

# Submission to the Independent Panel on the Family Justice System: Review of the 2014 Reforms



November 2018



**Kia eke ai te hunga taitamariki  
ki ngā rangi tūhāhā**

## Barnardos' priority recommendations on the Review of the Family Justice System Reforms 2014

Barnardos calls on the Independent Panel to recommend changes and improvements to the family justice system to strengthen its responsiveness to protecting and promoting children's rights and wellbeing, and the short and long-term wellbeing and outcomes of all families and whānau.

In this submission, Barnardos makes a number of recommendations to strengthen the family justice system. However, the **10 priority recommendations outlined below** are the things that Barnardos believes would have the **greatest impact** for Aotearoa New Zealand's children, families and whānau in this context.

### As matters of priority, Barnardos recommends that:

1. the family justice system is reformed on a system-wide basis to ensure it is child and whānau centred, and functions to support positive long-term child and whānau outcomes, recognising that the wellbeing of their family or whānau is central to the wellbeing of the child themselves.
2. the family justice system is reformed on a system-wide basis to function consistent with a child's sense of time, promoting of the rights and wellbeing of children in decision-making and minimising the time taken to reach decisions that will affect children and families' lives.
3. the family justice system is reformed on a system-wide basis to place children's best interests and right to participate in matters affecting them at the centre of all aspects and functioning of the system. Intentional steps must be built in throughout family justice system processes to ensure the views of children and young people are not only heard, but also have a bearing on decision-making that will affect them and their lives.
4. the family justice system is reformed on a system-wide basis to ensure that it is trauma informed, with greater investment of resource towards helping address underlying root causes of developmental trauma in children, and intergenerational trauma in families and whānau.
5. Te Tiriti o Waitangi should form a foundational underpinning to the family justice system in Aotearoa New Zealand, and it should be upheld through all aspects of the functioning of the family justice system.
6. the family justice system should be strengthened to be culturally responsive, and that the system should provide appropriate cultural advisory support to children, families and whānau to help them navigate the system, including through the Family Court.
7. every child engaged in the family justice system – including in both in-court and out-of-court processes – should be provided with a child advocate equipped with specialist knowledge and training to ensure the child is appropriately supported through family justice system processes and decision-making, to support the child's holistic wellbeing through change, and to support the child to make their views heard in decisions affecting them.
8. free counselling through the Family Court should be reinstated for both couples and children, and families should not be required to have started a Court case to be eligible for counselling.
9. Parenting Through Separation should be protected and strengthened as a key child and family/whānau centred component of the family justice system, including the development of online and specifically tailored PTS options to meet the needs of particular family and whānau audiences (e.g. grandparents raising grandchildren; families in rural localities; parents and caregivers in prison).
10. Family Dispute Resolution should be strengthened, including a requirement that the child's views are heard in the mediation process, and guidance published regarding the various options as to how children can be heard in FDR .

### A. Introduction

1. This submission, made to Independent Panel examining the 2014 family justice system reforms, outlines Barnardos' views and recommendations in response to a number of the questions raised in the Independent Panel's consultation document.<sup>1</sup>
2. Barnardos is Aotearoa New Zealand's leading children's charity working towards the vision of "An Aotearoa New Zealand Where Every Child Shines Bright".
3. We hold fast to this vision because we believe in the potential of each and every child, as reflected in our poutama: Kia eke ai te hunga taitamariki ki ngā rangi tūhāhā – Realisation and Development for All Children. While Government has a particular role as the primary duty bearer in protecting, respecting and fulfilling the rights of all children in Aotearoa New Zealand consistent with the UN Convention on the Rights of the Child (CRC),<sup>2</sup> we see it as our collective responsibility – all people living in Aotearoa New Zealand – to support the development and flourishing of all children in our country.<sup>3</sup>
4. Barnardos has been delivering services to children in Aotearoa New Zealand for over 60 years.<sup>4</sup> We work with children, young people and their families and whānau from all walks of life, including the full range of family forms and structures. Our work sees us range across three key strategies: advocating for the rights and well-being of all children in Aotearoa; delivering direct social services to children, young people, families and whānau in need; and providing quality early learning experiences available for all children. One of Barnardos greatest strengths is the combination of Advocacy, Early Learning, and Child and Family Social Services that we provide for children and their families and whānau. We see the whole-child, and in all our work, we are focused on the fact that all children exist within the context of family and whānau. We are based in the community and support a community-led approach to development. Our work contributes to positive, tangible change and development that creates long-term sustainable outcomes in the individual lives of children and their families and whānau, as well as their wider communities.
5. This submission is informed by Barnardos' insights and knowledge drawn from practice working with children and their families and whānau in Aotearoa New Zealand. In particular, this submission is informed by Barnardos' technical knowledge and experience as a Parenting through Separation provider, and through our work supporting children, families and whānau who have experienced family violence, family separation, or who are facing multiple disadvantage and high and complex needs. This submission is underpinned by Barnardos' Guiding Principles: Kotahitanga; Kaitōkiritanga; Māiatanga; Ata Whakarongo; and Mahi Tōtika. Barnardos is a member of Social Services Providers Aotearoa,<sup>5</sup> and we have a strong working relationship with FairWay,<sup>6</sup> a leading Family Dispute Resolution supplier in Aotearoa New Zealand.

## B. Barnardos' overarching views & recommendations

6. The family justice system deals with children and families who are going through times of transition and significant change and upheaval in their lives. Barnardos believes it is crucial that Aotearoa New Zealand's family justice system is responsive to the needs of children and families, acknowledging

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<sup>1</sup> See [https://consultations.justice.govt.nz/policy/rewriting-family-justice-reforms/user\\_uploads/have-your-say-on-the-family-justice-system-english.pdf](https://consultations.justice.govt.nz/policy/rewriting-family-justice-reforms/user_uploads/have-your-say-on-the-family-justice-system-english.pdf)

<sup>2</sup> 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>3</sup> As secondary or non-primary duty-bearers under the CRC.

<sup>4</sup> See for further information: <https://www.barnardos.org.nz/>

<sup>5</sup> <https://sspa.org.nz/>

<sup>6</sup> <https://www.fairwayresolution.com/>

that when they interact with the family justice system, they are likely to be in situations of heightened vulnerability. *The family justice system must place the needs, rights and wellbeing of children at the centre of its processes and functioning, always recognising that the wellbeing of their family or whānau is central to the wellbeing of the child themselves.*

7. *The family justice system must uphold and give effect to the rights and guiding principles established under the UN Convention on the Rights of the Child, to which New Zealand is a States Party.* Of central importance in this context are the best interests of the child principle,<sup>7</sup> the principle of non-discrimination,<sup>8</sup> the child's right to life, survival and development,<sup>9</sup> the child's right as far as possible to know and be cared for by his or her parents,<sup>10</sup> and the child's right to participate in matters affecting them.<sup>11</sup>
8. *Barnardos recommends that Te Tiriti o Waitangi forms a foundational underpinning to the family justice system in Aotearoa New Zealand.* This should include incorporating Te Titiri into family justice system legislation, and developing family justice system processes that are informed by Te Ao Māori cultural frameworks and approaches.
9. Barnardos emphasises that it is important not to lose sight of the context and circumstances that bring children and families into contact with the family justice system. While each family situation is different, there are some experiences that are common when it comes to families going through breakdown, separation and change. Often this is a time characterised by stress and emotion. The range of emotions experienced by parents and children is large in this respect. For parents, they may be feeling, anger, guilt, loneliness, jealousy, sadness, rage, and a general sense of overwhelm. These wide-ranging emotions can cause parents to lose sight of the impact their separation or family situation is having on the child or children involved.
10. *Therefore, it is essential that the family justice system is geared towards supporting parents to create room to focus on their child or children's views and experiences, and how they can find ways to parent together even after situations of separation and family breakdown.* Gearing the family justice system in this way, will, Barnardos believes, help to guard against the system being one that encourages the escalation of acrimony, which is never in the best interests of children or families.
11. It is also essential that the family justice system as a whole understands how the impact of developmental trauma leads to life-long impacts for children. Right now, the family justice system is simply focusing on symptoms, rather than placing resource into addressing underlying issues. The behaviours demonstrated by children (for example, refusing to engage with visiting parents or caregivers) often arise from fear, shame and trauma that has occurred as part of the child's family relationships over the course of many years. Establishing safety and addressing underlying relational harm is the root cause that requires support from the family justice system to be addressed (rather than rigidly requiring compliance with visitation agreements, for example). *Reform of the family justice system is needed to ensure that it is a trauma-informed system and one that invests resource in helping to address underlying root causes of developmental trauma.*
12. The impact of trauma also extends well beyond children. The pattern of parents or caregivers stuck in high conflict, adversarial relationships is, in many cases, likely to stem from their own unresolved trauma experiences. Simply placing structured agreements around disputed issues will not, in many cases, address or contain the emotive response that is driven from a place of trauma. There are many

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<sup>7</sup> Art. 3, UN Convention on the Rights of the Child.

<sup>8</sup> Art. 2, UN Convention on the Rights of the Child.

<sup>9</sup> Art. 6, UN Convention on the Rights of the Child.

<sup>10</sup> Art. 7(1), UN Convention on the Rights of the Child.

<sup>11</sup> Art. 12, UN Convention on the Rights of the Child.

tools that could be utilised in the family justice system to screen where adults or children might need a different response due to trauma – for example, ACE Scales (Adverse Child Experiences). *Such tools could be used to identify where a more intensive approach might be needed to help address root causes, rather than responding to each family dispute in a one-size-fits-all manner.*

13. More broadly, Barnardos calls for the family justice system to be one that values and respects children, placing emphasis on their experiences and views. In all areas of the family justice system, including both out-of-court and in-court processes, when decisions and actions are being taken that concern children, their best interests must be a primary consideration and the system must be set up to function in ways that facilitate this. *Providing children with opportunities to share their views on matters affecting them, and to consider and weigh children’s views in reaching decisions concerning them,<sup>12</sup> should be a central tenet to Aotearoa New Zealand’s family justice system and how it functions in practice.* Alongside this, an awareness of the ways in which children can be unduly drawn into family disputes between parents, and open to unfair and inappropriate pressure and a sense of ‘having to pick’ between parents, is important to inform the family justice system’s processes and functioning.
14. *Embedded in the family justice system must be an appreciation of and a focus on the child’s sense of time.* Childhood is a short but precious time in life, which can impact the long-term trajectory of an individual’s life. Put into the context of the family justice system, for example, for a four year old who is awaits a decision for two years through the Family Court, this is half their life. The family justice system should be focused on supporting outcomes for children and families that are consistent with a child’s sense of time, and therefore without undue delay and the uncertainty that goes along with awaiting decisions concerning one’s family situation and life. We draw attention to the following requirement in the Care of Children Act 2004:

“Any person considering the welfare and best interest of a child in his or her particular circumstances must take into account the principle that decisions affecting the child should be made and implemented within a time frame that is appropriate to the child’s sense of time.”<sup>13</sup>

15. Barnardos observes that the family justice system as it currently functions can result in a dehumanising effect on the children and families engaged with it. This must be guarded against, and instead, *we call for the family justice system to ultimately be human-centred and promote the concept of human dignity.* For example, greater care should be taken with regard to how parties to family disputes are characterised. Rather than reducing parents in a family violence situation to ‘respondent’ and ‘victim’, focus should remain on their primary roles as parents or caregivers. This would be a small effort, but would help to maintain a focus on the humanity involved, and bring greater focus on the person or people also impacted by their relationship situation – the child or children involved. *It is crucial that all family forms, parenting and caregiving situations are recognised by the family justice system and that this diversity of what ‘family’ looks like in 21<sup>st</sup> century Aotearoa New Zealand is respected.*
16. Taking an overarching perspective, *Barnardos encourages the Independent Panel to recommend changes and improvements to the family justice system that will strengthen its responsiveness to protecting and promoting children’s rights and wellbeing, and the short and long-term wellbeing and outcomes of families and whānau.*

### C. Out-of-court processes

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<sup>12</sup> Consistent with Art. 12, UN Convention on the Rights of the Child.

<sup>13</sup> Care of Children Act 2004, s.4(2)(a)(i).

17. Barnardos' feedback regarding out-of-court processes focuses on the two aspects we are most familiar with and are therefore best-placed to provide meaningful views on: Parenting Through Separation, and Family Dispute Resolution.

### **Parenting Through Separation**

18. As a provider of Parenting Through Separation (PTS), this is the aspect of the family justice system that Barnardos is most directly involved with, aside from our work across a range of our services with children, families and whānau who are engaging with the family justice system in some way.
19. Barnardos observes that it was a positive development that as a result of the 2014 reforms, PTS was made a compulsory requirement for parents, before they can make applications to the Family Court to resolve a disagreement or to seek a parenting order. The feedback Barnardos receives from parents, families and whānau who have engaged in PTS is overwhelmingly positive. Many people comment that they wish they had done the course sooner, and that it is much more helpful than they had realised it would be before beginning the course.
20. Barnardos sees the main strengths of PTS as being its focus on encouraging and supporting parents and caregivers to engage with children's experiences of separation, and how to find ways to positively parent or look after children together, even after separation. It provides a supportive forum for parents to explore the possibilities of what a parenting plan might look like, and to find ways to come to care arrangements that will work in the best interests of the child or children involved, both parents and the wider family or whānau. Through engaging with PTS, parents and caregivers build their knowledge and understanding of the impact that separation has on both themselves, and their child or children, and the wider family or whānau.
21. Barnardos' experience from providing PTS is that in the context of family separation, parents or caregivers are often so overwhelmed by their own experiences and feelings, that they do not necessarily think from their child or children's point of view. PTS provides a space for this to happen and supports parents to take a more child-centred view of the family separation and their role in relation to the child. This can lead to greater understanding of the child or children's experience, less misunderstandings with the other parent or in the family situation, and can help lead to better relationships for both the children and adults involved. *The child-centred approach taken by PTS to educating and supporting parents in the context of a family separation is something that Barnardos believes must be protected and strengthened in the family justice system.*
22. Barnardos sees PTS as playing an important early intervention role for families who are separating, which can help to minimise misunderstanding, stress, trauma and deepen understanding with a focus on children and the ongoing nature of the family or whānau in relation to the child or children, even after separation does occur. Therefore, we believe *it is crucial that PTS is purposeful, and directed towards achieving these outcomes.*
23. In this regard, Barnardos identifies one aspect of the content of PTS which should be strengthened in the interests of children and families. *We recommend a specific section is introduced into the PTS syllabus focusing on the importance of hearing children's views of how parental separation affects them, their concerns, and their views and wishes regarding their ongoing and future family care situation.* This will help parents to understand what the child's Article 12 right under the Convention on the Rights of the Child means in practice, why hearing the views of their child or children is important, and their responsibilities as parents to act in the best interests of their child.<sup>14</sup> Barnardos believes this is an important component of learning which would help to strengthen overall learning that is provided through PTS. It may well also help to position parents to have greater openness to

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<sup>14</sup> Consistent with Article 18(1), UN Convention on the Rights of the Child.

hearing and listening to the views of their child or children during Family Dispute Resolution (FDR) if they enter into FDR.

24. Regarding the delivery of PTS, *Barnardos believes that it is crucial that PTS is delivered to particular audiences in ways that will suit their particular situation and context.*
  - a. A good example of this is that increasingly, grandparents who are caring for their grandchildren during or following a family separation, are engaging in PTS. While such grandparents stand to gain a lot from PTS, they are not usually the direct parties to a separation. PTS would likely serve grandparents better if it was able to be tailored more specifically to the particular issues they face in the context of being a grandparent caring for a child or children whose parents are separating.
  - b. It is also very important that particular conceptions and understandings of shame and stigma associated with family separation for some minority communities – for example refugee communities – are properly understood by PTS providers, so that these issues can be appropriately and effectively broached through PTS.
  - c. Parents who are in prison are another group that Barnardos believes it is important have access to PTS in ways that suit and work with their particular situation. Consistent with the proposal made by Barnardos and FairWay to the Ministry of Justice in 2015, we recommend that a PTS course is created for parents in prison.
25. *Taking the above observations into account, Barnardos encourages the development of online PTS options that are targeted to meet the needs of particular audiences.* This could help to serve the specific needs of particular groups that do not fit completely into the PTS course syllabus that is currently delivered – such as grandparents who are caring for children in the context of family separation (as discussed above). It could also be useful for parents in other contexts, such as parents who have been separated for a long time, or who are separating in the context of family violence having occurred.
26. We further suggest that the provision of PTS online would be particularly beneficial for parents who want to attend PTS but who live in outlying areas and rural localities, for whom transport or travel-time to and therefore attendance at PTS in-person may be difficult.
27. In relation to the provision of PTS online, Barnardos emphasises that this must be both effective in terms of how syllabus content is covered and learnt (for example, this should still be delivered by a facilitator and engagement encouraged, rather than just through passive learning such as via non-interactive video content, and multiple shorter sessions are likely to be most effective), and reliable and accessible (with considerations as to wifi and internet connectivity requirements and online platform stability). Consideration will also need to be given to how personal safety is protected, for example to ensure that participants' exact physical location is not disclosed to other PTS participants.
28. Thinking further about how digital technology can be used in the context of family separation, we encourage the Ministry of Justice to explore investing in digital platforms that will enable PTS providers to provide some online follow-up following the delivery of PTS courses in-person. Something that Barnardos hears from those who attend our PTS courses is that they often want to keep learning from those with specialist knowledge, and with whom they have already built up a relationship of trust, after their PTS course ends. Connecting and continuing to learn through an online platform after a PTS course ends could be a way to effectively augment learning, so that it is enduring for parents, ultimately benefitting them as parents and their child or children as well. This is something that Barnardos would be keen to explore further, if funding is made available to develop such an online service to augment learning delivered through the main PTS course.

29. Barnardos believes that Aotearoa New Zealand's children, families and whānau would be well-served by greater promotion of the existence and availability of PTS. Given that one of the main pieces of feedback our PTS facilitators receive is that parents wish they had known about PTS earlier, Barnardos believes that it would be helpful if PTS is promoted through systems connected to or which serve as touchpoints for families and whānau going through separation or engaged in the family justice system. Practical examples of this are the health system (for example, through General Practitioners) and the welfare system (for example, through the Ministry of Social Development and Work and Income).
30. Finally with regard to PTS, from a funding perspective, *Barnardos calls for the costing and funding structure for PTS to be reviewed, so that PTS providers are able to provide the most effective service to families in a sustainable way.*

### **Family Dispute Resolution**

31. Barnardos supports the continuation and increased uptake of FDR within the family justice system because it is a child-centred, non-adversarial approach to reaching agreement out-of-court in family separation situations. It is the core focus placed on ensuring the best interests and outcomes of children involved in family separation that is the real strength of FDR.
32. Barnardos observes that FDR works very well for families and whānau where it is provided in a high-quality manner that is supportive, empowering, safe, discourages antagonism and encourages parents to engage with each other on a non-conflict basis, in the best interests of their child or children, and their ongoing roles as parents.
33. *Barnardos encourages the Independent Panel to look at ways that FDR can be strengthened, to best serve children's short and long-term outcomes, and the ongoing relationships within families and whānau, which need to endure on a positive footing after separation, for children to fully thrive. When provided in a high-quality manner, FDR can also help to reduce the trauma of family separation on all involved, including children.*

### ***Hearing and taking into account the views of children in FDR***

34. One way that Barnardos would like to see FDR strengthened is *a requirement that the child's views are represented in the mediation process.* This is consistent with the child's right under Article 12 of the Convention of the Rights of the Child, to have an opportunity to have their views heard in all matters affecting them. This should include providing children the opportunity to directly share their views as part of the FDR process if this is a safe option for them, and if it is appropriate having given consideration to their level of understanding and maturity in the context of the family separation. *In all instances where a child shares their views in an FDR process, they should be provided with appropriate independent specialist support from a person trained in working with children and young people, for example, a social worker. For children who do not wish to directly share their views as part of the FDR but who wish to have their views represented in the process, appropriate independent specialist support should be provided so that children's views can be heard, and then those views should be directly represented by that independent specialist or advocate as part of the FDR process. The idea of a children's advocate provided for each child involved in the family justice system is discussed further below in Parts D and E of this submission.*
35. Barnardos is strongly of the view that whenever children are involved either directly or indirectly in FDR to have their views heard, appropriate steps must be taken to protect the child's safety and wellbeing (both physically and mentally); to ensure the child understands the process and has realistic expectations of the process (that is, understands that their views are not determinative, but a factor that will be taken into overall consideration of reaching an agreement); and is not unduly

pressured. It is also essential that an independent specialist trained in working with children and young people follows through at the conclusion of the FDR process to talk the child through how the process concluded and any agreement that was reached and support the child to understand how their views were taken into consideration in reaching the conclusion or agreement through FDR.

36. It is essential that FDR providers take a consistent approach to the ways in which children can have their views heard through FDR, and therefore, *Barnardos would like to see some specific guidance published regarding the ways in which children should be given options as to how they can be heard through the FDR process.*
37. Finally, to support the participation of children in the FDR process so that they can have their views heard when they would like this to happen, *Barnardos encourages the Panel to consider making recommendations as to the level of funding needed to support children's participation in the family justice system through the provision of independent specialists or advocates who are trained to work with and support children in the context of family disputes and breakdown.*

***Ensuring a focus on FDR that is trauma-informed***

38. Relating to the focus on hearing children's views in safe and effective ways as discussed above, Barnardos is also keen to see a focus on ensuring that *FDR is facilitated in a way that is underpinned by a trauma-informed approach.* Barnardos knows from the work we do every day with children and young people that trauma is often experienced by children who are going through or who are impacted by family separation.
39. The impacts of this trauma can be lifelong, or they can be worked with and managed in ways that mean they do not have ongoing detrimental effects on children as they go through childhood and grow up into adulthood.
40. Barnardos believes it is essential that those working in the FDR space are equipped with a baseline level of understanding of the impact of trauma on children and families, and effective tools to work to ensure that trauma is not perpetuated, but that strengths are focused on and promoted, in the best interests of the child or children involved and their family and whānau.

***Ensuring FDR is effective for particular population groups***

41. *Barnardos encourages strengthening the FDR process so it is effective for particular population groups who may find it difficult to engage with FDR.*
42. It is important that FDR occurs in ways that is both culturally appropriate and effective. For example, Barnardos suggests that FDR may work most effectively for whānau Māori if delivered in a marae-based setting, and in a way that embraces and draws on Te Ao Māori cultural frameworks relating to hauora and whānau.
43. *Barnardos submits that it is also appropriate to consider how wider whānau – beyond the two parents – could be involved in the FDR process.* For whānau Māori and Pacific families, the wider whānau and family will be essential in terms of supporting better outcomes for a particular child and their parents. For whānau Māori, concepts of whakapapa and whānaungatanga are important here. Wider whānau or family also often form an important support network for family decision-making, and function as an accountability mechanism in relation to familial behaviour, including with regard to the relationships between parents and tamariki and children. FDR processes could therefore take a much more holistic view of mediating family situations, which Barnardos believes could help lead to more sustainable outcomes for the children and families involved.

44. *Barnardos also encourages that appropriate support and training is made available to those facilitating the FDR system to be able to work effectively with people with disabilities, including children who are non-verbal.*
45. Similarly, Barnardos notes that the FDR and wider family justice system can be particularly challenging for migrant and refugee families to navigate and understand. We would like to see FDR mediators required to take steps to understand the context that particular families have come from and which may have contributed to their particular situation or world-views. For refugee families, an understanding of the specific context and trauma which may have been endured will be important, in order to fully explore the issues facing the family and to reach sustainable pathways to move forward on into the future.

## D. In-court processes

46. With regard to in-court processes, the main issues that Barnardos can comment on is how children's views are heard in the court when their safety is at risk, the timeliness of in-court processes, and the need to ensure in-court processes are culturally appropriate for users of the family justice system.

### ***Hearing children's views in the Family Court***

47. Barnardos believes it is essential that children and young people's views are able to be safely and meaningfully heard throughout in-court processes, and that the family justice system should place the individual child or young person at the centre of decision-making and processes.
48. Because of their age and stage of life, the child or young person is likely to be the most vulnerable person involved in a family situation that goes through in-court processes as part of the family justice system. They will also very likely lack agency because of their age and stage in life. However, this does not mean that their views should not be heard meaningfully throughout in-court processes. To the contrary, *Barnardos submits that consistent and intentional steps must be built in throughout family justice system processes to ensure that the views of children and young people are not only heard but also have a bearing on decision-making that will affect them and their lives.* While children should not be unduly pressured into making their views heard – they should only do so of their own free will – it is crucial that children have opportunities to be able to make their views heard. This is consistent with the child's Article 12 CRC right.
49. Beyond facilitating and supporting processes for children's views to be heard in the family justice system, in-court decision-making should attach appropriate weight to children's views, and take steps to ensure that in-court processes and decisions are communicated to children in ways that they will comprehend and understand. This should include being able to understand how their views influenced and were weighed in reaching decisions that will affect them.

### ***The need for children's advocates***

50. Following on from the importance of hearing children's views on matters affecting them and these having an appropriate bearing on decision-making in the Family Court, *Barnardos recommends that consideration should be given to the idea of providing an independent advocate for every child involved in the Family Court.* This person – a 'child advocate' – would be well-placed to hear the child's views and then put these to the court, for the purposes of decision-making. The child advocate role could be undertaken by a Lawyer for Child, if they have appropriate training beyond working with children in a legal representation capacity. However, it is more likely that children and young people will be best served in the family justice system through the provision of a child advocate who is not a Lawyer for Child, but who brings a wider skillset – such as social work or youth work – and who undertakes their role in a manner complementary to and alongside Lawyer for Child.

51. The child advocate would also have a role beyond ensuring that the child has appropriate opportunities to make their views heard – crucially, they would have the important responsibility of ensuring that the child is appropriately supported through the court process, including understanding what the process involves and what decisions mean. A key focus of such an advocate should be on supporting the child through what will be a huge period of change in their life, to help build their resilience and to minimise additional trauma, (therefore ensuring that the court process does not add to a child’s trauma more than it might), at what will be an already highly stressful time in their life.
52. It will be essential that such a child advocate is equipped to support the child or young person in ways that are culturally appropriate and effective for the child’s particular learning needs. We suggest that if a child advocate has already been involved in working with the child through FDR previous to coming into the court process (as suggested at paragraph 35 of this submission), all efforts should be made to have that same child advocate work with the child through the in-court processes. Consistency in this respect will very likely help to support the child, and will limit the need for the child to re-share their experiences and views with a new child advocate.

***Timeliness of in-court processes***

53. As previously discussed above, Barnardos submits that it is essential that all processes undertaken and decisions made within the wider family justice system must remain focused on the child and their sense of time. When it comes to in-court processes, we note that long-wait times for reports to become available, and for decisions to be made, are having a highly detrimental impact on children and their families and whānau. The waiting period can be traumatic for children and families, due to the fear, stress and uncertainty that can fester during this time. For parents and caregivers, such fears and concerns will often relate to the potential outcome of child custody decisions. For children, uncertainty and anxiety concerning their particular family situation and their future relationships with their parents will often be of significant concern. *Barnardos emphasises that childhood is a short and precious time; delays in the Family Court must be addressed through any rewrite of the 2014 reforms.*
54. A practical example of the impact of delays that Barnardos has observed is that for many of the families we work with in a family violence context who are going through in-court processes, by the time the perpetrator comes to court, families have often reconciled. This can be exacerbated by long wait times, and partners of perpetrators then falling back into a pattern of abuse and violence. *We urge the Independent Panel to place a focus on changes that will help to support the safety of children and families.*
55. Through Nga Pou Tuarongo, a collaborative, culturally informed whole-of-family family violence intervention programme Barnardos is delivering in South Auckland in partnership with Te Whare Ruruhou o Meri and Fonua Ola, we are seeing the impact that providing support directly to family members in crisis can provide. Through Nga Pou Tuarongo, our organisations work closely with South Auckland Police and provide immediate support to family members while they are in crisis because of family violence. This means we are able to triage situations as early as possible after violence has occurred, offer immediate safety support to children and their parents, and through trust-based relationships supported by cultural frameworks, family members can become honest about whether or not they wish to stay together. If they do wish to remain together, we can help them to put the right support in place to support holistic family and whānau safety. Such an approach is much more effective than leaving families and whānau waiting for long periods of time for issues around their safety and family situation to be determined in-court.

***Ensuring in-court processes are culturally appropriate and supportive***

56. Barnardos observes that for many of the families we work with, in-court processes in the family justice system can be highly alienating and intimidating; this can traumatise children and families

further. This dynamic means that families can end up lacking confidence in the system that will make decisions over one of the most important aspects of their lives: their family or whānau.

57. The experience of Pacific families is illustrative in this respect, in the context of family violence. Barnardos observes that due to some of the cultural constructs at play in family violence situations involving some Pacific families, *it is important that sufficient provision is made through the Family Court for cultural advisory support*. This should be available from the very start and throughout a family's interaction with the Family Court system. Ensuring the provision of cultural advisory support directly through the Court would not only help to give families confidence in the system, but it might encourage greater uptake of self-resolution processes or less acrimonious resolution of family situations. Providing appropriate cultural advisory support will likely help families to resolve situations of family violence earlier and avoid remaining in family violence situations. It may help support families to avoid reaching crisis points where Oranga Tamariki statutory involvement enters the picture.
58. Barnardos further notes that it is essential that in-court processes are accessible for children and families with disabilities, and treat all people in a manner that upholds and respects their human dignity. *Children and families with disabilities should receive appropriate support from the Family Court to engage in supported decision-making processes that are inclusive and responsive to their needs*.

#### ***Support for young parents***

59. Barnardos observes that young parents often find it particularly challenging to engage with the family justice system, especially in the context of family violence. We see that young parents often have little understanding of the steps they themselves can take to create safety; therefore, *we encourage that the family justice system pays better attention to this through policy setting and the provision of effective support services for young parents, with a focus on education and prevention, and support to navigate them and their children effectively through Family Court processes*.

## **E. The role of professionals**

#### ***Supporting children in through in-court processes***

60. With regard to the role of professionals, as already noted above, Barnardos would like to see a greater role in the family justice system for NGO, community-based social workers and specialists with training in working with children and young people. This is because we believe they are well-placed to support children in this system and take a holistic, whole-of-child approach. However, Barnardos emphasises that such involvement would need to be fairly and sustainably funded.
61. As already discussed earlier in this submission, Barnardos believes that consideration should be given to the idea of providing an independent advocate for every child involved in the Family Court and family justice system, so that the child is appropriately supported in ways that best meet their needs. *Barnardos submits that it will be essential that child advocates have specialist training in working with children and young people in the family justice context, including working in a trauma-informed way*. As discussed above at paragraph 51 of this submission, while the child advocate role could be filled by Lawyer for Child, *we encourage the Independent Panel to explore other professionals who may best serve in the child advocate role, such as community-based social workers, specialist child support workers, and professionals equipped to support the child in ways that meet their needs holistically, including their mental health, communication needs and their cultural background*. We recommend that an accreditation process is established to ensure consistent expectations and standards concerning the role of child advocate in the family justice system.

#### ***Counselling services***

62. In terms of counselling services, *Barnardos recommends that the provision of free counselling reinstated through the Family Court, and with the proviso that couples do not need to have started a court case to be eligible for a referral to counselling.* Barnardos sees counselling as one of the suite of early intervention options that should be available to families and whānau, alongside and complimentary to PTS, Preparation for Mediation, and FDR, to provide them with choices as to how they work through their issues and to give them the best chance of reaching agreements that are in the best interests of their children and tamariki, taking into consideration their wider family and whānau context. We are of the view that counselling can help to strengthen relationships, help people to find creative ways to move forward, and even to gain better understanding of one another. In the context of family separation, counselling has immense value to offer for children and their families and whānau.
63. *Barnardos also recommends the provision of free counselling through the family justice system for children too.* This is a key intervention that can help to give children confidence, and enable them to have their views heard by someone who is professionally trained to hear and work through their concerns and worries with them. Counselling can help to limit the impact of the trauma of family issues and conflict on a child or young person, and should form an important component of Aotearoa New Zealand's family justice system.

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