave up, honestly I nearly gave up. There were times when I was seriously contemplating throwing it all in which wouldn't have been good for the kids or anyone. But there was so much pressure and dark times. The advice I would give would be it is just a hard, difficult time, expensive.* ( European / Pākehā parent)

## Get a lawyer

Many participants stated the need to get a lawyer early in the process. The family justice system was complicated, and the legal process, forms and jargon were daunting for newcomers. Many participants relied on lawyers to guide them through the process and ensure they didn't make any mistakes. Some parents admitted they had the skills and ability not to need a lawyer, but they knew mistakes could be potentially devastating, so wanted an experienced and non-emotionally involved ally.

Finding the right lawyer was also important i.e. someone you could talk to and feel comfortable sharing personal and sometimes upsetting information with. **Māori participants** reiterated, this might not always be the first lawyer that you came across, so doing some research and getting recommendations from others who had been through the family justice system, was necessary.

[What would you say to another Māori parent who has to go through the Family Court process?] *I would suggest go and get a lawyer. Go and get some legal advice.* (Māori parent)

For **parents with a disability**, finding a lawyer who understood disability rights added another level of complexity. Parents with a disability could feel disadvantaged and disempowered, so a lawyer who was conversant with disability rights and family law was vital.

*Ensure that your lawyer or person who is representing you, if any, is knowledgeable about your rights. Don't tolerate any discrimination whatsoever. [What is the best way not to tolerate any discrimination?] Be aware of certain language. They call it health issues or their condition. Or say due to their condition they can't do this. Sometimes it is not the lawyer it might be in the affidavit. So, and so did this and you can relate that back to the medication or something or lack of it. [But if you have it under control it is not a hindrance anymore.] There are many different disabilities. Especially for intellectual disabilities having someone there to be a spokesperson. Or when I get upset I can sometimes lose it.* (Disabled parent)



## Research and understanding of the process (and system)

Some participants had made it their business to learn as much about the family justice system as they could before embarking on the process. They recommended other parents should do the same and take the time to do their homework, so they were forewarned and forearmed. Some had gone directly to the Ministry of Justice website and found it useful.

*I would actually say, get as much information as you can from either lawyers or the mediators and stuff like that. I don't regret any of that time we spent in the preparation for mediation because I actually think, that if it does go through the court process, I still have the benefit of that knowledge that they have imparted to me about the situation. (European / Pākehā parent)*

Talking to others who had been through the process before could also provide valuable insights, especially in relation to the 'emotional' impacts. Parents must also be prepared to listen carefully to what was being said and confident to ask questions if they did not understand something.

*[If you were giving advice to anyone else in a similar situation to you what would your advice be?] I would say to listen, listen to everything, listen to all the information because no matter how big or small the word is, it is probably important. Ask questions. Be honest with the judge especially because they are there to help you. (Māori family member)*

## Have support in place

Journeying through the family justice system was very lonely. Parents could feel isolated from others (extended family or friends) who may be judgemental and less sympathetic. Parents sometimes masked their own needs and problems at the expense of appearing irrational or unable to cope.

However, having support in place was critical and parents said there was no shame calling on friends, family and whānau for support. Talking to independent, neutral individuals, such as the CAB or McKenzie Friends, could be useful for obtaining unbiased and unemotional understanding and oversight.

*Just that if you know you are doing it for the right reasons that you just have to stay strong because it's hard and just focus on the end point that you will get there and try and get as much help and support as you can through it. Because it is quite a lonely process, because even though you have got the specialists and things like that you have got to get through the day-to-day. (European / Pākehā parent)*

*[What advice would you give to a parent going through what you went through?] Get some support, I think that is very important to get some support. [Who is that?] Get some personal support. [Friends and family?] Yes. (European / Pākehā parent)*

One participant had referred to McKenzie friend who he came upon by chance. This person was invaluable and provided a good sounding board alongside his lawyer in helping him through the process. The bonus was he could provide free advice and so lawyer time was maximised, and legal costs reduced.

*One good thing for me was there was a guy at the school that the kids were at, a McKenzie Friend or something like that and so he had a bit of experience with the whole process so that was helpful. [How did you get in touch with him?] It was just random. He probably saw me ... So, he was available throughout the process. It can get quite involved, basically he can be a replacement for a lawyer, but I didn't really want that. I am not sure why I didn't want that, he was free advice. (Māori parent)*

## Private arrangements won't work for everyone

For some parents, private arrangements had, initially, seemed like a good solution. These parents had initially been able to come to their own agreements with their ex-partner and avoided the costs of lawyers and court. However, situations do change (people relocate, enter into another relationship etc), and, without a parenting agreement, ex-partners can play 'mind games' and threaten legal action whenever a change to the private arrangements is wanted. This can be a shock for parents, who had assumed all was well and arrangements were fixed.

Participants who had experienced the constant changes to private arrangements were keen to reinforce the need to move towards a formal parenting agreement to reduce the opportunity for the agreement to be used as a bargaining tool.

## Write things down

Some participants found it had helped to keep a diary (or similar) to document their emotions and thoughts as time and events progressed. This had enabled them to clarify their feelings and reduce their emotions. These participants recommended that parents be honest and not bend the truth and, in this way, it may help them to see both perspectives and how/ where they were being unreasonable.

## Be clear about what you want

Some parents admitted they had been side-tracked by minutiae (e.g. changeover day/ time), and subsequent discussions had added unnecessary time and stress. Being clear about their goals - the big picture - but staying open-minded and willing to compromise could help to expedite the process and keep relationships more civil.

## Don't tolerate discrimination and discriminatory language

For **parents with a disability**, a key piece of advice was to know their rights and not to tolerate discrimination of any type. They noted that it was their experience that discriminatory language could creep into conversations along with unconscious bias regarding the abilities of parents with a disability to safely parent.

*And they are like we are here to protect you because if you hurt the baby you would never forgive yourself and I am like cool but not so cool. I don't feel there is any such thing as bad people but if you have never been exposed to it, it is real out there. The thought of someone living independently, being a single parent, being in a wheelchair plus working long hours that is intense and if you have never had exposure to that it is very outside the norm. I don't know whether it is a campaign or they do some papers at uni. Unintentional bias is that the word I am looking for? (Disabled parent)*

### **Key insights**

**Insight 1:** The process is complicated (and individual), unknown and hard to prepare for; and at the heart of it a commitment to parent which drives participants to want a lawyer early on to ensure that mistakes are not made.

**Insight 2:** It is costly and more so for those who are disabled and low socio-economic status. Sometimes parents do not own cars, so rely on public transport or taxis; they have low paying jobs and / or no holiday available, so are forced to take leave without pay. They may be required to attend court appearances or child visits in different cities (on different Islands), so must find money for air fares or fuel, on top of taking leave without pay.

These participants struggled (both time-wise and cost-wise) to work their way through the process and consequently found it unfair and at times discriminatory.

**Insight 3:** Disabled, Māori, Pasifika, low socio-economic parents and those with a lack of formal education or poor literacy skills, can feel alienated and discriminated against by the justice system. Many have experienced unconscious and intentional bias, which has undermined their status, confidence and parenting abilities. Parents' disabilities have been used against them, to prolong/ stall proceedings

# Experience of out of court process changes

The 2014 reforms made significant changes to the way in which the family justice system assists separating couples to reach agreement about care and contact arrangements for their children. In line with the objectives of the Family Court when it was established, the reforms shifted the focus from court resolution of these disputes to encourage parents to reach agreement themselves, where this was appropriate.

The follow section summarises participants experiences of the key changes to the out of court processes.

Participants were shown a prompt which outlined a Journey Map of the main steps and services in the family justice system and asked to indicate which ones they had used. The subsequent discussion focused on the steps and services participants were familiar with and had experience of.

## 5.1 Family Legal Advice Service (FLAS)

The Family Legal Advice Service (FLAS) provides initial advice and information for parties in dispute over arrangements involving care of children matters. This service is free to people who meet the civil legal aid threshold.

### Key findings - FLAS

- This was a useful service for those who used it.
- However, we note that few had used it:
  - Some had gained early information from court staff (who had done an excellent job in explaining the 'papers filed'.)
  - Others had preferred to seek information from Auckland Disability Law or their local Community Law Centre or Citizens Advice Bureau.

Only a minority of participants (around 8) had used or could recall using this service and others were confused with whether this might be the Legal Aid/ Community Law service.

Some participants had felt no need to seek out the FLAS, as the court staff had been really helpful to them or they had their own lawyer from the outset. Others had sought help from alternative sources, such as Disability Law or the local Community Law centre.

Notwithstanding, the few participants who had used the service claimed to have found it useful.

FLAS had provided:

- A knowledgeable and practical listening ear, given participants practical advice on the steps in the family justice process; including how long the process could be
- Advice on the forms that would be needed and had helped to check completed forms
- Information on how to find their own lawyer (and in some ways highlighted the need to have their own lawyer).

*They were great because I actually saw them quite early. So, they had given me advice about the steps that I needed to go through at the start and then they told me all the forms and stuff that I needed to fill in because for the actual application you have to do it yourself. So, while you can get advice on how to fill them in you have to do it all yourself and file it yourself. Then you can get a lawyer. (European / Pākehā parent)*

A small number of parents' experiences of FLAS were not so positive, citing an overstretched/ under-resourced service.

*[Family legal advice service?] I guess the biggest thing there was the lack of explanation and time where lawyers are really constrained by their own knowledge of the law and their time frame and they are really quite busy to have that other level of legal knowledge but imparting that knowledge and explaining things and maybe being more empathetic. (European / Pākehā parent)*

## Other information sources

We also note that for many participants seeking information, their search on where to begin had started with a Google search, using key search words; 'separation', 'child custody', 'Family Court' etc. Some have gone directly to the Ministry of Justice website to begin their search, while others turned to support agencies such as Community Law and Citizens Advice Bureau (CAB). These were valued and respected organisations, who had helped many to begin the process and inform on where to start.

*[What about the family legal advice service have you used that?] No. I think I was lucky, the lady who sent me the paperwork from the courts I was able to ask her quickly the questions that I did have and she was able to quickly answer without going through the full thing. (European / Pākehā parent)*

## 5.2 Parenting through Separation (PTS)

Parenting through Separation is an information programme that aims to help parents minimise the effect of their separation on their children. PTS was available pre-reforms but has been made mandatory for people wishing to make an application to the Family Court for a parenting order to resolve a dispute between guardians unless an exception applies. It is free to participants and usually consists of two, two-hour sessions. Each parent needs to attend separate PTS sessions.

### Key findings - PTS

- PTS was viewed as another part of the process; in which some parents participated, while others did not. This raised questions of how compulsory attendance at PTS was and under what circumstances; participants were unsure.  
We note that attendance is only compulsory for applicants, but many participants did not understand this; they had either never been told or had forgotten. Subsequently, they were annoyed and frustrated when the other parent did not attend and viewed this as them purposely flouting the system (which was actually true.)
- The key message and lesson from PTS which all participants valued was the need to focus on the children and how their actions towards their ex-partner affected their children. Hearing the experiences of others was also widely valued.
- Conversely a minority of participants viewed PTS as another delay in the process. And for some the learnings in PTS were not anything new.
- Some logistical improvements to PTS were also suggested:
  - Timetabling was difficult for some solo parents so online learning could be included.
  - Accessible premises (physical disabilities) and learning tools (sensory and learning disabilities) for parents with a disability should be included.

Around 20 participants had attended a PTS workshop.

### 5.2.1 What worked well?

#### Helps parents to understand themselves

For some participants, PTS had helped them to understand better their own emotional state; why they were reacting in a certain way and the impacts/ consequences of this. Seeing and hearing how other participants talked about their ex-partners had encouraged a couple of parents to reassess their own words and behaviour.

[Parenting through separation.] *That is probably an A. I found that one really good.*  
(European / Pākehā parent)

#### Helps parents to understand the impacts on their children/ young person

A key lesson for participants was that it helped them to understand the impact of the separation on **all** their children (older and younger) and think about their children's needs. It also helped them to

reorient their approach to ‘focus’ on the children as the priority and less about ‘winning and losing’. PTS encouraged parents to think about the children’s feelings, to stop making children feel guilty and to stop talking about their ex-partner in a derogatory way in front of the children.

*It was good actually I valued it because after that I stopped talking about my ex-partner to my children. That was the biggest one. Now I don’t remember all the details but I think that was the core of the course ... and then watched some videos and the children talk about how they are feeling when their parents are separating. So that is why I found I should not give them guilty feelings because it is not their fault. So that was really good. ... Also, in that programme they explained some of the emotional stages. Not only for the children but why divorces happen ... and we are all in a different stage of the emotional feelings. (Asian parent)*

### Gives parents a wider perspective

Participants who were open to the possibilities also agreed PTS helped them have a wider perspective on how ‘day-to-day care and contact’ arrangements could work.

### Provides access to support from other parents

Participants found the interaction and support from the other parents attending PTS worked well; it was good having a range of ages, ethnicities and gender and a range of views and experiences.

*[What did you like about that programme?] Probably the one good thing about it was being in the group because you got the perspective of other people’s situations and it sort of gave you a way to gauge whether or not continuing on the process was something that you needed to do or whether or not you were maybe being just a bit like actually we could sort this out. Because there were a lot of different situations on the course. So, it was quite good to hear other people’s views. (European / Pākehā parent)*

*So, I think parenting through separation is really good. It is for people of all different ages and stages so you are going to get out of it whatever you might get out of it. ... And I do think it was pretty well rounded and I think the other people in the group with me - they didn’t understand the timeline of how things work. .... You need somebody or a small group like that, that if you don’t get it you can ask questions at the time. People shared quite a bit about their situations and there were so many different situations. (European / Pākehā parent)*

## 5.2.2 What didn’t work so well?

### Negative tone

A couple of participants had found the mood and tone of their PTS courses very negative, noting that some parents were using the sessions solely to get their certificate rubber stamped, to speed up the court proceedings or to complain about their ex-partners. PTS was a means to an end rather than being open to the possibilities.

## Another delay in the process to get to court

For a minority of parents, PTS was cynically viewed as another delay that lengthened the overall process.

## Is PTS compulsory?

For many participants who had taken part in PTS, their big question was whether their ex-partner had also attended. Consequently, there were queries around the compulsory intention of PTS. There were, as far as parents were aware, no known sanctions for non-attendance, which meant non-compliant parents (in their view) could ignore any attempt to encourage them to attend. This was frustrating for parents who had attended and who had found it useful. They noted that in order for them to put the lessons into practice within the premise of a more even playing field, it was important that the other parent attended also.

And for those who had attended knowing that their ex-partner had not, led them to feel it made a mockery of them and to some extent, the family justice system (due to their mistaken assumption that attendance was compulsory for both parents.)

*I had to do it because it was compulsory but then (ex) didn't do it. It ended up going my way in the end so maybe the fact that I did all the courses - I ended up getting 365 nights of the year custody. (Disabled parent)*

*If they (court) order you to do the courses, then they should make sure that it gets booked. Give the proper days or tell you here's the number and you need to sort it out. And have someone call to say, "have you done it yet?" ... but there was no follow-up. (Pasifika parent)*

## PTS is irrelevant

A few parents stated they had learnt nothing new - that PTS had simply confirmed their own philosophy and approach - while one participant had never had a relationship with the other parent of their child so did not see the relevance of PTS for them.

*I didn't learn to be a parent any better than I was. They basically just explained that whenever there is a break up the children are affected and to be mindful of that. Which I already knew. So, it was more of a rubber-stamping thing, I gained nothing from it other than it delayed things. [And your ex didn't go anyway?] No. I am pretty sure they didn't go anyway. It is difficult to compel people to do anything. And the next step is a very good example of that and that was the mediation. (European / Pākehā Parent)*

## Logistics

Timetabling was difficult for some solo parents with limited support and/or no transportation. **Parents with a disability** mentioned the need for accessible premises as they had encountered difficulties in attending.



*The place was inaccessible, parking was inaccessible. So, I had to struggle and struggle and that is why I was late because I had to call somebody to come and pull me up the steps.*  
(Disabled parent)

One suggestion was that online learning could be an option and/or the ability to learn in small bites.

### Key insights

**Insight 4:** A key prerequisite for parents to fully participate in and benefit from PTS, was that they needed to attend with an open mind. Unfortunately, this was not always possible as PTS had occurred quite early in the process, when emotions were still running high. Participants said it had been difficult to listen and learn dispassionately, while still hurting and resenting their ex-partner.

**Insight 5:** Participants who had attended PTS sometimes queried its value when approaching mediation, if the other partner had not attended and was not open to the possibilities as much as the partner who had attended.

**Insight 6:** While parents generally understood the intent of the course - i.e. to help them understand and manage the needs of their children following separation - and agreed that it makes sense on one level to attend PTS if it helps to facilitate this, on another level, participants recognise that they are going to work out what works for them regardless of whether they attend PTS or not.

## 5.3 Preparation for Mediation (PFM)

Preparation for Mediation (PFM) is a voluntary service available to help people prepare for Family Dispute Resolution (FDR) by learning tools to manage their feelings and focus on the children so they can participate more effectively in FDR. It is mostly provided by counsellors who are suitably accredited by a professional membership body. Matters discussed at PFM are confidential and they are not reported to a party's mediator.

### Key findings - Preparation for mediation

- Around 30% of participants (10 out of 34) had used or could recall using this service. Those that did had found this service useful and regarded it highly.
- To maximise value, it was suggested by one participant that FDR follows closely and within a month of attendance at PFM.

Around 10 participants had attended Preparation for Mediation.

### 5.3.1 What worked well?

#### Good preparation and confidence builder

Preparation for Mediation had outlined possible scenarios and provided good examples. It had also given participants a general understanding of mediation and how it could work, the process and parental rights in the mediation process. Importantly, it had helped to build their confidence in a process they knew little about.

*And the mediation preparation was so important because it was setting the ground work for the mediation to be successful. A lot of what we spoke about was really enlightening and I took notes and he said your relationship has broken down because you have gotten to this point and if you go into mediation and do what you have always done it is going to fall over and you are not going to get anywhere. So, they were extremely helpful going through scenarios and what to expect and how to go about things in a different way in terms that referred to yourself and made sense and aren't just big generalisations or info dumping so you didn't remember anything when you got there. (European / Pākehā parent)*

### 5.3.2 What didn't work so well?

#### Gap between PFM and FDR was too long

One participant noted that the gap between the course and the actual mediation was too long and it was hard to recall and use all that they had learnt. It was suggested that PFM and FDR should be held within one month of each other so as to receive the maximum benefit from both.

*And then sometimes you do the preparation and it is quite some time later that you actually get the mediation appointment. [Was that the case for you?] I think it was. I think it was probably a good three months or something. I think probably no more than a month. And also, because you go through all of that stuff in the preparation and by the time you sometimes get to it you think what was it all about? Because you have got so much other stuff going on as well to try and remember what was discussed. So, in a way I still felt like I was going in there like "oh my God what is going to happen?" (European / Pākehā parent)*

## 5.4 Family Dispute Resolution (Mediation)

Family Dispute Resolution (FDR) is a service aimed at helping separated parents and guardians reach agreement about caring for their children. FDR is intended to be a less stressful and more timely process for resolving care of children disputes than the Family Court. FDR replaced out of court counselling.

### Key findings - FDR (Mediation)

- For a small number of participants, FDR worked well and there was a place for mediation if both parties were willing to make it work. Specifically, those who were more open-minded and willing to compromise. Key things that worked well included:
  - Good facilitation from independent mediators
  - Obtaining a more flexible parenting agreement
  - Proving an opportunity to be heard with an independent mediator
  - The involvement of family support.
- Unfortunately, for many other participants, FDR had not worked so well and had added more time and expense to the process and simply delayed the inevitable i.e. going to court and having lawyers more involved. Specifically, these participants were characterised by having polar-opposite points of view regarding parental 'day-to-day care and contact' arrangements and showed little willingness to compromise.
  - Also, these participants regarded FDR as a step towards their eventual goal of a Court Order i.e. a judge order.

Around 20 participants had attended Family Dispute resolution.

### 5.4.1 What worked well?

#### Good facilitation/ independent mediator

Some participants praised the experienced mediators, who facilitated the discussions well in difficult situations. The facilitators had helped interpret the discussions and work towards agreement. A few parents explained that while they had been 'on the same page', in their emotional (stressed, angry, upset) state, they had been unable to recognise this. The 'battle' or confrontational element was reduced through the mediation process and good facilitation by the mediator.

*I guess at the time I actually don't know how they actually did it, but I think they kept on bringing it back to the child and that is how we worked through things. Because you can go off on tangents very easily but being able to voice your opinion and how you think but also coming back to moving forward, helping us to move forward and think about the young person. Because you can very easily go back to old issues, but it is about moving forward and creating a path for the young person and what that would look like. Because it is not the ideal situation, but it is what it is. Helping us focus on pathways moving forward for the young person. (Pasifika family member)*

*I had a phone call from [Name] who was appointed to be our mediator on behalf of myself and my (other parent). And she was really clear about her role. I was a bit apprehensive at first because she was Pākehā but the main thing for me though was the professionalism and how she introduced herself and then she told me that she would send out the relevant information and papers so that I could read through it and sign it off and she did that.*  
(Māori family member)

The independence and neutrality of the facilitator was integral to the process. Some noted that their presence provided an independent witness and evidence to the discussions which they valued.

One Pasifika participant thought that mediation might have worked better if they had a choice of who could mediate their sessions. Someone of high authority in their culture may have helped ease the tension and issues before the sessions got underway.

*While the process may work in theory, I think we needed someone who (ex-partner) respected, like a village matai or a senior elder in the Church. That might've helped (ex-partner) and us.* (Pasifika parent)

### An opportunity to be heard

Importantly, mediation provided a safe and supportive environment for discussions; including *maanakitanga* which helped calm the nerves. Some participants had found it hard to get their viewpoint across to angry and unreasonable partners, so it was an opportunity to be listened to and heard in an independent and neutral environment

[So, what worked well in the mediation then?] *Well I did actually get to talk because they would let me finish what I was saying when I was getting interrupted and say, "no you will get your turn, but you have to listen now". [So at least you felt your view point came across?] Yes, even if I knew it was talking to a brick wall, at least I got to have a say and to have someone else hear that what I was saying wasn't trying to blame - that someone else could hear that what I was saying was valid from my point of view and it wasn't just because I was trying to be vindictive.* (European / Pākehā parent)

Having family support participate also worked well, especially for **Māori** and **Pasifika**. This had given participants more strength and confidence to talk and state their requirements than if they had done so alone. For one Pasifika family it had been helpful to keep the process out of court. As a Pasifika family there was support (both financial and practical) from the wider family and mediation was less costly all round for them and less emotional; as they were able to talk things through with a skilled mediator.

*I guess the biggest thing for us is probably it was a good thing to keep it out of court. Because at the end of the day they can only see what is in front of them in that amount of time that it is not fair on the child. And I guess probably for many island families having lawyers, it wasn't just us. I just said I was nominated from the family that I would look after (name), me and (name2) ... when we went to mediation I think for my sibling, I think it was better for (them) because we were able to talk through a lot of things.* (Pasifika family member)

One **Pasifika** participant noted in retrospect that mediation would have worked better for them as it was less harsh than the in-court experience and would have provided an opportunity for the wider family to participate and talk things through with an experienced independent mediator.

#### 5.4.2 What didn't work so well?

##### No point/ waste of time

Notwithstanding, a significant proportion of participants had found FDR a waste of time, as there was no willingness to compromise from one or either party from the outset. Sometimes parents had gone into mediation with opposite or entrenched views from which they were unwilling to shift. Others had approached it with a negative mindset - believing from the beginning that it was not going to work - while, in other cases, one party had no intention of fully participating. For them, mediation was an unwanted hurdle, delaying their day in-court.

These participants found the process a waste of time and money; and an additional cost, time and stress burden.

*I can sort of understand in some situations but I guess in my situation it did seem like it was delaying the inevitable because there was never going to be agreement. And that was apparent from the very start. I guess it doesn't look at individual cases it is this is the process. (European / Pākehā parent)*

*... it would never have worked. And it wasn't a process with the mediation it was polar opposites. ... The United Nations couldn't have mediated it. As much as I think mediation is a cool idea there are some things that can't be mediated. (Disabled parent)*

*We went through it and we didn't get anywhere. We were in there for 15 minutes and the mediator said, there's no point. (Pasifika parent)*

For some **Māori** parents, having children attend a bi-lingual school was important but could be refused if the ex-partner refused to agree to this and the importance of this was not recognised at mediation.

*But that is another big argument we had because I wanted [Name] to be at a bilingual school and (other parent) didn't want [child] to. So that was a big kerfuffle because (other parent) wanted [child] to go to a school (they) went to. (Other parent's) excuse for [child] not to learn Māori was just pathetic but yet mediation didn't seem to really care. (Māori parent)*

##### A means to get to court

Other participants saw FDR as the pathway to get to in-court services rather than participating with any intention of coming to agreement at FDR. These participants wanted to go to court for the legal certainty and finality of a parenting order directed by a judge. They had been told they had to go to FDR or that it was 'something they had to do to get to court', so had no real intention of approaching FDR with an open mind or of giving it any chance to succeed.

[So, you haven't gone into the court process?] *No. I wanted to a couple of times because [my ex] has just been a nightmare to deal with but when we get the legal advice, they say that we have to go back to mediation. Which meant every time we had to go back to mediation and it was like nothing is going to get resolved in mediation except paying more money. (Māori parent)*

*When I was locked out of the house and my bank accounts were frozen and the kid wasn't there. Then they said to me you have to go through mediation, and I was like what are you talking about, there is nothing to mediate here. Then they explained to me that this has to be done. That is what I say about the time delays because I can't remember it felt like years, but it must have been months and to have to wait months to sit with someone to mediate something ... it was horrific. (Disabled parent)*

## Disempowering/ traumatic

For some participants the FDR process had been a traumatic experience. A few participants described mediators who had a pre-determined goal or outcome in mind; hence the participant did not feel listened to and/or that greater weight and importance was given to their ex-partner's viewpoint. The process had been belittling and participants were left feeling there was no care or understanding of their perspective.

The discussions were often very emotionally charged with angry and upset participants. One parent described how they had pulled out of the process and refused to engage any further in discussion, as there was no compromise from the ex-partner, but they had felt they were the one taking the blame for the lack of progress.

*We went through mediation and paid a lot of money for even private mediation. But (ex-partner) didn't really step back. I feel like I wanted to stop here, and I didn't want to waste my time or money anymore, but (ex-partner) didn't stop and then the only thing I can do is to keep going. It took both parties, but one wants to keep going and the other really doesn't want to. (Ex-partner) gave up custody quite quickly but the relationship property (ex-partner) was dragging until the end. (Asian parent)*

*I just think the mediation process was traumatic. They need a better way of doing that. You go to see the lawyer and then back to mediation and then you can go through the court ... It is stressful enough. (Māori parent)*

## Involvement of lawyer or not at this stage

Some participants had felt they had needed a lawyer at this stage to go over some of the discussion at mediation. They had wanted things explained in simple terms; including the implications of any decisions suggested or made at FDR.

Those who did have a lawyer found this useful and noted the reassurance they felt having the lawyer participate. The lawyer provided a much-needed buffer and someone knowledgeable to talk things through with. Having a lawyer 'on their side' gave participants a greater sense of confidence and self-belief to talk freely, to stick to their guns and not be bullied or undermined by their ex-partner (or others).

*When we went to mediation, she was able to speak for me whereas I might not have been able to speak for myself and get confused and bullied. So, I felt really, really strong and because she had already advised me prior to mediation and all of that what to expect I went in there knowing exactly what was going to happen. (European / Pākehā parent)*

However, there was a power imbalance when one partner had a lawyer and the other did not; the latter feeling disadvantaged and out manoeuvred during FDR.

## Cost

Cost was a significant drawback for some participants, especially as there was no flexibility on the number of hours to come to an agreement. It could be costly if parents need/ want to extend the amount of time to reach consensus.

*My only negative was that you get allotted so many hours and that includes preparation time with the mediator or a mediation advisor. We didn't reach a conclusion through the formal mediation and we weren't able to go and think about it and come back and revisit it because both of us had used some of that preparation time, the set hours ... we didn't quite get there. We were working towards an interim agreement and then there were some issues with the interim agreement that we wanted to come back and revisit but the mediator said you have basically used all of your hours so we couldn't keep carrying on with that process. (European / Pākehā parent)*

## Key insights

**Insight 7:** Mediation is predicated on participants' willingness to compromise and to attend with an open-mind. Unfortunately, for many the process is early in the separation and many parents found it hard to compromise or stated their ex-partner showed no willingness to compromise.

**Insight 8:** There was a place for FDR if there were willing parties e.g. who were more open-minded, willing to compromise and where there was less conflict among the parties. Improved marketing, using exemplars and case studies, to illustrate what can be achieved, may be also helpful for parties who are sceptical, but not totally dismissive.

**Insight 9:** However, for some couples, mediation will not work. As one participant stated - sometimes there is a need to meet and agree that mediation is not going to work, rather than attending mediation to reach the same conclusion afterwards.

# Experience of court process changes

One of the most significant changes was limiting access to legal aid and legal representation in the initial stages of CoCA (Care of Children Act) proceedings. Parties are unable to get full representation unless their case meets one of the exemption criteria. While the change was primarily to address cost pressures on the legal aid scheme, there were also several assumptions behind the proposal, including that it would encourage earlier resolution of disputes out of court where appropriate; parties would be able to resolve matters with the assistance of a judge in a less adversarial setting and without the expense of legal representation, and most lawyers would come back in the system at a settlement conference hearing.

A more streamlined approach with fewer requirements for proceedings in the simple and standard tracks was considered to help mitigate any risks associated with the proposal. The success of this approach also depended on easy to understand forms and questionnaire affidavits, streamlined court process and encouraging the use of McKenzie friends and support people.

The follow section summarises participants experiences of the key changes to the court processes.

## 6.1 Forms and affidavits

As mentioned above, the success of the 2014 changes, particularly the expectation that more people would represent themselves, depended on having forms and other court documents that were easy to understand and use.

### **Key findings - Forms and affidavits**

- The paperwork was onerous and scary at the same time; especially for first time participants. This drove many to seek the input and support of a lawyer to ensure that forms and affidavits were completed correctly. Participants were afraid that incorrectly completed forms would place them at a disadvantage and jeopardise their 'day-to-day care and contact' arrangements.
- The notification of 'Papers' being served in itself increased the anxiety for many participants and while court staff did their best to support parents, some advance notice where appropriate, would alleviate some of the associated stress.
- It was noted that experience did help, with those who had been through the family justice system before being better prepared.



## Time-consuming

Participants were aware that forms and affidavits were crucial evidence for the in-court stage, and that time and care needed to be taken to complete them correctly and ensure that all information was included. Participants spoke of these in terms of taking hours and hours of work to complete and there being lots of paperwork, even for those who had appointed a lawyer. One participant, who did not have a lawyer, talked about how his heart sank every time he received another envelope of documents to complete, many of which seemed to be unnecessarily long and repetitive.

*As far as I remember there were just so many documents that you need. If you want to file something then there is an affidavit for filing and then also that one should be delivered to that person but if you don't know the address then you have to go through another file. You have to submit and wait 60 days for them to reply back or not. Then if you want to shorten that period you have to file another one. Initially you don't get all the information.*  
(European / Pākehā parent)

*... I remember doing affidavit after affidavit.* (European / Pākehā parent)

*That is part of what creates so many forms and so much paperwork is the need for it all to be explained clearly. ... There is a lot of legalese terms that I didn't follow ... it is all explained really well, it is just there is so much of it that it gets overwhelming. It is just constantly A3 envelopes with 30 different forms in it. By the time I get through five I can't remember how they started. Then you get the same thing again about a month later.*  
(European / Pākehā parent)

## Need a lawyer

For many participants, having a lawyer was very important. Lawyers understood and had experience of the process, so it was often the lawyers who explained the terms and forms and the importance of the information gathering and collation process. This was especially so for those who were following the 'Without Notice' track.

## Worrying/ scary

Participants were worried about completing the forms and affidavits incorrectly, as any mistakes or omissions could be devastating on the outcome. The use of legal jargon added to the 'scariness' of the form filling. In addition, the questions were not straightforward and required thinking about to make sure your replies answered the question **and** did not inadvertently disadvantage you.

*I guess I wanted my response to be professional as well and worded right in the way that the court system talks.* (European / Pākehā parent)

Completing forms and affidavits was daunting for **all participants**, and even more so for those not familiar with form filling, the English language or the New Zealand legal system. Two parents with legal backgrounds had still hired lawyers, as they had wanted experts in Family Law representing them.

A few participants stated they were more comfortable and preferred the spoken language (to filling out forms). They had been taken unawares in-court, as they had thought they would have the opportunity to speak and elaborate more (but if it wasn't in the affidavit, they found they were shut down).

[What about filling in the forms and your own affidavit?] *Some of it is very confusing it is not 100% straight forward like you would expect it to be. [You did that all yourself?] I did. [What would help people like yourself fill them in more easily, what did you find difficult?] Probably the big words. .... some of the jargon that they use is massive. [So, what would help in the form filling?] Maybe just a general guide. You have got your big word of what they want you to have and then a basic explanation even if there is an example next to it for people to understand. ... trying to download the forms off the web is diabolical.* (European / Pākehā parent)

*We filled one in, we took it in and the lawyer spoke with us and edited it and I guess reworded it and put it into better sense and she did actually write the final copy alongside us and she photocopied it and gave it to us. Then she had a typed up one as well obviously. [How did that process work for you?] At first, we were quite confused about exactly how much detail and all of that stuff. ... When it is worded better it obviously makes sense but it just don't feel genuine because it is not your own. I guess they have to put it into lawyer-speak.* (Māori family member)

Form filling was difficult for Pasifika participants and they would rely on lawyers/ legal support people to complete these. Legal terminology was hard to understand and interpret and participants talked of being 'very' careful in writing things down and trying to be safe in the words that they used.

There was a call for everyday language to be used or a guidebook that explained in simple terms the terminology being used.

### Court staff can be helpful

Some participants had approached the Family Court directly for help and advice and found some court staff were knowledgeable and helpful in their responses.

*I actually filed in [City 1] and then I didn't get any response and I rang them and they said my file is in [City 2]. So that is why I went to [City 2]. The ladies in there were much more knowledgeable. I don't believe I was informed of the procedure properly. There are so many other ways to do it but even when I asked, "okay I have done this one now what happens" then some people are able to answer and some people can't.* (European / Pākehā parent)

### Initial notification/ being served the 'Papers'

For many parents, it had been a very scary and anxious time when 'Papers' were served. This was exacerbated when this happened unexpectedly, and parents were given no warning. Sometimes court staff had explained over the telephone what the 'Papers' were but others had to wait until they collected them from the court to find out. In these circumstances, participants felt the other partner had clearly got the upper hand, as they had intended, while they had struggled emotionally to deal with the situation and to respond.

[When you say terrifying, what do you mean?] *Just not knowing. Suddenly getting a phone call saying that you have got papers sitting at the court that you need to be served with. ... it was just so vague. That was all she said ... and I said to her “can you explain what it is about?” and thankfully the lady did. She said I am so and so from the court - I can't remember whether she said it was my ex-partner or whether she actually said their name, but she said it was court proceedings that I was going to be served with.* (European / Pākehā parent)

*I was just thinking back to the first phone call I got. One thing I felt was very cold - I had my child and her friend in the car and we were on the way to the beach and I got a phone call from the court saying I had some legal papers to pick up and they wouldn't tell me what it was about. I just felt that was really cold.* (European / Pākehā parent)

*... at the start the guy served me, he came to the gate or something, so you think, “oh God, oh no”.* (Māori parent)

Participants had been angered and upset when they had been served Without Notice Papers; when it was later proven there had clearly been no risk of harm to the children or ex-partner. They believed there should be sanctions for people who sought to undermine their ex-partner in this way and waste court time.

*It worked well for (ex-partner), it worked really well. That didn't work for me. If I ever had to do it again I would do it before (they) did because I think that it worked really well. [It worked well for the person who initiates it.] Yes. It worked a treat. ... I think if you are really smart and you figure out that that gets you the kid and puts the other person on the back foot then it can get abused. ... I would love to see a world where if you pull a without notice and then it is proved that there was never any intent for harm to the child or partner then you should get prosecuted for wasting the court's time and making a drama.* (Disabled parent)

## Second time around is easier

There were a few participants who had been through the family justice system for other relationships and children and for them the form filling was easier and less worrying. They saw the forms as just part of the process and a means to an end; they lacked the scary, unknown quality of the first-time round.

For example, one participant had used their ex-partners forms as a template to file their own papers the next time round. On the previous occasion, the ex-partner had used a lawyer to draw them up and so the participant felt they had a good guide to copy and use; and for the participant, they were looking to maintain the status quo.

## Key insights

**Insight 10:** Very few found the form and affidavit completion process a simple one. In part this was the result of participant's concern that so much of the decision-making relies on the content of the affidavit; so, they were fearful of not completing these correctly or of not using the right terminology. A lawyer's input was crucial for final completion with most participants not confident in their own abilities.

## 6.2 Court processes

The overall court process was then explored with participants. Specific aspects of the court process were explored separately.

### Key findings - Court process

- In general participant's experience of the in-court process echo their overall experience. The in-court process is described as a highly emotional time (with high stress) that is time-consuming and unfair. It is time-consuming due to the many additional reports required, while feelings of unfairness were attributed to not getting a fair hearing.
- In particular, for parents with a disability the need to provide evidence of safe parenting incurred additional costs as well as increased the time to agree on a parenting agreement.
- It was a surprise for many that their time in-court was similar to 'being on trial' with cross examination by lawyers and a strong legalistic tone. Listening to and understanding the tenor of affidavits can be harsh and hard to accept.
- There were some, who on reflection, considered they had been pressured into accepting a parenting agreement brokered during a conference meeting rather than letting the judge decide.
- Participants thought that the Without Notice track put the parent who did not initiate proceedings at a disadvantage, in that the applicant secured an initial 'win' in the form of an interim order. This set a negative tone for the process from that time forward.
- A very small number of participants were pleasantly surprised by the in-court process. From the analysis it appears these cases were less fraught and more likely to focus on access or there were whānau and extended family involved, meaning participants were more likely to work together.

### Highly emotive process

All participants across all key audiences described the in-court process in terms of being stressful and emotionally draining. Even those with a strong case and an inherent belief and trust in the court system admitted to being emotional wrecks during the entire process.

As mentioned earlier, participants used terminology such as horrific, devastating and terrifying to describe their experience. For most, it was the first time they had been in-court and the reality and

seriousness of the situation - that they might lose 'day-to-day care and contact' of their children - was overwhelming.

Several also described the process as discriminatory. They felt that they had been disadvantaged by their financial or social status, gender, race or disability and that these, rather than their parenting abilities, had been 'on trial'.

[If you were describing the court process what words would you use to describe it then?]

*Same words I used at the start. I actually found it quite horrific. That is quite dramatic.*

[Was it the cross-examination, listening to the affidavits the way the judges or the lawyers worked?] *Everything except for the lawyers.* (Disabled parent)

**Pasifika** parents commented how harsh the in-court process can be, as it pits extended family members against each other in the best interests of the children - grandparents and siblings are required to recount difficult situations in their quest to safeguard the children. Relationships are stressed during this time.

## Unfair

Several participants had been left with a strong sense that they had not had a fair hearing. While researchers suspect that for some this was mainly due to what they perceived as an unfair outcome and, for others, their lack of understanding of the judicial process and the role of affidavits, there were times when participants genuinely felt they had little opportunity to state their case to the judge.

Several participants felt they had not been listened to and one participant stated they felt lesser being poor.

*I just expected it to be I will go and have my say, my child's (other parent) will have their say and that will be pretty much the end of it. They gave the power, which I don't disagree with entirely, they gave all the power to my child's (other parent) and my child and I was left powerless and that still hurts. I was the one making all the effort to be the best parent I could be, and I was the one who had to jump through all of the hoops, and some of those hoops were on fire.* (European / Pākehā parent)

*I felt like it (the process) was very intimidating. I felt like I didn't know what was going to happen. I didn't know if it was my lawyer at the time and whether she didn't know what was going down, but I kinda felt like I didn't get the chance to tell the judge or tell the court what I thought was the best thing to do for us.* (Pasifika parent)

Several participants felt that shared care was being pushed as the main outcome by the professionals, when it was not always in the best interests of the children. This sentiment was reiterated by three older teenagers, who felt 'traditional' ('day-to-day care and contact' to the mother) had been over-ridden by the more recent premise that 'shared care' with a regular father figure had been favoured over their preferences.

*I know on the course they did talk a lot about shared custody and things like that and I totally understand that in some situations it can probably work. But I think that tends to be in situations where the break-up is quite amicable and there aren't other people involved. And that was sort of the issue with us and the shared care and as I said the kids being so*

*young, within 10 months of us separating (ex-partner) was moving in with someone else with other children and thought that it was all going to go swimmingly. And I was trying to explain that these sorts of things need to happen a bit more gradual for the kids to accept and adjust but it just all happened anyway. (European / Pākehā parent)*

One participant's experience emphasises some of the difficulty's parents face when managing shared care with young children.

*[Happy with 50/50?] I haven't been for a while. It does kind of work, but my issue is that I have had to deal with my child not wanting to be with their (other parent) literally since we split up. [Name] will have their good weeks but most of the weeks (child) doesn't want to go to their (other parent) and that is what I struggle with. ... Literally for five years [Name] hasn't really been too keen to go to their (other parent). Child will be kicking and screaming when we do changeovers between us. ... It has been a nightmare. ... What else can I do? Do I have to go back to court and be like I want my child all the time, but I have nothing to show them that their (other parent) can't look after (child)? I even got to a point where I started recording the times when [Name] was playing up and didn't want to go to their (other parent) as some kind of evidence. But again, when I get free advice they just say that you have to go to mediation. (Māori parent)*

### Time consuming

Participants recognised and understood that the court process took time and, in all but the most serious (dangerous) of cases, they would have to wait to 'have their day in-court'. What they disliked and disagreed with, however, was that the process could be purposely stalled and drawn out by the ex-partner. They were also frustrated by the needs of the court for specialist reports, professional supervision and mediation, which added months (if not years) to the process.

For **disabled participants** the additional requirements of professional supervision and specialist reports could mean additional time lost in having access to their children and significant additional expense.

Some parents had felt prompted to settle for less than ideal 'day-to-day care and contact' arrangements by lawyers and judges as the process could drag on for too long and they worried about the impacts of uncertainty on their children (and on their own emotional and financial well-being.)

*[How would you rate the court process overall?] So slow. I understand why they need to do things, but it was so slow. [Could it have been any faster?] If (ex) didn't respond right at the beginning and (ex) hadn't responded in the first two calls to court, then they should have left (ex) out and left me and CYFS and that would have been faster. If you are not showing an interest, then you waive your rights. They do that with the criminal court system, if you don't show up then obviously you don't want to sort this out and you get a warrant for your arrest. (European / Pākehā parent)*

Conversely, there were a small number of parents who valued the longer process, as it proved due diligence, that proper process and procedures were being adhered to, and it gave reassurance that 'things could not just happen at the whim of an ex-partner'.

## Trial-like

Despite knowing and understanding the Family Court system was part of the justice system, for many participants the process was far more 'trial-like' than they had envisaged or expected.

Undergoing cross-examination was daunting. Participants felt like they were being attacked by the ex-partner's lawyer and that their personal integrity and their credibility and suitability as a parent were being challenged. For some, this was a surprise as, until then, they had not fully appreciated the legal environment that the Family Court process followed.

In addition, a number of participants were unsure of the court process; whether there were breaks, when to stand, when to sit, whether the judge was making a statement or asking a question and the legal jargon used. They felt uncomfortable and that they were playing catch-up with those who had a much better understanding of the process.

*The language I didn't really understand what was going on and it was just muddled. [When you talk about the language what words come to mind?] I am just going to say legal jargon to what is happening instead of kind of bringing it down to layman's terms. Because of this action we can't allow you to have the children or you need to be completing this, this and this to be able to work on it. ... it is just the language that was used that was really hard for me to follow. ... Because they do use some rather weird terms for rather simple things. (Pasifika parent)*

Adding to participant's stress and discomfort was that some of the affidavits were harsh and tough for those concerned to hear and listen to. Sometimes court had been the first time they had heard the hurtful and damaging things others had said about them. And, for some participants, it had meant pitting family members against each other which had negative implications for family dynamics and relationships going forward.

*Also, the language. I know people going through it might minimize it but it was how things were described in those court documents made me sound like I was evil. Not just negligent but evil. And now I can look back and see that things had to be stated in a way to obviously get the attention that my kids needed, to get the care that they needed. ... It is still really hard reading. (Pasifika parent)*

*Whereas with the lawyers involved with the history, the affidavits, the history, it was like man (family member) just got smashed. (Pasifika family member)*

*But I guess the thing that really surprised me was (ex's) lawyer basically attacked me. I just felt like it was a full on attack and my lawyer had told me that while some of the questions might be a bit like that, not that someone was going to be raised voice and it was almost like on the offensive trying to break me, sort of thing, that is the way that I felt. [Did the judge intervene?] Yes, and my lawyer was objecting. ... I really wasn't expecting that. I expected lots of questions and to be up on the stand for a testimony and stuff but that took me by surprise. (European / Pākehā parent)*

## Without Notice Track puts one party at a disadvantage

As mentioned earlier, for participants who were caught unawares by the filing of papers using the Without Notice track, the results were feelings of alienation and devastation.



Being served papers unexpectedly was shocking and upsetting. It made people angry and they entered the in-court process setting already feeling a negative tone had been set. For parents who had been served papers, the Without Notice start had made the process difficult from the outset.

### No follow-up

Many parents had been disappointed with the court order. In fact, some were convinced the court had made the wrong decision and that their children were suffering as a result.

They felt the process should include some sort of follow-up to check how arrangements were working and whether the best interests of the children were being served.

*My issue with the court process is that they handed in their report and walked away. They hold no consequences of their decisions. (Pasifika parent)*

*My child cries and cries because (child) doesn't want to stay at their (other parent's) ... how do I deal with this? I'm tired of forcing my child into their other car seat. I can't do this anymore. I rang CYFS, I rang 0800 Health Line, I rang the Caregivers Advice Line because I feel like I am going backwards as well from the trauma of separation. But no-one could tell me what to do or how to help me ... because I need help to make sure I am doing the right thing. (Pasifika parent)*

### Involvement of extended family valued

A small number of participants felt the trial was as fair and as user-friendly as it could be. They understood that it was a legal process, defined by strict processes and procedures and that those who were part of it had to adhere to these.

One Māori participant appreciated that they were able to work through things as a family, while a Pasifika parent explained that the trial was better than expected as the judge and lawyers had taken the time to listen and understand the history and background and valued the input from the extended family.

*Yes, so as far as fairness goes, I think they were reasonably fair in our case. I wouldn't be able to speak for anyone else. They allowed it to be more family orientated. They were actually able to take it away from the court and I think they call it a round table meeting with just the lawyers where it is a bit more personal. They came to a decision through that rather than having to face the judge. (Māori family member)*

For **Pasifika** the extended family was very important and having a **Pasifika** advocate/ support person who could explain the process to both parents and extended family was suggested. Being reassured and reducing fear/ trepidation about the process and what to do was very important as the process was an unknown.

*Maybe having a support group maybe. [Some people talked about McKenzie friends, they support people through separation and the family justice system.] Something like that would have been great, having somebody that explained it in a relatable way so I could relate it down to peer support. So, having somebody who has gone through the process and can be there to help you understand. (Pasifika parent)*



However, the layers of family need to be recognised and included. This in practice may mean that extended family have a role to play in parental 'day-to-day care and contact' arrangements - uncles and aunties taking on the role of parents for example.

*I guess going back to the layers of family. Layers of family can be church family as well. ... when you are thinking that the child is mine you kind of have a mono view of what is in the child's life and what a child needs to thrive. So, there is the environment which the lawyers take into account but then there is the bigger picture of the layers of support. Kind of the village mentality. Pasifika are more able to share parenting early on; kids are not yours, they are ours. [Name] is shared among many. (Pasifika family member)*

This could also be further reinforced for Pasifika families going through Parenting for Separation.

### Having a mentor or someone independent to talk to

**Pasifika** world views and identities are based on a collective approach, with health and well-being relying on safe and balanced relationships. Given the holistic nature of these relationships, any disturbance or imbalance can be difficult to deal with.

**Pasifika** participants reported that male family members found the process particularly difficult to understand and deal with and a number spoke of the importance of talking to and supporting the male members of the family, while also focusing on the future of the children. That is not to say that Pasifika females do not need support also, but their specific or individual needs were not raised to in this small study.

Having a Pasifika advocate and possibly someone who has been through the process before may help to calm things down.

*Having somebody from my own culture come and talk to me about things. A really easily understood timeline of the process. You go through this and then this and then you can explain the different orders. (Pasifika parent)*

*Coming from a Pasifika family, having somebody in the beginning talk to myself and my father because it seems like it was us two that it affected the most. And help him to understand what was going on because then hopefully he could have guided my mum a bit better to what was going on. (Pasifika parent)*

We note also that 'reading' and interpreting the English language is not always that easy for some Pasifika participants and having someone talk through the process would be helpful.

*I am not very good at reading. Being Polynesian looking at a piece of paper is not too good. I think these days you have too many robots on the other end of the calls. [So maybe having someone real just talking through it and not too far away either.] Yes definitely. (Pasifika family member)*

## Key insights

**Insight 11:** Being in-court was a difficult and stressful process for the majority and many could not imagine being there without their lawyer. The trial-like cross-examination was a surprise for many; even though their lawyer and the judge may intervene; the experience was daunting.

**Insight 12:** For parents with a disability there were substantial increased costs and the ensuing stress that followed with requirements for additional professional supervision to show proof of being a safe parent, extra transportation costs to get to and from court and translation/ reading of court documents that were not readily accessible for those who were blind (or had a sensory disability).

**Insight 13:** The requirement for additional reports from professionals such as Lawyer for Child, psychologists and professional supervision; lengthened the overall process considerably as often meetings and assessments could not be scheduled efficiently or there were waiting lists for assessments/ meetings.

**Insight 14:** For parents for whom English is not their first language, who have dyslexia or who just find reading and interpreting information difficult, help to read, process and understand court documents is necessary.

## 6.3 Meetings/ conferences

Dedicated conferences were also introduced. None are mandatory but their availability depends on which track the proceedings are being dealt with. These include:

- **Issues conferences**, which help the judge decide which issues need to be resolved and whether to hold a settlement conference or go straight to a hearing.
- **Settlement conference**, which enables the judge to help parties resolve their disagreements.
- **Directions conferences**, which enable the judge to make directions and orders that will get a case ready for hearing.
- **Pre-hearing conference**, which take place after a directions conference and before the hearing to ensure the case is ready for the hearing.
- **Case management conference**, which can be held at any time for complex cases and allows the judge to closely manage how the case is going.

### Key findings - Meetings/ conferences

- Parents were confused which meeting/ conference were which or what their objectives were and were disappointed when they did not match their expectations.
- While meetings/ conferences were a useful and important part of the process for some parents, lack of understanding of their purpose, or a feeling of being pressurised into making a decision, added more stress for others.

Overall, all participants found it difficult to distinguish between one meeting/ conference and another, so the feedback below is more general than specific. And more likely than not the researcher had to probe and prompt on whether a conference meeting had taken place.

Sometimes parents found meetings/ conferences useful as they were less formal and pressured than mediation or court. When the dynamics worked, they could provide an opportunity to think things over more rationally and to reconsider their standpoint.

*... it was good to be able to say, "okay you guys go and have a chat". Because it is a change of scenery and you can take a breath and you are not in that high pressure environment, sterile environment with the judge in front of you. You can take a breath and let things sink in and maybe you might change your mind about something. (European / Pākehā parent)*

### Bullied into coming to own arrangements

Some participants considered they were bullied (by judge and lawyers) into coming to an arrangement at a conference, rather than having the judge make the ruling. They described being ambushed or coerced into an agreement, for example, by being told (warned) *"you may get less time with the kids if you leave it to the judge"* or that it was better for their children if parents came to a decision.

In hindsight, these participants regretted not leaving it to the judge to make the decision and feel slightly cheated that they had endured the extra time, cost and stress waiting for a court appearance when, to all intents and purposes, it had been a waste of time and the decision could have been made out of court.

*Because I felt so much pressure on me that we had to come to an agreement. Because even from the judge when he adjourned it and sent us out his statement was all about it was so much better for the kids if we can agree rather than someone else make the decision. But it just felt like this pressure ... So, I just got presented with a piece of paper from the Lawyer for Child and you get all of this, oh well it might be worse if the judge decides ... I guess I wish I had just let the judge decide because he may have thought differently after talking to the kids but I will never know. (European / Pākehā parent)*

*... We met with the judge first and the judge said to us "you need to try and come to an agreement because otherwise I will make the decision for you and you do not want that". ... In the end (ex-partner) did end up agreeing. I think later (ex-partner) felt bullied into it, but (ex-partner) should have got their own lawyer. (European / Pākehā parent)*

One participant noted that they would not sign anything until they had taken it home first to read again - they had been burnt once before when they signed something that was not the outcome they had expected.

*When you go through the court system and they are talking all this sh\*t, I don't even know what they are saying half the time, you don't even know what you have just agreed to sometimes. I just took it home and researched it. I would take the papers before I signed them. They would say sign this but I wouldn't sign it. That was something that I learnt really quickly. (Māori parent)*

### Access to private facilities

Being able to go away and talk in a safe and private setting was helpful and important when emotions were running high.

## Key insights

**Insight 15:** The different conference types overcomplicate things for participants with no participants recalling the 'type' of conference(s) they had participated in. Notwithstanding, they did value the opportunity to engage in round table discussions and separate meetings out of the court setting.

**Insight 16:** It is a concern that several participants considered they were pressured into coming to agreement at conference meeting and looking back a few years later regretted not leaving it to the judge to make the decision. When pressed they felt that a judge may have ruled differently and that they had compromised too much.

A fuller explanation of the outcomes of agreements and also what redress they had may be needed - or a cooling down period to reflect on agreements made during a conference meeting prior to being finalised.

## 6.4 Case for a lawyer

As mentioned, one of the most significant changes was limited access to legal representation in the initial stages of CoCA proceedings. Parties are unable to have a lawyer complete paperwork and act for them in court in the early stages unless their case meets one of the exemption criteria e.g. Without Notice track.

### Key findings - Case for a lawyer

- Most parents could not contemplate navigating the family justice system without the support of a lawyer.
- Lawyers are knowledgeable professionals and helped to reduce parents fear and stress and allowed them to focus on their own and their family's emotional well-being.

Most participants in this research had instructed a lawyer.

### Reduces fear

Participants primary reason for appointing a lawyer was that they were fearful of doing something wrong or forgetting something and clearly were worried about jeopardising the outcome if unrepresented.

*First of all, I went straight to my lawyer to get advice and then I made the decision as to whether I would have a lawyer or not. My child's other-parent has been through a divorce before and I knew how that went and I knew that I had to have a lawyer to get the best outcome for me and my child. And I don't think I could have done it without my lawyer. (European / Pākehā parent)*

*[Why did you think you needed to have a lawyer?] Just because the way they speak is a different language. I think we just thought we were better to have one. (Pasifika, parent)*

*I didn't have the knowledge of how to do it properly and didn't want to muck anything up. It was very important that I got everything right. (European / Pākehā parent)*

## Reduces stress

As mentioned earlier, participants were in highly emotional states and having a lawyer early on provided reassurance, moral support, advice and encouragement throughout the process. Having a good lawyer who parents trusted and who they could talk to, helped to calm them down and to think and talk through what was happening and why. They supported parents to cut through all the emotion and to focus on the outcomes. While lawyers needed to understand the situation and participants' experiences and expectations, they were not mediators or counsellors (though sometimes undertook these roles) and they are expensive, so the time spent with them needed to be productive.

As parents were in such an emotional state, having a lawyer enabled them to focus on their own and their children's needs and to leave the legal process to the lawyer (and to one who was familiar with all that was required).

*I couldn't handle this by myself. (European / Pākehā parent)*

*I would have been terrified without my lawyer. (Disabled parent)*

*I got myself a lawyer right at the beginning, so I was advised right from the beginning what was going to happen and what to expect. [Why did you do that right at the very beginning?] Because I was going to fight for my child. (European / Pākehā parent)*

For parents with a disability, who already felt prejudiced against, disadvantaged and undermined by the family justice system, a lawyer was crucial.

*[Do you think you would have felt okay representing yourself?] No way. Always need a lawyer. ... I am completely emotionally charged, I am too emotional and I have a really bad head for facts and figures - no chance. I would lose. ... I would never represent myself ever. Like I said about meetings, if my assistant doesn't tell me where I am supposed to be I turn up on the wrong day. (Disabled parent)*

*My lawyer was very good, she would go to the other party with an offer and then we would have somewhere to start. So, a starting point. ... She would put it in a way of let's make a decision otherwise we are just going to be wasting our time. So quite assertive but in the context of taking into account our needs. ... Obviously to-ing and fro-ing from lawyers costs you a lot of money. So, we had some time and it was just bang, bang, bang. They wrote it down and then it was typed up. (Disabled parent)*

[What were the good things about having a lawyer for yourself at the very beginning of the process then?] *She was really smart, take notes, keep records, stay focused. .... She advised me on things way beyond her job description about self-care. Go home, have a bath, turn off your phone, turn off your email. Stop ruminating over all the papers, all the letters (my ex) has sent you. Put them down and do self-care. All these sorts of intelligent ways ... She was like it is going to be really simple, but it is going to take a long time but you just need to not panic because we knew this was going to happen. It was almost like a mentor as well more than just a lawyer. (Disabled parent)*

## Lawyers know the system and can deal with all the legal aspects

Lawyers are the 'experts', they are professionals, and were relied upon to explain the process steps and how to approach them. Forms were important to get right, so lawyers were depended on to deal with them, do the final checks, clarifications and rewrites as required. A lot depended on the evidence written down on these forms, with many parents unaware of what an affidavit was, so legal understanding and input was crucial. Lawyers could speak in the right language for the court room and could be trusted to deal with all the legal aspects.

Lawyers were seen as generally well organised, systematic and impeccable record keepers; they were skilled at keeping information up to date and ensuring information was easily and quickly accessed when required; skills which some participants admitted lacking.

One participant explained how the lawyer made them feel strong; how they appreciated having someone on their side and representing their best interests in a stressful and unfamiliar environment.

## Completely lost without one

In fact, several participants commented they did not know how anyone could contemplate going to court without a lawyer. They would have felt completely unqualified and unprepared to do so on their own. Having a lawyer seemed a necessary part of 'fighting for their child' and to provide the best opportunities to maintain 'day-to-day care and contact' and access to their child.

*I had heard the term affidavit, but I really didn't know what it was or what it entailed or the purpose of it. I wouldn't have even known where to start. For example, when things get to that point where you need legal intervention you are already spent, emotionally, sometimes physically and to try and navigate that minefield by yourself you are not firing on all cylinders so you are not taking things in like you normally would or processing things like you normally would. And to have to try and find your own way in the dark would be terrifying and add more problems. ... if you fill in something wrong or do it in the wrong order that could prejudice your whole outcome. (European / Pākehā parent)*

[So, by having that lawyer right at the beginning what did it do for you?] *She put everything into perspective and listened to me and backed up what I knew what was right and wrong. (European / Pākehā parent)*

For parents on the Without Notice track, this had meant needing a lawyer quickly, especially when a parent was served papers without prior warning.

[Without notice track, how did that feel?] *Devastating. I was an emotional wreck. It made you get a lawyer quick.* (Disabled parent)

### Key insights

**Insight 17:** The legal system is powerful and complex. A lawyer is generally considered to be an essential 'team member', in a high stakes game, where players (parents) do not necessarily know the rules or the penalties for breaking those rules.

## 6.5 Case for representing yourself

### Key findings - Case for representing yourself

- Representing yourself saved money and could make parents feel empowered and in control.
- But it was not for the faint-hearted and attending court without legal representation could be a lonely and confronting experience.

A minority of parents represented themselves, though this was sometimes more by necessity than design.

### Saving money

One participant was glad of the option to represent himself. He understood, and agreed with, the notion of keeping the matter out of court and did not think a lawyer was necessary, at least in the early stages. The key factor, however, was one of cost-saving as he could not afford a lawyer and saw this as a way to save money. When other participants were asked what they considered would be the benefits of representing themselves, most mentioned saving money.

### Confident in representing themselves; second time round experience

There were a small number of participants who had been through the process before and were confident in their own ability to represent themselves. These participants were articulate and confident and had the research skills and background to complete the forms and speak for themselves in court. A couple of participants talked in terms of feeling empowered and proud representing themselves; they had said what they wanted and got their point across without anyone editing or prompting them.



[Do you think there are any benefits to not having a lawyer in the early days?] *Definitely in the early days because you have got your own mind and you are allowed to have your say, they are very open about that when you go through your conference stages. It is not like you sit there and get bombarded by things, you get to stand up and have a little bit of a chat and it is very unthreatening. The family court rooms you might be in there with at most, four other people and anybody that you may have invited as support people. ... I was listening very intently to what was being said around me and making my notes. I wasn't arguing I was just making sure that my point was made. And that is allowed to happen which is a good thing.* (European / Pākehā parent)

## Difficult and confronting

Those without a lawyer did talk about how alone and vulnerable they had felt without a lawyer's input. Even informed parents and those who had been through the system before did not profess to understand the legal or family justice systems in depth; knowing what to do and say when and sustaining their confidence and self-belief was difficult at times.

[What are some of the not so good things about not having a lawyer then?] *For me I started to second guess myself at some of the points just wondering whether I was making the right decisions. ... having to go away and picking (ex's) affidavit to pieces which I shouldn't have had to have done but when you get blamed and it said that you have kept the kids away from (their other parent), that was frustrating.* (European / Pākehā parent)

### Key insights

**Insight 18:** Parents without legal representation are disadvantaged by their vulnerability and limited experience/ knowledge and even more so when the other party has a lawyer.

## 6.6 Professionals involved

The 2014 changes sought to better target the use of professionals in the court. Both parents and children/ young people participants were asked to describe their experiences of the key professionals they interacted with in the family justice system. The key findings from both sets of participants are summarised here. More detailed findings are included in the Appendix report.

Note - A detailed discussion of children / young people's overall experience of the family justice system is included in Section 7. However, their experiences of professionals involved are included here so they can be read in conjunction and compared with their parents' experiences.

Parent participants experiences of these are summarised overleaf.

### Key findings (Parents) - Experience of professionals

- Judges are generally well regarded and respected for their legal knowledge, wisdom and their authoritative and attentive manner, though a small number of participants were disappointed when they perceived the judge had not been as impartial as they expected.
- Good Lawyers for Child have engaged well with children, have had their best interests as their focus and provided rational and unbiased professional oversight. However, some have seemed busy and distracted and were less able at dealing with children and understanding the complexities of individual cases.
- Specialists (psychologists) have generally had the best interest of the child as their focus and their reports have contained important and insightful findings. Findings can be distressing and sometimes inconsistent, which made some participants question their validity.
- For some, counselling had provided a safe, private and supportive space for children and adults to talk and express their feelings. Others had found the sessions awkward and not so useful.
- Some parents criticised the restricted access to and limited number of sessions of counselling available, as the families (children's) problems did not end once the court case was finished.

With children/ young people participants, researchers explained that we knew that often children/ young people could end up talking to lots of different people and that we wondered who they could remember talking to. (For each person mentioned researchers asked, how did you feel when you talked to this person? Show me (using face emojis) how you felt when you spoke to the ... (Lawyer for Child). Children were then asked to explain their choice/ feelings (as much as they could).

Children/ young people participant's memories and experiences of professionals they have had interactions with varies widely. Some have very limited experience (or memory), while others can talk in-depth about their experiences. Some children/ young people were not always clear regarding the context of the professional they have met, so can get a little muddled.

Older children (teenagers) had the most vivid recall but even younger children (aged 11-12) could talk in detail about their experiences and feelings.

### Key findings (Children/ young people) - Experience of professionals

- Children/ young people's memories and experiences of their interactions with professional range from vague/ non-existent to detailed, though memories can be muddled with parallel interactions relating to other matters e.g. behavioural or mental health issues.
- Talking with strangers can be overwhelming, awkward and embarrassing though, so taking time to build trust and rapport and to encourage children/ young people to express their own views and opinions - speak candidly and to not be 'guarded' - is important.
- Children/ young people can be unclear whose interests the **Lawyer for Child** is representing; clarification is required. From a children and young people's perspective, a good Lawyers for Child is clearly there for the child, is a good listener, explains things well and is unbiased and non-judgemental. They elicit trust and encourage children/ young people to speak honestly.
- Children/ young people generally find that meetings with **psychologists, social workers, counsellors** (counselling) etc. are helpful, as they are given space and privacy to talk freely and to process things. It was noted that counselling can be painful and awkward though, and children/ young people can feel embarrassed, guilty they might be accused of taking sides and worried what they say will be shared. Reassurance of their privacy and confidentiality is critical.
- Older teenagers who have not received counselling (and some who have), feel they might benefit from this now they are older and have a better understanding of the process and their feelings.
- Some older teenagers feel cheated they did not meet the **judge** or participate in the court process. This has undermined their trust in the system and their belief their views were considered.

The following summary tables highlight the key findings from both parents and children/ young people regarding their involvement with key professionals in the family justice system.

EXPERIENCE OF PROFESSIONALS	
Lawyer for Child	
Parents - Positive experiences	Children/ young people - Positive experiences
<p>Parents are generally supportive of the Lawyer for Child and believe it is important for child/ren/ young people to be given the opportunity to speak and have an independent voice. The Lawyer for Child:</p> <ul style="list-style-type: none"> <li>• Represents the best interest of the child. They on their side.</li> <li>• Generally, engage well with children; they are approachable, helpful, empathetic, friendly and natural.</li> <li>• Provide professional oversight; independent and unbiased.</li> <li>• Some go beyond their role as a Lawyer for Child e.g. are mediators/ educators/ go-between children/ young people and their parents.</li> <li>• Māori lawyers are helpful for Māori families.</li> </ul>	<p>Children/ young people’s positive experiences have been when the Lawyer for Child:</p> <ul style="list-style-type: none"> <li>• Has clearly been there for the child/ young person.</li> <li>• Is a good listener.</li> <li>• Explained things well; told children/ young people what was happening and why.</li> <li>• Talked to children/ young people about what they really wanted and let children/ young people talk without interrupting.</li> <li>• Encouraged children/ young people to speak truthfully.</li> <li>• Was professional, unbiased and experienced (or so older children assumed).</li> <li>• Had a nice personality; kind, friendly, bubbly and happy.</li> <li>• Held meetings in a neutral environment.</li> </ul>
Parents - Negative experiences	Children/ young people - Negative experiences
<ul style="list-style-type: none"> <li>• Sometimes parents are less complimentary and have been critical of Lawyers for Child who they feel did not engage particularly well with child/ren.</li> </ul>	<p>Not working so well for children is when it is unclear who the Lawyer for Child is representing. Older children can be distrustful and wary what they say.</p> <p>The experience can be overwhelming, confusing and confrontational for younger children meeting with any unknown adult (especially wearing a suit and carrying a briefcase.)</p> <p>The Lawyer for Child’s personality/ approach can be off putting:</p> <ul style="list-style-type: none"> <li>• Rude and cold; interrogator type approach.</li> <li>• Manipulative; put words into children/ young people’s mouths.</li> <li>• Waffle-y and do not explain things well.</li> <li>• Talk down to children (teenagers).</li> <li>• Do not let them speak or express an opinion.</li> </ul> <p>Sometimes children/ young people do not always tell the truth; they are afraid and/or are distrustful and sceptical of the family justice system.</p>

**The Lawyer for Child plays a key role in representing the best interest of the child and ensuring their voice and perspective is heard. However, some are less skilled and engage less well with children, so additional training may be required.**

## Other specialists/ psychologists

### Parents - Positive experiences

**Parents' experiences of specialists/ psychologists** are generally positive:

- Represent the children/ young people's best interests and their point of view.
- Provide neutral, independent and professional oversight.
- Sometimes a pre-cursor to additional help for the family.
- Can support parent's cases; i.e. their parenting skills.

### Children/ young people - Positive experiences

**Children/ young people's experiences (of specialists/ counselling)** have generally been positive and the outcomes beneficial:

- Even children/ young people who have not spent time with a specialist feel it would have been beneficial and, with hindsight, some older teenagers wish they had made more of the opportunity to do so at the time.
- Others would like the opportunity again now as their problems are ongoing.
- Meetings can be happy, fun and relaxed times.
- It can be helpful to talk with someone outside of the family.
- Children/ young people can relax and open up; express themselves in a safe and private environment with neutral and independent professionals, who are trained to listen to understand children.

### Parents - Negative experiences

Criticisms of **specialists/ psychologists** are:

- Strict and tight criteria involved, which means some children miss out.
- Costs; they are expensive.
- Long waiting lists.
- Findings/ content can shock and upset parents.
- Findings can be inconsistent.

### Children/ young people - Negative experiences

Sometimes experiences have not been so positive:

- Meetings can be awkward and/or painful when uncomfortable or upsetting topics/ questions are raised.
- Children/ young people worry they might be perceived as taking sides/ breaking confidences.
- Timings/ being taken out of school can be awkward and embarrassing.

## Counsellors/ counselling

During interviews, parents sometimes referred to different types of counselling they and/or their children had attended but were not always clear if this was court ordered or not. To clarify:

- “Section 46G counselling” is judge directed (when proceedings are underway). But it is only for parents and only focusses on (a) improving the parenting relationship or (b) helping parents comply with orders.
- The court does not have a mechanism to direct counselling be made available for a child. It can ask that a psychologist (known as a “specialist report writer” in this context) prepare a report on the child, but this does not necessarily result in therapeutic outcomes. Parents can, however, send a child to private counselling (which is funded by some organisations).
- Some parents reported that counselling had been useful for their child/ young person, in that it had helped them to understand/ not feel guilty.
- Counsellors had engaged well with the children/ young people (and, in some circumstances, with the family.)
- Parents have had mixed experiences of **counselling**.

### Parents - experiences of court directed counselling

Parents - Positive Experiences	Parents - Negative Experiences
<ul style="list-style-type: none"><li>• Provide a safe environment to speak the truth.</li><li>• Prove coping skills and tools e.g. stress and anger management tools.</li><li>• They are unemotional, professional and provide oversight and perspective.</li></ul>	<ul style="list-style-type: none"><li>• Competence and experience varies; some are more skilled at listening and encouraging confidences than others.</li><li>• Can add stress when couples feel under pressure to participate.</li><li>• There is a stigma attached to counselling in some quarters.</li><li>• Counsellors only hear one side of the story, so may be biased.</li><li>• It is expensive and time consuming.</li><li>• Relevance and value challenged if it occurs too late in the process.</li></ul>

**The neutral, independent, safe and supportive environment provided by specialists/ psychologists/ counselling can be invaluable for parents (and children/ young people), though sometimes the experience can be painful.**

**Increased and longer-term access to counselling may be helpful for families experiencing ongoing trauma.**

## JUDGES

### Parents - Positive experiences

**Parents** have mainly been satisfied with judges, who they respected for their wealth of knowledge and experience and for their professional aura and demeanour.

- Judges go directly to the point and filter out unnecessary information.
- They calm and diffuse situations and do not take nonsense from anyone.

### Parents - Negatives experiences

A few parents had more negative experiences:

- They believed their judge had their own agenda/ biases.
- Said they had felt belittled and ignored in court; spoken at, over or about, not spoken to.

### Children and young people's experiences of judges

- **Children and young people** have, in the main, been kept out of the court process.
- One teenager's recollection was that the meeting was a repeat of previous meetings with her Lawyer for Child and the counsellor, so had not been helpful.
- Some older children would have liked to have had the chance to speak to the judge or attend court sessions, but they had not been given the opportunity.

**Most parents' have had an 'excellent' experience with judges who are more human - less intimidating and scary - than they expected. However, judges who make assumptions about parents, or do not engage with them, can undermine parent's confidence and raise suspicions of (unconscious) bias.**

## MEDIATION

Two children/ young people's experiences of mediation have not been positive; in one case, a parent had reacted very badly and in the other it was very late in the process when the young person's trust in the process was low. One teenager was upset her parents did not offer her the opportunity to be involved.

Potential improvements are:

- To more carefully gauge when family dynamics are right/ suitable.
- Better (earlier) timing/ intervention.
- Potentially, to offer more children/ young people, especially teenagers, the opportunity to be involved in mediation and to have their say, as this may help to allay distrust and fears their views were not being considered.

### Key insights

**Insight 19:** Professionals play a crucial role in supporting a fair and evidence-based family justice system. While there are strong indications that some professionals are working well in the family justice system from the perspective of both parents and children/ young people there is definitely room for improvement.

- Improved Lawyer for Child professional understanding/ empathy of children/ young people to ensure children/ young people can provide honest and open responses.
- Improved access to psychologists and counsellors.
- Improved consistency of service among all professionals.

## 6.7 Professionals - improvement

Children/ young people were asked how their experiences talking with professionals could have been better.

As mentioned, children / young people's overall experiences of the family justice system are discussed in depth in Section 7. Their suggestions for improving their interactions with professionals are included here so the reader can more easily consider their feedback in the context of their parents' experiences and views.

### Key findings - What would have made it better for you?

- Clearer explanations and reassurances of processes, personnel and privacy.
- At least two meetings to build trust and confidence.
- Making sure to stay independent and be non-judgemental.
- Being more supportive of children/ young people's opinions, views and wishes.
- Age appropriate communication and conversations.

Children/ young people made several suggestions how their interactions with professionals could be improved.

1. Better explanation and reassurance about privacy, confidentiality, how any information gathered would be used and who would be party to it. Also, who people were and what their role was in the process.

*Say what you say gets back to either of the parents which might be abusive in one way or another then you are obviously going to say something which is going to keep you safe rather than what is going to get action to be taken. (18, Māori)*

2. By spending more time with the child to get to know and reassure them and to impress upon children/ young people that they do care.  
One child suggested a two-step Lawyer for Child process. For them, it might have been better to have had two meetings; the first to get to know the Lawyer for Child, for them to explain who she was and what her job was, and the second, to talk in more detail about what the child wanted and their feelings.
3. By staying independent and unbiased and keeping their own views and opinions private.
4. By listening and being supportive and responsive to the needs of the child, by validating their opinions, and taking their views and experiences into consideration.

*Even if they don't agree or understand what has been happening that they can have some form of empathy and validate their thoughts and actually ask them. I knew at the time that okay I am only 14 years old but it would have been really nice for her to ask me what I wanted from her and from the whole situation. (18)*



5. Age appropriate information and communication. Older children felt that talking to and treating teenagers like young children was disrespectful and patronising.

*Because a child can't rationally understand how court exactly works but they do know very well what they want. For a child to say that and to be listened to, I think would be very important. (17)*

## 6.8 Views of safety

Both parents and children/ young people participants were asked about their views and understanding of 'feeling safe'. The key findings from both sets of participants are summarised here.

### **Key findings - Parents**

Feeling safe includes both physical and emotional safety and crucially a place where children/ young people can be themselves. Calmness, constancy and routine were also hallmarks of 'feeling safe' parents said.

### **Key findings - Children/ young people**

Feeling safe means:

- Having a quiet, calm, private, alone space where they can think, reflect and escape from tension in the household.
- Having access to safe spaces outside of the home e.g. school, church, other peoples' homes.
- Having access to - talking or being with - 'safe' people (or pets); extended family, friends, teachers, professionals.
- Partaking in 'safe' physical activities or hobbies, to relieve tension and relax the minds.

### 6.8.1 Feeling safe

Parents were very clear that 'feeling safe' for their children/ young people included both physical and emotional safety.

- Physical safety ensured a calm and secure environment that both parents and children can call home. Importantly, parents recognised the need to have a place where their children/ young person could go to be themselves; cool off and have privacy from others.
- Crucially 'feeling' safe' included emotional safety where a child/ young person could experience love and support - again the ability to be themselves was paramount. Some participants mentioned the need for 'no emotional blackmail' by the other parent and that children/ young people should have the power to talk about things without any repercussions.

[Anything else that helps feeling safe?] *Yes, having their own room, own space that they can come to, play with their Lego and that it is theirs. Just be themselves.* (Pasifika, family member)

- Having a routine and constancy were also seen as hallmarks of ‘feeling safe’.

*Making sure that I am not going to put my child in harm’s way and sort of as well as making sure they understands the processes but keeps them out of all the other stuff which will be more keeping them mentally safe. [So, when the Lawyer for Child talked about it did that make sense for you?] Sort of but not really. Even now. [What do you think feeling safe for [Name] would look like?] A happy home. And trying to ensure that that happens in both houses. Don’t change something every second week is probably the big one. Once my child is set in their routine don’t change it.* (European / Pākehā Parent)

- Some participants also spoke of the need for children/ young people to be safe from further harm - both physical and emotional abuse.
- Importantly, participants wanted assurance that the factors that contribute to ‘feeling safe’ for their children/ young person were in action in both homes.

[What does being safe for your kids mean for you?] *Being safe to me means they have shelter from the physical environment but also that they are free from further emotional or physical harm. There were rare instances of physical, most of it was emotional and psychological, but without a doubt it is undeniable the effects that it has had on my children because I see now that I have been out of it for six months I have realised how bad it actually was. And now that we are living without it, it is a much calmer more peaceful environment.* (European / Pākehā parent)

- ‘Feeling safe’ also encapsulated conversations children/ young people had with key professionals; it meant that children/ young people could be open and honest in their responses and that they would be listened to and heard.

*I suppose it all comes back to when the Lawyer for Child questions the child to make sure that it is definitely what the child wants. To make sure that it is not mum or dad putting the words into that child.* (European / Pākehā parent)

For children/ young people feeling safe meant feeling loved, relaxed, calm, not on edge and confident to be yourself. It was knowing that you were not going to be hurt.

*Being safe means somewhere you don’t feel intimidated, somewhere you feel at ease. I feel that here, at my (relation’s) place, because it’s quite calm there, and they’ve got all these instruments to play, we can do that ...* (18, Māori)

Children/ young people also found it harder at times moving between the different households and finding that safe place.

*But here is more outdoorsy but I don’t feel that safe. I can’t really talk to them because I don’t feel like they are proper family sometimes. [But you still want to spend time here?] Yes, especially for Christmas and stuff because we go camping and stuff and that is what I love.* (11)

*When I was younger, this sounds bad but they were a bit meaner than my (other parent). They were telling me off all the time for things that I didn't really do. They are always swearing at me, not at me but at each other. [So, you feel more comfortable at your other parents?] They don't swear. They don't tell me off for doing things that I don't try and do.* (11)

For some older teenagers, feeling safe could also mean being independent and being in control, making their own choices and doing what they wanted to do.

## 6.8.2 Safe places (and activities)

Children/ young people felt safe where they could be **alone**, where it was quiet, where they had privacy, where no-one could bother them and they could concentrate on their own thoughts.

They could feel safe **inside their heads**, for example, when focusing on absorbing hobbies or sports, which diverted their mind and attention.

*Sometimes I also like being on my own, because I'm that type of person ... a quiet place and space. And, I really like my animals too, like (name) my cat.* (18, Māori)

For most children/ young people, their **home** felt safe. It was a reassuring and comfortable environment, with familiar people, belongings, pets etc.

*... (Dog) when I came home jumped up and down.* (14)

However, their **bedroom** (or being in bed) was their inner sanctum and where most could feel safe, even when there was tension in other parts of the house.

*My safest place here is my room. It is the only place I know that no one is going to come and get me, no one is going to come and annoy me, nothing is going to happen to me unless there is a fire and I have to jump out the window.* (11)

*I guess just when I am in my room. [Why would that be do you think?] Mostly because I just never like leaving the bed. It is kind of like my safe place where I would like to relax and can't be bothered. [So, you can escape a little bit?] Yes. I sleep a lot. I try and sleep a lot.* (17)

One Pasifika child felt safe at **church and with her church community**.

For some children/ young people, **school** represented a safe haven, separate from the stresses and realities of home but a bullying culture in some schools undermined this for some children. Paradoxically, school could also be a source of additional pressures and stress for teenagers, for example, where there was peer pressure to wag or misbehave, exams and having think about future career and life goals.

*We had a little gang at school, not a bullying gang, but a good gang, and we all used to hang out at school with each other, there's only a few people in it and we called ourselves the 'Name Gang' because we liked (stories). We'd all pick a name from a story and it was really cool.* (13, Māori/PI)

**Removing the cause of stress (and/or fear)** increased children/ young people's feeling of safety and well-being generally. Several children no longer had contact with violent parents or those with unpredictable and/or poorly managed mental or psychological illnesses, which had helped them to feel safe almost anywhere.

*I am able to relax and feel safe basically anywhere now because what was causing most of the stress has gone. So that helped a lot. [What did you and your siblings do to feel safe before that?] It was just trying to get out of the house, school, trying to take the dogs for a walk. But most of the time we just stayed in our rooms. (18)*

**Physical exercise and being outside in the fresh air** - kicking a ball around, mountain biking or moving sheep could reduce stress and anxiety and increased feelings of safety and well-being.

*If I am feeling upset or anything my (relative) will tell me to go and do some work on the farm and stuff, because when I was little, I used to help. They live on (x) acres and my (relative) has built up fences and stuff and bought animals. (16)*

The **internet** and the (relative) anonymity of **online gaming** could offer an escape to a different world for children/ young people and a suggestion of 'virtual' safety.

*A lot of it with the computer it is just a skip and a jump and you are in a different world and you don't have to deal with anything anymore. (16)*

### 6.8.3 Safe people

Children/ young people felt most safe around **familiar and trusted people**, and for some children, this included extended family, parents, siblings, grandparents, teachers etc. Specifically, people who listened and did not judge.

*I feel safe around people that I know, like my family. And, some of my friends from school in (Island), as well. I have grandparents but they're not really my real grandparents, but I feel safe being with them too. (12, Pasifika)*

**Friends** were very important and provided an opportunity for children/ young people to relax and have fun with non-judgemental peers who shared the same interests and liked to do the same things.

*[Why did friends make you feel safe.] Some kind of security I suppose. Even without wanting to talk to my friends about my problems at least having them there was better. (16)*

*When my friends come over and we are all in the pool and playing about together. (13)*

*My best friend was going through the exact same thing as me, so we can talk about stuff. (Friend) even got a new step-parent the same time I did, and our families had babies at the same time too. (12, Māori)*

*I feel safe with (name) [dog] because she wouldn't hurt a fly, but she would definitely stand up for me, always. (13)*

## Key insights

**Insight 20:** Feeling and being safe encompasses many different aspects of children/ young people's lives and includes emotional safety, safe places, people and activities. These are not discrete entities but together create a holistic sense of safety and well-being. Having a safe, private space for alone time and to 'escape' life and household tensions is critical.

And importantly the factors for 'feeling safe' need be visible in both households a child/ young person resides in.

## 6.9 Views of 'welfare of the child' and 'in the best interests of the child'

Both the terms 'welfare of the child' and 'in the best interests of the child' are used frequently during 'day-to-day care and contact' discussions. During the discussions with parents time was taken to explore and understand what participants considered they meant to them within the context of the family justice system.

### 6.9.1 'Welfare of the child' and 'In the best interests of the child'

Participants found it hard to differentiate between the two terms and described them both similarly. Importantly, both these terms included the factors that contributed to 'feeling safe' for their children/ young people.

Not unlike 'feeling safe' participants understood this to mean that their children/ young person will be kept safe and that their children's wishes will be respected. It also includes:

- All needs are met; both physical and emotional well-being.
- Both parents are included.
- Children/ young person is happy in both family situations.

[What about the welfare of the children how would you describe that?] *Their access to their mum and dad when they need it. Healthcare. My child was in hospital for the first month of their life. Schooling. Education. Inclusion of all family members whether they are just mum and dad or whoever. Being able to view their parents as they want to view them not how their parents view each other.* (Disabled parent)

*The welfare of the child is to make sure my child is happy in both family situations that they are in. You always listen to your children and look out for warning signs and stuff and there were a lot of warning signs in the beginning which was quite upsetting, but things are okay now and my child is always happy to go to their (other parent) and they are always happy to come home.* (European / Pākehā parent)

[What about in the best interests of the children, how would you describe that?] *A holistic approach to everything so thinking about the whānau, their needs, their housing, their minds and then their hearts all being looked after in one and having spaces for each of those needs to be met. And again, for them to be able to feel that they could go to somebody or have these things done. I think about what I do in the best interests of my children and I would say that I provide, and I guide. It is not just one thing, it is, what are they going to need to make sure these children have exactly everything and who would they need access to.* (European / Pākehā parent)

[What about the best interests of the child then, how would you describe that?] *That is interpretation of each person who is trying to get what they want really. [But how do you imagine it to be?] My child's best interests are generally what my best interests are. I know that my child wants to see their sibling here and their two siblings at their (other parent's) house. So, I know that I am probably never going to go for full custody because I don't want to stop my child from seeing the rest of their family. [So, understanding and respecting your child's views as well?] Yes. They are going to tell you if they are not happy. They are quite good at it sometimes. Just be open with your kids, they are not stupid, they know the process.* (European / Pākehā parent)

[What do you think the criteria are for the best interests of the child?] *... their extended family and their brothers and sisters. Holistically because a family operates as a family unit. So, the best interests of the children, mum is okay, dad is okay, nanna is okay, sisters and brothers are okay. Because if you are just looking at this kid, this kid might be fine on a Tuesday afternoon but then if mum loses it and dad loses it even individually so what you put them in different houses but if they are both unhappy and miserable they can have the food and the hygiene and the education but if they are looking at mum crying every night and dad hitting the piss every night because he is lonely and broken then no.* (Disabled parent)

It was noted, however, that when participants were told that decisions were needing to be made 'in the best interests of the child', that sufficient evidence was available to justify these decisions. Some parents were sceptical that decisions made had been made in the best interests of their child.

[So, you were describing best interests of the child is that they are in a safe environment and not being hurt?] *So, to me to find that stuff out after my ex had walked out on me and you are telling me that it is in the children's best interests to go to their (other parent). And I am thinking clearly (ex) was very violent when I wasn't home and you want me to put my children in a place with (ex) where I am now not even there to protect my children.* (European / Pākehā parent)

## Key insights

**Insight 21:** Both 'the welfare of the child' and 'the best interests of the child' included the core elements of 'feeling safe' - both physical and emotional safety. However, as decisions were often couched in terms of taking these both into account - participants also intimated that the wishes of their children/ young person should be considered and accounted for.

# Children/ Young people overall experience

## 7.1 Introduction

Thirteen children and young people, between the ages of 11 and 18 were interviewed for this research. They included children/ young people from more and less affluent families, from different ethnicities, children/ young people living in larger and smaller communities and with experience of a wide range of care arrangements and family dynamics. Many were part of one or more extended/ blended families which added emotional and logistical challenges to their experiences.

While some children/ young people took a little time to relax and open-up to researchers, once they understood and believed the research was an opportunity to be truthful and to speak their minds, most did so and more! Some interviews ran over time as participants appreciated giving their opinion in a safe and confidential environment. Being reassured what they said was between them and the researcher and was not going to be seen or read by either parent was critical to gaining their trust; several children/ young people admitted they had been frightened to tell the truth on other occasions, as they had been worried about hurting or being disloyal to one or other parent, or 'frightened' of the consequences.

This is only a small qualitative survey, and the findings are indicative only of the experiences of children/ young people whose families have been through the family justice system.

All children/ young people were interviewed in the home of the parent with the current day-to-day care.

Please note in this section where we refer to children/ young people we are referring to the participants in this research study.

## 7.2 Overall experience

To gain a sense of their overall experience children/ young people were asked to think about when Mum and Dad (or another caregiver) were working out how to look after them when they decided to live in different places; what things seemed to go well for them and their family, what things were harder and what might have made it easier for them (and their family). During these discussions it was apparent that for all children/ young people the experience was hugely emotional and at times overwhelming.

Children/ young people's experiences of the family justice system varied widely and were dependent on a myriad of factors including, for example, their age, family dynamics and situation, their relationship with both or either parent (or caregiver) and, indeed, the relationship between parents/ caregivers themselves.

Some younger children had vague recollections of the family justice system and found it very difficult to remember specific details or events. Some were too young to remember, some had been through the process more than once, so got events and timelines a little muddled and some had many other things happening in their lives at the same time e.g. mental health issues, pressures of school, peer group pressures etc. so found it difficult to differentiate between meetings, psychologists, counsellors etc.

### **Key findings - Children/ young people's overall experiences of parenting arrangement discussions**

- Regardless of the outcome, the family justice system journey can be an emotional roller coaster for those involved in it. Even children/ young people whose parents, to all intents and purposes, have largely sheltered or protected them from the process, their emotions tend towards the negative. Children/ young people variously describe feeling scared, guilty, torn, confused, sad, shocked, pressurised, depressed, responsible, overwhelmed, in danger and lonely.
- Some continue to feel these emotions afterwards, as life continues to be difficult and/or care arrangements are not what they asked or wished for. Ongoing oversight of the family situation and, potentially, counselling for children/ young people, may help.
- Older children(16+ years) are most negative, though it is difficult to distinguish their negative attitudes towards the family justice system from their memories and experiences of their parents splitting up, their homelife preceding this (e.g. family violence) and their relationship with their parents.
- For a few children/ young people, the experience is more positive and empowering, and more so when the outcomes reflect their wishes or what they have asked for.



## Emotionally draining

For children/ young people, their experiences had created powerful and lasting memories. One child (aged 16) recalled the first time their parents went through the family justice system when they were four, then again when their parent regained 'day-to-day care and contact' from their step-parent, when they were aged about seven and the most recent experience aged 13. They had felt let down before and found it difficult to trust and be open and honest now.

*I remember not seeing my parent for a couple of days straight and I was living with my (relative) at the time and my (relative) was with my (parent) in court and I remember being in the bath and my (relative) came in and got me out of the bath and got me dressed and we hopped into the car and headed into town. And I asked them where we were going? and they just looked at me and patted me on the head and said I will always love you. Then when we arrived at the court house my (relative) wasn't allowed to cross the road or else they would get put to jail. And my parent was still in the court and I got taken from a person and they said to my relative your job is done now you can leave. And that is when I got taken away to my (other parent) who lived up in [City]. (16)*

*Lots of near mental breakdowns. I wasn't well mentally, emotionally. I think for a lot of it I was barely functional. (17)*

*I remember my parent being angry and crying all the time. I didn't know what was wrong. I thought it was my fault and I was scared they might be sick or have cancer or something. There was sort of like an atmosphere in the house. I had to sort of creep around and be really well behaved so I didn't upset parent ... because they were angry and upset a lot. (12)*

*It was like when adults talk about things and think the children aren't listening. Well, they are listening, but they don't really understand what is happening, so they get worried. (12)*

For children/ young people it was apparent the majority have experienced a gamut of emotions. Sadly, the overriding memories and experiences were negative.

*At times I still felt in a state of depression every time I thought about it. Basically, no matter what decision I made I would feel miserable, the other would feel miserable and everyone would feel miserable. At the time I couldn't handle it and it made me feel depressed. I was kind of in a state of depression. ... Don't want to be a burden - I know for a fact that they care very much for me and my sibling and my mental health and stuff like that but at the time I didn't want them to have to deal with me ... It was a very miserable time for me. ... I think there were times when I just gave up on everything. ... I guess I slept a lot and tried to forget about everything. (17)*

Also apparent were that for some children/ young people, their emotions were a jumbled mix. One child described how both families (Mum's and Dad's) wanted a change and they were all excited about it. However, they were also slightly worried how things would work out and if the changes would be better or worse than before. Another child was happy at the prospect of seeing their other parent more regularly, but worried how this would impact on their social life, school, sports etc.

Children/ young people can experience divided loyalties which can be overwhelming at times.

*I like spending time with them a lot so I make the most of it whenever I go there. [Would you like to live there all the time?] Sometimes I say I want to live there. I tell parent2 I want to. [Do you think your parent would be sad?] Yes, they would be really, really sad. ... Whenever I go to parent2, parent1 misses me a lot. When parent1 says no, I cry and tell my parent2 so my parent2 will call them and convince them to let me go. (15)*

*And it was also kind of tough because both my mum and my dad, I don't know about my sibling, but they would pressure me about what I wanted. I didn't really want any of it to happen. I think if I had to say a time when I had to be brave was when my parent and my sibling often got into disagreements and I would always try and vouch for my sibling because to me they were a lot more valuable, they mean a lot more to me. (17)*

In summary children/ young people have felt:

- **Scared** ... what will happen to me, my family, my home? Their parents were shouting at each other. Their mother was crying a lot. Their father has disappeared.
- **Guilty/ torn** ... children/ young people loved both parents. They wanted to live with both and not leave either.
- **Confused and unsure** ... where is their other parent? Where are they are going to live and who with? Who will take me to soccer practice/ dancing? What is happening? Why is this happening?
- **Sad, unhappy and worried** ... things were changing. Mum or Dad was not there all the time.
- **Shocked** ... they never thought it would happen to their family.
- **Pressured** ... to take sides and to hide their own feelings.
- **Depressed** ... one child slept and cried a lot but tried not to in front of others.
- **Responsible** ... to protect, shield or look after siblings (or parents).
- **Overwhelmed and feeling a sense of dread** ... their changing family situation was something far larger than they could comprehend.
- **A sense of danger...** one child described the atmosphere in their home as 'waiting for a volcano to blow'.
- **Lonely** ... one child didn't trust or talk to anyone.

We also note that a minority of children/ young people described positive emotions. One felt **happy and excited** to see their other parent (and their new family) more regularly and more often. Another welcomed the much calmer and less stressful home environment, which benefitted everyone's mental health and well-being.

*Me and my X year old sibling, we never used to come downstairs we were always in our room because we were too scared of being in the family living area but now all of us will come down and watch TV together which never would have happened. It is like you are walking on egg shells. Someone put it a good way the other day that you are living at the bottom of a volcano just waiting for it to erupt and that is what it was like living with (parent). (18)*

One older teenager described a **sense of relief**, as they claimed they had been waiting for their parents to split up since they had been born.

**Insight 22:** Not unexpectedly, children/ young people's experiences were overwhelmingly emotionally draining with lasting impressions left on them.

## 7.3 Key factors that helped and hindered the process

### Key findings - What made the process easier, harder and potential improvements?

- The process is made easier when children/ young people are kept informed, and when they can maintain a sense of normality and routine (constancy) in a calm, non-stressful household.
- Making sure children/ young people feel empowered to talk and ask questions, greater transparency (including evidence that all relevant views have been listened to and considered) and an easier, quicker and less complicated process may also help.
- Children/ young people appreciate being asked for their views but when they feel these are ignored, this can undermine their trust and make them feel powerless.
- Children/ young people worry about telling the truth if there is a chance this will impact negatively on them or one or either parent. Older teenagers feel this most acutely, so the opportunity to talk candidly and in confidence e.g. with a counsellor or specialist, can be helpful.
- Parents who behave responsibly will improve the process for their off-spring. Neutral, outside support and friends can also be invaluable.
- Time can be a great healer and children/ young people's increasing maturity can help them gain a better understanding and perspective.
- Conversely, some (older) children / teenager's views and emotions can become more entrenched and negative as they get older.
- The process is harder when parents behave badly and when there is little or no communication. Families can be divided, children/ young people can miss their other parent (family) and teenagers may already be dealing with the stress of school, exams, peer pressure etc.

### 7.3.1 Key factors that supported the process

As part of the discussion, we talked to children/ young people about what things seemed to go okay for them and their family(s).

For most children/ young people, their experience of the family justice system marked a difficult and upsetting time in their lives.

Importantly, we have noted that as time has passed some children/ young people have been able to reflect and begin to appreciate a different perspective to their family justice system experience. Looking back, some children/ young people said they now had a better understanding that their parents were better apart if they were not happy together. Their parents have reached a resolution or agreement and their new routine has become their new normal.

[So how is that system working for you, have you adapted now?] *Yes, every fortnight Friday when I get home from school, I know to get out of my school clothes and get into mufti gear and play and wait until (parent) turns up.* (16)

Notwithstanding, many described aspects which had gone okay, and which had made the process easier for them:

#### Communication/ involvement in decision-making/ being kept informed

It was important for children/ young people that they were kept up to date with what was happening and why e.g. the Lawyer for Child visits.

*... I knew she (Lawyer for Child) was going to come. They usually tell me things before they happen. Yesterday they told me you guys were going to come.* (11)

*I think that kids deserve a say ... because we're not just stupid and we have ideas and parents, they need to listen and we could help them instead of them doing it all on their own and failing, when someone can help them find the answer.* (13)

While some parents tried to shield and protect their children/ young people from what was happening, this was difficult when children/ young people were left to interpret changes themselves and sometime got it wrong.

#### Environment - consistency and routine

Having consistency and routine where children/ young people's lives carried on pretty much as normal provided a sense that life would be okay. This could include having ongoing close contact with people they loved and trusted.

Children/ young people longed for a 'good' (calm, safe, non-shouting household) environment.

#### Holistic support

Support that included family, friends and someone neutral and independent to talk with were welcomed.

## Family

Having a close family and encouraging extended family to be involved and siblings who were going through the same thing was helpful.

And children/ young people appreciated having responsible parents who understood the stress and difficulties children/ young people were experiencing. For example, responsible parents ensured both homes and families were where children/ young people felt happy and safe. Responsible parents were supportive and understanding of a child's position and views and stayed neutral. They did not blame or try to influence or pressurise children/ young people.

## Friends

For children/ young people their friends were very important in helping them navigate this situation. Friends offered children/ young people a chance to have fun, do 'stuff' and forget about things for a while. Sometimes friends were going through or had been through similar experiences, so could empathise.

It was also noted that being away from their core group of friends and being unable to attend social events such as birthday parties, could be difficult for children/ young people who were spending time with a parent who lived far away. Resentment/ anger/ sadness (for not being able to attend the birthday party) and guilt (for wanting to attend the birthday party, in preference to spending time with their parent) could build. Children/ young people wanted their parents to know how torn they felt and to work harder for solutions which were mutually beneficial.

## Neutral, independent outside support

Access to outside, ideally neutral and independent, support people such as talking with neighbours, teachers and professionals, people who understood and who were not judgemental, were especially valuable. Having meetings and counselling sessions away from the home and not in the presence of family members or other outside distractions, was also important.

## A safe space

Some children/ young people, more so boys, turned inwards and used **escapism** (online gaming, videos, anime) to cope.

*... I did spend a lot time gaming because that was basically my only escape. It was definitely a coping mechanism. (17)*

### 7.3.2 Aspects or situations that hindered the process

We also explored with children/ young people what made the process more difficult for them and their family(s).

#### Poor/ little communication on what is happening

Children/ young people were angry and critical when their views were misinterpreted. This had discouraged several older children from telling the truth later.

*[Views misrepresented you said, why was that?] Kind of like they tried to present to the court that [Name] prefers this, this and this. [Were you there when they said those kinds of things?] After I learned all of these things I kind felt a bit of betrayal and I felt like I was betraying one side. It did not sit well with me. (17)*

Older children (teenagers), generally welcomed the opportunity to have their say and input into decisions being made regarding their day-to-day care and contact arrangements and were left disappointed if their views were not considered.

*I think involving the child's decision and thoughts of the matter is very important but that becomes mute if the information they are being given is heavily biased and filtered which is what was happening in my case. (17)*

For some children/ young people it was a very confusing time. They didn't really know what was going on and some felt partially to blame, but not sure why. One child was worried about their parent who was cross, upset and crying a lot; they worried their parent was sick or dying.

*I wasn't told what was going on with it until after it happened. I wasn't told my (other parent's) side of it, that was kept completely isolated from me so I didn't truly know what was going for or what they were trying to do or what their thoughts on the matter were which I think would have been very important. [So, you felt you were trying to talk to people and make comments without actually knowing what the full story was.] Yes, I wasn't really given any of the story. [So, at that time did you think your parent maybe didn't want to see you as much?] No, because I think they were going for half and half custody but of course this was at a time when my other parent was going okay, I am not supposed to tell you anything bad about your other parent but blah, blah, blah. So, I went with the whole I will see parent on weekends because I didn't know better. (17)*

#### Family dynamics

Sometimes families (siblings) **loyalties were divided**, especially in blended families where step-parents and siblings had different allegiances.

It was difficult when a child did not see one parent as much as they would have liked; even though the circumstances might warrant it e.g. one child was 'whisked away' from an abusive step-parent but loved and missed their birth parent and siblings.

One teenager described how they had been forced to be a go-between or peace maker, as their parents no longer spoke to each other. Older teenagers, who were more aware of the family dynamics (e.g. family violence) could feel resentment toward siblings who still loved and wanted to spend time with the abusive parent.

### Parents who behave poorly

Some children/ young people described the whole experience as hard; they missed their parents being together and yearned for the time when they were a family. This was made more difficult by parents who fought over everything and who tried to make children/ young people take sides.

Some were controlling, manipulative, jealous, childish and used emotional blackmail to get their own way. One child was expected to keep secrets from the other parent. Some parents had violence and aggression issues. Sometimes there was an atmosphere - tension - in the home.

*My parent is a very manipulative person, they can be very manipulative and at the time there was lots of - tell me of your other parent; don't worry I promise I won't be angry. So, for a lot of it I lied because I didn't want to get shouted at which they were very good at. [Lied to your parent?] Just in general because I was under lots of stress and I didn't want any more attention on me and if I told my parent the truth then I would get shouted out. Basically, if I told them anything that they didn't want to hear I would get shouted out or it would be a week of glares and back-handed comments. (17)*

### Difficult handling puberty and family break-up

For some older children (teenagers), it had been a difficult time of their life, regardless of the family justice system, as they struggled to deal with the pressures of school, peer pressure, puberty etc. They were no longer children, but not yet adults, and sat uneasily in both/ neither camp.

*2013-2014. That was where instead of doing Year 9 at school they put you one year ahead, and I had just turned 13 doing work the year ahead and I had six teachers all saying don't worry your homework should only take one hour - I am not doing six hours of homework a night. [So that was a pretty stressful time at school for you?] Very stressful because everything was happening at once basically. (17)*

*It was terrible when I first started high school. At primary school my friends were there but I just didn't know them here. (14, Māori/PI)*

### Powerless

One observation was that for some children - mainly older teenage participants there was a feeling that, to a larger or lesser extent, of powerless, believing that they had no control or influence on outcomes or decision-making. They acknowledged that there were processes and protocols in place to include and reassure them, but they were, to all intents and purposes, obliged to go along for the ride and accept whatever decisions were made on their behalf.

*It would've been good to know what was going on through it all. At least have the structure explained to you, because we're completely unaware. I remember being in the dark about everything and didn't know what was going on and my parents didn't tell us anything because it was their dispute. It was really annoying. And I didn't like asking my parents because I wanted a neutral voice on it, not theirs. (18, Māori)*

*There was no communication between them and me and what was actually going on. Kids do have some kind of understanding what happens in-court even though it is pretty minimal. There is some knowledge and as a child you don't know where you are. As in I would never know why we would go somewhere, we would just go somewhere and I would have to talk to someone countless times and I never got any positive results from any of them. Whoever I talked to nothing changed. (17)*

## Key insights

**Insight 23:** Children/ young people need to be communicated with about what is happening; otherwise they feel confused and disconnected from the ongoing family changes.

Older teenagers can be more critical and also demonstrate feelings of powerless over the situation - this can lead them to be more disconnected and disillusioned when their expectations are not met regarding key decision/s.

### 7.3.3 Suggestions for improvement

Children/ young people were asked to think about what might have made the experience easier for them (and their family)

#### Key findings - Suggestions for improvements

- Improved communication; what is happening and why? That the situation is not children's fault. Who people are and what their role is.
- Empowering children/ young people to ask questions and receive unbiased and unemotional answers.
- Being transparent and open, honest and truthful e.g. how children/ young people's feedback will be used and reassurances that it will be presented honestly and unedited.
- Ensuring everyone's views and experiences are included; older children noted more passive parents being 'bullied' and/or theirs and their parents views not being considered.
- Parents being more intuitive, open and supportive of their children/ young people's emotional (fear, guilt, confusion) needs.
- A neutral or independent person/ people to talk to.
- Constants in their lives; friends, pets, hobbies, parents, other key adults.
- A quicker process.
- Support - online/ face to face - groups for children/ young people going through or who have experienced the family justice system.
- Follow-up system to check on the well-being of the child (family) and how arrangements are working.



Children/ young people made several insightful suggestions for things which might have improved the experience for them and their family/s and which might improve the experience for others coming into the system:

- **Improved communication** ... children/ young people wanted to know what was happening, why their parents were sad, angry or crying and to be reassured that it was not their fault. They also wanted to know who people were and what their role was.
- **Empowering children/ young people** ... so they felt confident to ask questions and know they would get an honest, unbiased and unemotional answer. No child liked to be rushed and older teenagers explained that it was unreasonable to expect children/ young people to open up to lawyers (other professionals) immediately. It could be difficult to answer questions and to articulate feelings when put on the spot. It might take a couple of visits before children/ young people could talk candidly and confidently.
- **Being transparent** ... and open, honest and truthful. For example, what the information children/ young people were providing will be used for and making sure children/ young people's views were presented honestly and un-edited.

*I think the biggest help would be an accurate representation of what the child thinks or wants rather than the lawyer's moral ideas. (17)*

- **Ensuring everyone's views and experiences are included** ... one teenager felt far too much weight was given to his one parent's side of the story.

*If they listened. If someone called saying something then they could go and talk to everyone like the kid, the parent, everyone. [So just look into things. Do you think people knew things weren't right?] I don't think anyone really knew except for me and my parent really. Maybe my other parent knew. [Did you tell them?] Yes, but my other parent didn't really listen. (14)*

- **Parents** .... needed to be more intuitive and open and supportive of their children/ young people's needs. This could present a conundrum for parents who were keen not to involve, upset or worry their children/ young people when, paradoxically, the pretence that everything was normal was awkward and unreal for children/ young people who knew the opposite.
- **A neutral or independent person/ people to talk to.** One child suggested a case worker or designated person, be specifically assigned to the child (family), to inform him/her about the entire process and what might be expected of them.

*Definitely provide the child an unbiased source of information. Somebody that they can vent to and talk to that is going to be unbiased and preferably isolated from the parents and then also investigate what is going with the parent that they are with at that time. Possibly even a psychologist for the parent who currently has custody and the child. (17)*

- **Having constants in children/ young people's lives which make them feel happy and safe** ... for example, friends, pets, swimming pool in the back yard, sports, hobbies and good relationships with parents (and other key people).

- **An easier, quicker and less complicated process.**

*I think it took over three years and it was just tiring. (13, Māori)*

*They could have organised it better seeing them without it being so complicated. Not being able to go that often because for a while I didn't go there for a few years. (14)*

- **The idea of support groups - online and/or face to face** - for children/ young people going through or who have experienced the family justice system was suggested to some children/ young people. Most agreed this might be a good idea and that any safe environment for sharing experiences, giving and receiving advice and ideas, might have been beneficial to them. One young person suggested an anonymous feedback form may help improve services for children/ young people in future.

*Even if people could anonymously upload their experience and advice with the situation that would be really helpful to read through other people's and what they suggest like what to talk about and what will happen. Because going into that point we had no clue what was going to happen and that made it even scarier. Even a feedback form because for me it is a lot easier to write things down. I would feel awful trying to confront her, not saying what she did was wrong, but saying what she could do to improve maybe not with me but with other clients. So maybe having some feedback form tailored to the age of the child. Not trying to be rude or anything but just trying to help them understand from our perspective. (18)*

- Another young person suggested that a **follow-up system** should be instigated once the case had been finalised. Specifically, someone to check up on the well-being of the child and how the arrangements were working out for everyone. Another child said she felt sad once it was all over, because her parents had separated, and she was emotionally drained from the entire process.

*Afterwards, you actually have the affect after it's all been put in place, so it should be part of the process. During and after, and a long while afterwards too, once things have settled down. (18, Māori)*

## Key insights

**Insight 24:** More open communication and inclusion was a recurring theme throughout the conversations with children/ young people.

**Insight 25:** Children/ young people must be encouraged and supported to speak candidly and without fear of reprisals, to ensure their voices are heard and their views are considered. Notwithstanding, if those views are ignored or misrepresented, or if children/ young people have unrealistic expectations of how much weight their views hold in decision making, they can become cynical, distrustful and unwilling to tell the truth in future.

## 7.4 Advice to other children/ young people

To help understand what was important to children/ young people - they were asked to think about what advice they would give to other children/ young people in a similar situation.

### Key findings - Advice to other children/ young people

- Talk to people about things and don't keep everything bottled up inside.
- If you are unable to talk to parents, talk to someone outside of the family.
- Make sure your voice and opinions are heard.
- Tell the truth; can't assume other people will know what you are thinking.
- Situation is only temporary. In time, things will get better.
- Be nice to your parents and not angry at them for separating. (It is a hard time for them as well.)

Children/ young people had some sound advice for others in a similar situation.

### Talk about it (to someone)

Their top piece of advice was to talk to people about things and not to keep everything inside them. One said children/ young people should talk things over with their Mum or Dad and ask them to explain what was happening, otherwise they tended to concentrate or imagine only the bad things. Another said that if children/ young people could not talk to their parents, they should have someone outside their family they could talk to. For example, friends or a teacher.

Several children/ young people wanted to impress how important it was to make sure their opinion and voice was heard. And, while it could be difficult to speak up, it was important to tell the truth. Children/ young people shouldn't assume other people would know what they were thinking.

*If you talk to a lawyer be honest - say what you really feel, don't be influenced by your parents. They are there to help you. They may be scary, but they will listen to you. (16)*

*Don't just say what you want, say why you want it and explain the problems you are having. (17)*

*Say what feels best for you. If you are not happy about it say it. (16)*

### It will get better

Some children/ young people were quite philosophical. They said they would tell others that, in time, they would be able to look back and it would all be so far away and different that it would not be a problem any more. Things would get better and work out eventually.

One child would tell other children/ young people to be nice to their parents and not to be angry at them for getting divorced.

### **Key insights**

**Insight 26:** Children/ young people recognised their need for support and someone to talk to outside of their family. Teenagers especially could see how crucial this was and reiterated the need to seek this out (with the benefit of hindsight and experience they wanted others to know how important this was.)