

Date: 7 November 2018

To: Family Justice Reforms

From: Birthright New Zealand

SUBMISSION: Impact of the 2014 Family Justice Reforms

1. About Birthright New Zealand

Birthright New Zealand is a registered charity. Birthright has been operating in New Zealand as a national organisation for over 60 years. We work to strengthen and enrich the lives of children and families. We specialise in working with families led by one person. Our vision is for nurtured, resilient, inspired children and families.

Birthright New Zealand is a charitable trust with 11 affiliate organisations throughout NZ who deliver a variety of social services to children and their families. These organisations work with families with a wide variety of needs. They assess needs, provide social work services, and in some locations, counselling services and early childhood education. We work closely with other community service providers to ensure children and families who need support can access appropriate services.

2. Introduction

This submission does not attempt to provide a detailed question by question response on the questions raised by the panel. The submission relays our social workers' experience of the system based on client stories. It also includes specific client stories describing their encounters with the system.

We are pleased to see this review is underway. Families we have supported (predominantly single parents, many of whom have experienced the family court process at some stage) have indicated some strengths with the system and some serious shortcomings. More enhancement is needed to ensure the child's welfare and best interests are at the centre of the process.

Birthright are particularly interested in:

Seeing changes that enhance the children’s voice and safety during the process. We do not feel the current process is addressing the child’s welfare concerns.

Reducing the length of time people are in the court system. Families are unable to get on with rebuilding their lives and face increased stress as a result of the process, with many being involved in the court process for multiple years.

Better understanding of the impact of family violence on women and children’s lives and how to keep them safe through the court process and not minimize their experiences. Women feel vulnerable and unsafe facing the perpetrator of violence; they experience re-victimisation and are often forced into situations they would prefer to avoid.

Seeing increased out of court support through more Parenting through Separation programmes and increased access to free counselling. Parenting through Separation has received positive feedback and should continue to be offered. Counselling options are extremely limited and would help prepare people for the court process.

3. Why Reform Matters to the Families Birthright Supports

We take a particular interest in families led by one person, which make up over 26 percent of New Zealand families. Single parents in New Zealand have a diverse demographic make-up, in part because of the variety of pathways into single parenthood. These range from beginning parenthood as a single parent, through to transitioning to single parenthood following separation or divorce; bereavement; imprisonment of a partner; or moving to a long-distance relationship. The diversity of pathways into single parenthood mean that single-parent families differ in the levels of personal, financial, and social resources they can draw on to overcome disadvantage. (Superu 2018).

With low financial resources (around 90% of sole-parent families have incomes below the median household income) and high stress levels being prevalent in single parents’ lives (43% single parents meet the criteria for a mental health disorder) it is essential we create systems that do not add additional burden into the lives of these parents and their children.

We believe children have a “birth-right” to the same opportunities regardless of their family circumstances. We must ensure the family court process works for children and their caregiver, keeping children safe and alleviating the financial and emotional stress the system currently places on children.

4. Case Studies and Social Worker Feedback

The Review Panel are seeking feedback from those who have experience of the system. This section consists of direct quotes and feedback from Birthright affiliate social workers, as well as the voices of Birthright clients who have experienced the system. All statements are reported experiences of the system and not a collective position of Birthright New Zealand. They have been grouped under the headings the review panel was seeking feedback on.

4.1. Out-of-Court Processes

a) Family Disputes Resolution

Culturally Responsive Services

The providers in our area do not appear to be able to provide culturally responsive services. In fact, one supplier has many contractors who come from Auckland so they are not even local people and potentially don't understand travel distances or being able to assist people with other assistance locally let alone culturally.

Clarity on Family Harm

When people call to find out if they are eligible for a financial exemption or if they have experienced family harm it is not clear if the complaint has to be recorded via the police or if an individual's claim is sufficient.

Not Sufficiently Funded

The cost of the service does not allow for enough sessions. This affects the ability to work through issues that are preventing communication and safety concerns. It is important to have these reflected in parenting agreements. As a result, clients are still going to court and being aggressive or feeling intimidated when making agreements about children.

Quality of Facilitator

I have heard some positive outcomes and some not positive outcomes depending on who the facilitator was. A large majority of cases went on to see lawyers and continued to court, as they were not able to reach a resolution.

We have seen 'mediation and/ or dispute resolution' processes where lawyers have become too involved in 'reaching settlement' and the process then becomes perfunctory –we would want to see that 'process' being left to trained counsellors and/ or advocates.

Service Offered in a Vacuum

The process stands alone and does not have anyone supporting people to manage communication differently, attend parenting courses, and understand that winning is not the only outcome of trying to do what is best for children.

Financial Cost

When people see a financial cost attached to the process they try to work things out themselves but the outcome is often worse. Essentially what was going on previously in the relationship has heightened since the separation.

It is not clear to people the threshold that user-pays kicks in and what the cost will be to them.

Withdrawal of One Party

Difficulties occur when one party doesn't engage or withdraws. It becomes a blame game. One party initiates the process then withdraws, leaving the other party vulnerable (expectations of process/costs is unclear).

Feeling of Intimidation

Feelings of intimidation, particularly when there is family violence can increase if those affected feel further emotionally controlled by the process.

Suggested improvements to FDR:

- Increase quality control of mediators and ensure mediators can meet the needs of Māori, Pasifika and other ethnicities.
- Reduce cost for people applying for assistance.
- Have better information on how many sessions families have access to and what they can expect when the process is complete.
- Ask whānau where they would like to hold their FDS hui.
- Allow whanau to meet with the FDS facilitator before the Family Dispute hui takes place.

b) Parenting Through Separation (PTS)

Positive Results

We hear positive comments on this course and appreciate that they run frequently and believe doing these courses before going to court is essential.

PTS has been very helpful in meeting the needs of our single parents as they come to terms with their separation. The greatest concerns that our parents have is their children. The tool, tips and practical advice has helped our parents to feel supported, gain self-confidence and plan for the future.

Not enough providers/accessibility

The quality of the service varies across the country. Some parents struggle with the time commitment of the programme or lack of available programmes when they need to attend.

Client example

I have not done this as I have no transport at that time.

Suggested improvement for PTS:

- They could be improved by having more emphasis on strategies to deal with power and control as well as the effects on the child.
- Offering more flexible formats/timing for the workshop would be helpful.

Client Example

Susie (38) has three children. Two boys age 10 & 5 and a girl (28mth). Susie separated from her husband in 2016 and moved from Auckland to Hamilton. The separation has had a huge impact on her two boys. Susie was feeling overwhelmed as she did not have the tools or the knowledge to know how to talk to her boys about the separation and how to move forward.

Susie attended a Parenting Through Separation course in Hamilton and found it very helpful in knowing how to care for her children after separating. It also assisted her to gain practical advice to help understand and manage the needs of the children following separation. She was also able to gain tools and tips on how separation can affect her children. PTS also assisted Susie with a plan for the future and of her legal rights as a parent.

4.2. In-court Processes

a) Removing Lawyers from Early Stages

People need free legal assistance

People get intimidated when the other parent says "you will hear from my lawyer". The whole process can be so overwhelming when trying to work out matrimonial property, at the same time as parenting orders and upheaval from someone leaving the house.

The court reforms assume that separating couples can sort out their issues by themselves without legal advice. It also assumes that parents know how to read and fill out court documents. Going through court proceedings is a very traumatising time for our families. Access to justice is a vital component of the law and to not have legal advice at the early stages creates anxiety for families. The court reform needs to put children's needs first and meet the needs of families at all stages of the process.

A lot of our single parents who are going through court feel quite overwhelmed. Some have issues with numeracy and literacy so reading and filling out legal documents or understanding legal requirements by the courts is extremely hard for them.

Client Example

Sense of urgency depends on the person- you don't approach a lawyer if it's not urgent!

b) Changes to court processes

Long delays

Massive timeframes, the system continues to be completely bogged down. Families are left in limbo creating high levels of stress.

Non-urgent cases are pushed to the side and more concentrated efforts placed on the urgent cases. Which means that there is a longer waiting period for the families to have their cases heard.

Client Example

I don't think it works at all, I've been going through it for nearly two years, I have full custody of my children, have cared for them from day one and care for them well. I work hard and they have more than they could ever need. Their dad was in prison for over 3 years yet somehow, I'm treated like a criminal and told what to do with my children. They jumped from supervised visitation within an organisation for 2 hours a week to visitation with his brother supposedly supervising, for 4 hours at a time.

I'm not happy with it at all, every time I have to watch my little girl cry because she doesn't want me leaving her with him. She doesn't know him, yet the court system is trying to force him on her, she's only just turned 5 & she cannot begin to comprehend the situation.

I avoided it as long as I could, and a male judge had me arrested. They tell me that children without dad's grow up with psychological issues. I grew up without a dad and as far as I'm concerned, I'm a decent human being and my children will be too. I should get some say and so should they, I shouldn't be made to feel like a naughty child when I've done absolutely nothing wrong and the court system is trying to put my kids in the care of a convicted rapist.

The worst part is the lawyer who is supposed to act on their behalf sits with them for 2 minutes and thinks they can say what's best for them.

In response to the above story, someone replied

So true! No one listens, yet heaps of experts tell you how and what is best for children. Something's terribly wrong with the system/s .. maybe that's the problem...too many systems, too many experts, not enough ears!



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Client Example

I was a survivor of domestic violence and the solution identified by the lawyer and children's lawyer is not realistic e.g. meeting at a public place /drop off as it incurs costs. They said maybe a support person can pick the children up. I am an immigrant, I only had my ex and my children. I have no support system that I can lean on - our friends are divided and I have not established any support system when I am trying to survive day to day. In the end, my ex (perpetrator) has to drop off the children at my place.

I really felt belittled by the system, by the people in the Court even my own lawyer as I have no job. I felt my ex was favoured by the system as he has the financial capability to provide financially for the children.

It seems when the lawyers/Court read a case, they have already arrived at a conclusion and anything you raise is dismissed.

It felt like the Court did not listen nor understand my situation. The Court seems to think I want the children to myself because of the "benefit money" I will receive.

I have asked the lawyer of the children to check on home situations e.g. overcrowding, boarders drinking but have heard nothing.

Children left at my care when their father went overseas for about 1.5 months-no allowance left, not even a cent. I told children's lawyer and he did not listen. Going through FDR left a huge trauma on me. For months I did not want to check my letter box for letters from the Court lawyer. I feel nervous when my phone rings and comes up with a private number.

On the Court Order, the summary said I was hysterical. I was only sobbing quietly and really hurt so I was crying. But I will not say I was hysterical. I do know what hysterical means.

Client Example

I'm chomping at the bit to work. I come from a family who have always been on the benefit. I want to be a role model for my children, they need to see me working. When my youngest turned 5 I attended any course I could. I had lots of family court issues. My work plans had to be put on hold to ensure I could get my daughter in a safe position.

Client Example

I recently attended court with a client who is trying to have two children back into her care. We have been in and out of court since the beginning of last year. A decision has not been reached. This has been very unsettling for mum and her children. This has been a long and drawn out process because the courts do not see it as an urgent case.

There needs to be a time frame for decisions concerning children and their parents who are going through court. The longer these decisions take, the harder it is for children who should be at the centre of these decisions.

Today a judge told my client that she has to wait in the holding cells until her bail letter is

Client Example

The Court says it's important for the child to see and have a relationship with their father. The Court should really look into the real intention of the father and the quality of time he spends with his children. Also, really look into the capability of the mother who provides maternal care and nurturing aspects for the children.

To really find out what's the story, the depth of the real story, to ascertain the capacity of the mother and father. Not all mothers are after the money.

I feel for my two-year-old son when the court ordered for him to stay straightaway with his father for the weekend, even if he has not really known or connected with him. My son comes home really exhausted from crying and puffiness in his eyes.

The Court should look into parenting perspectives from other cultures and ethnicities to understand values held.

Client Example

Too long to wait to even talk/get advice from a lawyer.

Will be great to get an initial advice on the day that I went to see a lawyer for peace of mind especially for a first-time parent/immigrant parent on her own.

I have lost faith in the system as it left me with no hope, that whatever I do or how good my intentions were (for my children) I was not listened to. Government led support are superficial –they say there is support for you, etc. but when it comes to accessing it, they do not really listen.

My confidence has been destroyed and me doubt my capability.

Suggested improvements to court processes

- Provide timeframes that issues must be worked through to ensure a clear end point.
- Help people with clear processes that are freely available and have services to assist people with the fall out of separation.
- Give free legal advice for a couple of hours to assist people to get clear what their rights are and what options are available.
- Improve cultural responsiveness of the system and recognise cultural differences.

c) Changes to how children's safety is assessed

It is not working

The Family Court is **not** child focused.

Client Feedback

Interviews by a social worker/lawyer done in a day is not enough. Better to use tests e.g. drawing.

Supervised Access

I have clients with a Protection Order in place and there is a push for the child to be seen by the applying party for supervised access. While access is meant to be supervised access, it is the parent's wishes that are placed first, and the child often does not want to attend.

Client Example

A client's 12-year-old daughter did not want more time with her father. The father took it to court. The mother felt the judge bullied her into finding a way to make a time with the father work, even though the daughter did not want this

They are now "trialing" the daughter having more time with her father for three months. The child did not agree to any of this. Now the mother is dealing with the daughter's behaviour and anger as the daughter feels her mother didn't represent her well enough.

Cost of Supervised Access

Some clients cannot afford the payment for supervised access. So even if it is good for the children to have contact they are let down by parents who are experiencing financial constraints.

Lack of consideration for drug and family violence

The Family Court does not appear to address drug issues for children exposed to households with methamphetamine and other drugs let alone family violence and mental health issues. We have seen an increase of referrals for children that present with suicidal thoughts as young as 6 years of age due to the situation in their homes.

4.3. Role of Professionals

a) Lawyer for the child

Access to Lawyer

Lawyer for child not engaged at the early stages. Child's voice is not heard or often lost.

There seems to be less ability to have the children seen by a lawyer unless there is family harm and even then, it is court directed and parents have to pay if they request a child psychologist to be involved.

Suggested improvements to court processes

- If the child is old enough it would be good for them to have a space to talk to a judge.
- Hearing from the child in a facilitated process can be powerful and stop parents from assuming the other is influencing the child when it is actually the child's position.
- Protection orders should have weight in parenting agreements and couples be asked to work on historical issues together in safe environments - a restorative justice type process.

b) Removal of counselling services

Limited availability

There is currently minimal counselling available.

Client Example

Co parent counselling was accessed for a family. Due to the lack of availability in Wellington they had to travel from the CBD to Kapiti on a train. They went on different carriages; the whole situation was very fraught.

More focus on prevention

Preventative work for couples is essential. Invest in people and relationships and help parents by providing free parenting courses and relationship courses

More Support with Separation

Adding courses for parents and children who have separated and funding this would be an improvement as this is an area that has fallen by the wayside now that Relationship Aotearoa is not in operation any longer.

Prepare people individually

Offering individual counselling and not force someone into communication with an ex-partner when there is little safety between the couples in the first place. Parents have already gone to the court and are adversarial so the court asking them to communicate better is too little too late - early intervention is better.

More support for children

The children we see are affected so much by separation; from feeling angry, depressed, suicidal, bullied, isolated, rejected and much more. Grief programmes are not available for these children and would be very helpful to any child in this situation.

Dealing with Trauma

Courses run by counsellors and facilitators who understand the trauma and grief for children effected by parents separating and being in blended families as well.

c) Introduction of ‘cost contribution orders’

Many whanau can't pay anything

The family/whānau that we work with are not in a financial position to contribute to the process – this would also heavily impact on middle income families.

If people can't afford the service, then the system is contributing to more harm and more children living with the effects of separation.

Our organisation has family lawyers that volunteer time to provide free legal advice once a week. This has been very helpful for our families who are struggling financially. This has eliminated barriers for our parents to seek legal advice around parenting orders and responsibilities. Without free legal advice a lot of our whanau will not seek legal advice as it costs too much.

Costs can limit outcome

Clients that access private practitioners will only attend for a short time due to the cost. The issues surrounding separation may not be resolved in that time.

Client Example

A lawyer stopped a man buying his home as the payment of the parenting order costs had not been fully paid (was on the drip feed). The lawyer would not do the conveyancing as the cost was still outstanding, even though the man was fully compliant with the repayment schedule they had agreed.

Client Example

Lawyers need to be more empathetic and listen to their clients. Clients who go for FLAS are so desperate but also need to be respected and listened to and not to be prejudged.

5. Conclusion

Birthright New Zealand is pleased to see the Government is reviewing the reforms made to the Family Court system. Further reform is required to put children's welfare and safety at the centre of the process, to ensure we are not revictimizing women and to remove the financial and emotional stress of the process.

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