



The Royal  
Australian &  
New Zealand  
College of  
Psychiatrists

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*Tu Te Akaaka Roa*  
New Zealand National Office

## **Submission to the Ministry of Justice**

Family Justice System Reform  
2018

*An accessible, responsive justice system for  
children & whānau/families with mental  
health problems*

### **About the Royal Australian and New Zealand College of Psychiatrists**

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry and addiction, supports and enhances clinical practice, advocates for people affected by mental illness and advises government on mental health care. The RANZCP has more than 5,000 members, including around 3,700 fully qualified psychiatrists and almost 1,200 members who are training to qualify as psychiatrists. Psychiatrists are clinical leaders in the provision of mental health care in the community and use a range of evidence-based treatments to support people in recovery – including pharmacotherapy and psychotherapy.

### **Background**

The RANZCP New Zealand National Committee - Tu Te Akaaka Roa - and the New Zealand Committee for the Faculty of Child and Adolescent Psychiatry (FCAP) are pleased to provide feedback to the Ministry of Justice on the Rewriting of the 2014 Family Justice System Reforms. We understand that the Ministry of Justice has established an Independent Panel to lead this mahi. The RANZCP acknowledges the complex needs of many whānau/families and individuals in contact with the family justice system, and support reforms to better address their mental health needs throughout the process (RANZCP 2015).

The RANZCP considers the Family Justice Reforms must not be developed in isolation to wider factors, and supports the advice provided by the Office of the Prime Minister's Chief Science Advisor (Gluckman, 2018) in recognising and including preventive, life course, and restorative approaches through early intervention programmes to address economic and societal impacts.

Our key priorities align with the goals of proposed changes to the justice system and the United Nations Convention on the Rights of the Child, which stipulate that children have the same fundamental human rights to health and wellbeing as adults.

### **Changes to the Justice System**

The RANZCP principles to guide ongoing redevelopment of the family justice system must recognise the importance of:

- meeting the contemporary needs of whānau/families and individuals
- protecting the safety of individuals, particularly children
- affording dignity and privacy to separating families
- timely and cost-effective resolution of family disputes
- protecting the needs of children
- child-centred and trauma-informed approaches
- equality of treatment for children regardless of family structure
- ethical professional practices.

We support reforms that recognise the importance of holistic care facilitated by integrated and appropriate services and prevention strategies that reflect understanding of whānau/families of different cultures, such as, Māori, Pacific people and culturally and diverse communities.

### **Our Response to the Consultation questions**

Our responses to the questions raised in your consultation document reinforces the importance of early identification pathways and access to remedial services for children. Psychiatrists are frequently confronted by the mental health consequences of early exposure to adversity and trauma<sup>1</sup>, resulting from experiences in infancy, childhood and adolescence, which can lead to the onset of adult psychological disorders (Copeland et al., 2009; Copeland et al., 2013; Potter et al., 2017; RANZCP, 2010).

We have answered those questions relevant to our area of interest and expertise.

#### ***A – Family Dispute Resolution***

**A15** – The RANZCP identifies the Family Dispute Resolution process as complex and stressful for some families, and supports reforms that provide additional assistance to help people navigate the family justice system. Employment of Case workers would be useful for providing support to people with complex mental illness needs, harmful substance use, or family violence experiences (RANZCP, 2018).

#### ***B – Parenting through separation***

**B9** – The RANZCP considers current counselling offered is not enough to support parents when working through a potentially stressful situation. We encourage efforts to assist families with complex needs to navigate the interactions between mental health and other services, through effective referral pathways and culturally appropriate services.

Ongoing government investment in parenting education has shown to be significant for influencing protective parenting practices and positive child development (Potter, et al., 2017; Superu, 2015).

#### ***C – Family Legal Advice Service***

**C9** - The RANZCP maintains that efforts to facilitate transparency of the family justice process for families would be improved by simplifying form filling. This reform would increase the effectiveness of accessibility and appropriateness of the service for people from culturally diverse communities.

#### ***D – In-court reforms – Removing lawyers from the early stages of Family Court cases***

**D7** – The experience of court processes and entering a courtroom can be stressful, and re/traumatising for some people living with mental illness. The RANZCP consider it is important to offer skilled, trusted, and meaningful support by the right people to those with mental illness, and in need of family court services. In particular, assistance with providing evidence, following legal processes, reading and respond to statements with legalistic language, and coping with potentially distressing content. Reforms must also improve collaboration and information sharing between courts and family violence systems.

#### ***E – Changes to court processes***

**E5** – RANZCP supports proposed reform strategies that facilitate timely and cost-effective resolution of family court disputes, recognising the impact of lengthy separations on the mental health and safety of individuals, particularly children. To further address safety concerns for children, we support reforms

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<sup>1</sup> Perinatal and Infant (conception to two years); Preschool (two to five years); School age (five to 12 years); Adolescence (13 to 18 years)

that reduce the need for families to engage with more than one court particularly considering the mental health risks associated with repeated recounting of traumatic histories.

We also support reforms to improve the physical design of courts to make them more accessible and responsive to the needs of children and whānau/families. Segregation of parties is recommended to avoid unnecessary eye contact and exchange of threatening language. The RANZCP is concerned that such exchanges often go unnoticed by authorities, and may harm the mental health and well-being of those individuals going through the court process.

#### ***F – Changes to how children’s safety is assessed***

**F5** - RANZCP notes that the Children, Young Person, and their Families (Oranga Tamariki Act, 2017 (the Act)), seeks to address the complex needs of children in care and protection, and youth justice services. We welcome the focus on children’s voices which places the child at the centre of decision-making, and earlier intervention to prevent children’s ongoing exposure to risk. While we agree with the Act’s mandate for broader reporting of concerns regarding a child’s wellbeing and Oranga Tamariki responding in a more flexible ways at an early stage of contact, we are concerned that adequate resourcing has not preceded the Act’s assent. We maintain that there has been limited service level change to ensure access to integrated and multidisciplinary services which competently manage children with complex needs.

The RANZCP maintains that the inclusion of medical neglect within the definition of family violence, for example, when those responsible for caring for a child obstruct access to medical and psychological care, or refuse to attend appointments for the child. When determining parenting rights and/or considering the best interests of the child (their particular stage of social and emotional development), we suggest reforms to the decision-making framework clearly prioritise protecting the child from harm. Risk assessments undertaken as a matter of course are important when a child is at risk of family violence.

When assessing the welfare of the child, in relation to both parental responsibility and time spent, the RANZCP considers (RANZCP, 2015):

- The welfare of the child is generally best served when provision is made for consistent care by an adult or adults with whom the child has a safe and secure attachment.
- Biological parents are most often the persons with the strongest commitment to and have a relationship with a child. However, the biological parent status does not guarantee that the relationship is positive or in the child’s best interests. Under certain circumstances, other family members or biologically unrelated adults may have developed a safe and nurturing relationship with the child, which is reciprocated and needs to be preserved.
- When several children in a family are involved, their welfare is usually best served if the siblings are kept together, rather than divided between the parents.
- There is no clear evidence to suggest that, on the basis of gender alone, one parent or the other is the more appropriate custodian.
- Procedures that diminish the adversarial process and shorten litigation will generally promote the welfare of the child. In the case of young children, it is desirable that the development of an attachment relationship to a parent figure should not be jeopardised by delays or reversed decisions.

- Any wishes expressed by the child in relation to parental responsibility, guardianship, time spent or other relevant matters, should be conveyed to the Court, with appropriate qualifications regarding the child's ability to make a responsible and considered assessment either of the relevant factors or, of the significance of the decision.

The RANZCP considers family law system professionals and decision-makers have and maintain relevant competencies, specifically in the areas of:

- the nature and dynamics of family violence and child sexual abuse
- the impacts of trauma, including trauma-informed approaches to relevant professional practices
- risk identification and assessment, including family violence and suicide
- cultural competency, and child rearing practices, and experiences with family violence and the family law and broader justice systems
- intersections of family court, child protection and family violence systems
- child inclusive practices.

#### ***G – Role of professionals – Lawyer for the child***

**G7** – RANZCP advocates for reforms that improve responsiveness and children's experiences of participation in court processes. Appointment of a children's advocate approach would strengthen links between the family law system and mental health. This initiative would improve children's access to appropriate services, including addiction services. We suggest developing a combined clinical–legal multidisciplinary approach to child representation. To manage risks for children in families with complex needs, we suggest increasing the availability and use of culturally appropriate problem solving and decision-making processes within the family law system.

#### ***H – Specialist reports***

##### **H5 - Experience of changes to specialist reports**

The RANZCP notes that specialist reports are regarded as opinions. A psychiatrist's role is to alert the Court to factors that will promote the welfare and wellbeing of the child, such as describing the relevant adults' capacities for parenting. In certain instances, highly specialised information may be required, such as the effect of a parent's mental illness upon his/her children (RANZCP, 2015). The opinion is placed alongside the evidence and opinions of others, in a process that seeks to arrive at decisions that are in the best interests of the child. When seeking a second opinion it should be sought from the same professional group so as not to dilute the opinion.

Psychiatric reports are prepared in accordance with the RANZCP Professional Practice Guideline (RANZCP, 2015). In developing reports and conducting independent medical examinations within medico-legal settings, it is important that instructions for the preparation of the psychiatric report is in writing, and that the person or agency seeking the report has provided all relevant information.

#### ***I – Counselling services***

**I15** – The Disputes Resolution Service (DRS) is a valuable addition to the process. RANZCP notes that initially the intent of the DRS was to cut the numbers and costs for the Family Court. The impact has been to reduce the numbers of people obtaining access due to low awareness, and the administration process has also impacted on availability (Ministry of Justice, 2015).

# The Royal Australian and New Zealand College of Psychiatrists New Zealand National Committee

## Submission to the Ministry of Justice – Family Justice Reform

We emphasise the importance of drawing from the evidence-base for effective Māori models of prevention, intervention and rehabilitation of tamariki and rangatahi in care including, kaupapa Māori parenting education, and the application of Te Pae Mahutonga (Cram (2012)).

### **J – Cost contribution orders**

**J1** – Efforts to reduce costs in family law proceedings are important but should not compromise community access to high-quality expert reports from senior psychiatric specialists. The RANZCP suggests costs could be reduced by developing processes whereby report requests can be informed by psychiatric expertise and medicolegal best practice to avoid costly and unnecessary assessments.

### **Conclusion**

In summary, we commend the Independent Panel in undertaking this timely review of the family justice system as we contend these proposed reforms will contribute to improvements in children's experiences of the court system. We look forward to the release of the report in November 2018.

### **References**

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