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SUBMISSION TO THE MINISTRY OF JUSTICE:

REVIEWING THE FAMILY COURT – A PUBLIC CONSULTATION PAPER

This submission is made on behalf of Child Poverty Action Group.

Child Poverty Action Group (Inc) Aotearoa (CPAG) thanks the Ministry of Justice for the opportunity to contribute to this important Review. CPAG is a non-profit group formed in 1994, and made up of academics, activists, practitioners and supporters. CPAG has a strong education and research role which enables it to contribute to better informed social policy to support children in Aotearoa New Zealand, specifically children who live in poverty. CPAG believes that our high rate of child poverty is not the result of economic necessity, but is due to policy neglect and a flawed ideological emphasis on economic incentives. Through research, CPAG highlights the position of tens of thousands of New Zealand children, and promotes public policies that address the underlying causes of the poverty they live in. www.cpag.org.nz.

1. OVERVIEW

In the process of the Review, and in the consequent decisions, CPAG urges that priority is given to the immediate and future safety and security of children. In particular, there is a critical and urgent need to improve the effectiveness of the Court's work in preventing and responding to the family violence which is a major issue for New Zealand, and improving the outcomes for children.

The primary reason for the Review is stated as: "The Family Court is facing a number of issues that compromise its ongoing sustainability and effectiveness. Reform of the Court is necessary so it can manage the ongoing fiscal pressures and improve its efficiency"; and attention is drawn to an overall 62% increase in expenditure in recent years, despite only a small increase in application numbers (Reviewing the Family Court: A Summary, p. 1).

It is of grave concern that, as shown in Court data, the changes in the Court's activity and increasing costs are largely driven by proceedings under the Care of Children Act 2004 (the Act): in 2009/10 22,935 children were the subject of disputes under the Act. Such cases, "the most expensive to progress", occupy 50% of all court fixtures requiring judge time, and are associated with high and increasing professional service costs, including \$23.2 million in 2009/10 for appointments of lawyers to represent children under section 7 of the Act (Reviewing the Family Court: A Summary, p. 2).

2. DOMESTIC VIOLENCE

Costs of the Act and, in particular, the costs of lawyers representing children, are to be addressed in the Review. Yet adequate representation for the children is vital, as many cases under this Act are associated with family violence, physical, sexual or psychological abuse, mental health, and alcohol and

drug issues, and can frequently result in negative consequences for children (Reviewing the Family Court – A public consultation paper, pp. 12, 23).

The prevalence of cases in which domestic violence is a known issue to the Family Court means that **CPAG recommends**

- **the Court prioritise safety for adult and child victims in all decisions and processes;**
- **the Court seek long-term solutions; and**
- **this Review does not decrease children’s support or representation in order to reduce costs.**

If effective and informed responses are made to family violence, women and children are less likely to make repeat applications to the Family Court. It is in such ways that the future costs to the Court can be reduced, and its efficiency improved, without compromising the safety and well-being of children.

The Salvation Army’s State of the Nation Report, *The Growing Divide* (Johnson, 2012, p. 5),¹ uses data from Child, Youth and Family (CYF), the public agency responsible for ensuring that every child in New Zealand is safe from harm and neglect, to show that the safety of our children is decreasing:

- between 2009/10 and 2010/11, the number of substantiated notifications to CYF rose from 21,025 to 22,087. The increase over the past five years (2005/06 to 2010/11) is 58%, or almost 10,000 extra cases of confirmed child abuse or neglect;
- the Chief Social Worker states that just over 57,000 children have been reported to CYF by Police because they were found present at a domestic violence incident (Johnson, 2012, p. 5).

Using Statistics New Zealand data, Johnson finds that during 2010/11, reported violence offences against children increased around 20%, and reported cases of child neglect rose over 36%. Reported assaults on children rose from 1,889 offences during the year to 30th June 2010 to 2,229 offences for the most recent fiscal year. Over the same period, reported sexual assaults on children rose 20.6%, from 1,522 in 2009/10, to 1,835 such offences in 2010/11. Cases of child neglect rose 35.5%, from 436 in 2009/10, to 595 reported cases in 2010/11 (Johnson, 2012, p. 7).

In 1987, New Zealand’s Ministerial Committee of Inquiry into Family Violence (the *Roper Report*) said “Family violence is the cradle for the perpetuation of violence in the community.” Under the United Nations Convention on the Rights of the Child (UNCROC), New Zealand pledges to uphold the right to the protection and care necessary for the child’s well-being (Article 3). A child affected by family violence can endure significant financial, safety and psychological impacts. The involvement of the Government in family matters is sometimes necessary in order for the rights of the child to be upheld.

3. POVERTY

The OECD report, *Doing Better for Families* (2011, p.253) states: “there is considerable evidence,... that low income is significantly correlated with child abuse and neglect”. Because poverty and violence are associated, it is important for the State to provide the necessary protection for children who are at risk.

As stated in CPAG’s recent publication, *Left Further Behind* (2011, p.112),

CPAG recommends

- **locating the best interests of children at the centre of programmes and services for children and families faced with issues of violence and child abuse; and**
- **including an understanding of the significance of poverty in the context of child abuse and family violence.**

4. CPAG RESPONSES to the child-related questions posed by the Review documents:

To manage and reduce conflict between parents following separation, and to reduce the necessity for a Court hearing, **access to suitably trained counsellors and legal executives would ensure each parent was supported, and informed of their own rights, and of the rights of their children.**

Children must be given reasonable opportunities to express their views in Family Court proceedings, and **the best trained professional to obtain the child’s views would best be determined on a case-by-case basis**, depending on the age of the child, their experiences, and their own wishes to be heard. If the child was unable to indicate their preference, the judge would ensure that the child had access to a

¹ Available at: <http://www.salvationarmy.org.nz/uploads/file/The%20Growing%20Divide.pdf>

suitably trained counsellor, social worker, or lawyer who would be responsible for obtaining the child's views on the Court's behalf. Please note that Article 12 of the United Nations Convention on the Rights of the Child, to which New Zealand is a signatory, states that a child capable of forming their own views has the right to express those views freely in all matters that affect them, that their views will be given due weight in accordance with their age and maturity, and thus the child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting them.

The safety and security of the child would be protected by an obligation in legislation for parents to consult with the child about care arrangements following parental separation, except in urgent cases involving the safety of children and in cases involving domestic violence. Provisions could be included in the law to act as a starting point for decision making. However, there must be enough flexibility in the legislation and in the decisions made initially for care arrangements to be changed in the future.

Given the adversarial nature of separation and other failures of family relationships, **lawyers who specialise in family law must be obliged to work collaboratively in the interests of children rather than their clients, and report to the court on the results of such collaboration.**

Before an application can be filed in the Family Court, in certain circumstances, such as a legal separation or divorce, some form of alternative dispute resolution (ADR) should be mandatory, except in urgent cases involving the safety of children and in cases involving domestic violence. The child's advocate/advisor could be the first person appointed, and the first person to advise the parents on their duties to the child, and to inform them that the state's duties to the protection and care of the child are met in part by the provision of state-funded ADR.

Modes of ADR can be developed that are responsive to the cultural needs of Māori, Pacific and ethnic communities through true consultation with, and assistance from those communities.

Access to the Family Court needs to be limited to those family members who are directly involved, and their representatives. The intimacy of the Court provides additional protection for the children. During the counselling and ADR sessions, other interested persons can be invited to attend, with the agreement of all the family members involved.

In order to improve the safety and security of children, and to prioritise resources, all Family Court applications need to be screened to determine their appropriate pathway.

With regard to introducing fees for Family Court proceedings, **a modest, non-refundable 'setting down fee' for allocating a hearing date would discourage cancellations and adjournments, and focus the attention of the participants.** In regard to applications for parenting orders **the State's interest and involvement in the welfare of children is confirmed by the State carrying the full cost of the proceedings under the Care of Children Act.** This also confirms the State's right to impose conditions on participants.

The challenges are: to reduce and prevent domestic violence through the state-funded programmes provided for respondents, victims and children; to ensure family violence victims and children are given immediate access to state-funded counselling and other programmes; and to develop children's programmes with the primary objective of assisting the child to deal with the effects of domestic violence, move toward a safe and secure future, and find ways of reconciling that safety with a meaningful relationship between the child and their parent/s.

CPAG urges that due care is taken to ensure that the increasing risks to the safety, security and well-being of increasing numbers of children are not combined, under this Review, with reduced access to legal representation, and/or counseling, in order to cut Family Court costs.

CPAG also urges that all changes made to the Family Court system and process as a result of this Review will be transparently based on the best interests of the child.