

Evaluation of Family Dispute Resolution Service and Mandatory Self-representation

Qualitative Research Findings

Preface

This research was undertaken by the Research and Evaluation Team of the Ministry of Justice and two contracted researchers, Nan Wehipeihana and Tolotea Lanumata. The Ministry of Justice acknowledges and thanks the parents and key informants who willingly gave their time to participate in the research.

Although all reasonable steps have been taken to ensure the accuracy of the information contained in this report, no responsibility is accepted for the reliance by any person on any information contained in this report, nor for any error in or omission from the report.

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October 2015**

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1. Executive Summary

1.1 Background

In March 2014 changes were made to how the family justice system (FJS) works. The Family Dispute Resolution (FDR) service is one of the major features of these changes. This service supports separating parents to reach mediated parenting agreements out-of-court. The FDR service consists of:

- An assessment of whether a case is appropriate for mediation
- A service that prepares people for mediation
- A mediation process in which the mediator typically meets with each parent individually and then, at a later time, meets with both parents in a joint mediation session.

Another major feature is mandatory self-representation in the early stages of some Family Court proceedings. This means that people who take their mediated parenting agreement to the Family Court for formal recognition, or who would like a judge to help them reach agreement or make a decision for them, are not able to use a lawyer to:

- File their documents with the Family Court
- Meet with the judge (if required) in the early stages of the court process.

The Family Legal Advice Service (FLAS) is available to help low income people understand the new FJS and assist them to fill in court forms if they decide to go to the Family Court.

This report presents findings from an evaluation of the FDR service and mandatory self-representation one year after their implementation and includes information on improvements¹ suggested by evaluation participants.

1.2 Approach

From March to July 2015, semi-structured interviews were conducted with 67 parents who had been to at least one session of FDR mediation (referred to in the report as FDR parents). Interviews were also undertaken with 28 FDR mediators and providers of preparation for mediation (FDR professionals), 10 FLAS lawyers and 11 representatives of FDR accreditation or supplier organisations (organisation representatives). This means that the qualitative data about FDR does not provide

¹ Evaluation participants suggested the improvements presented in this report. The legislative, financial and practical implications of these suggestions have not been assessed.

information on the experiences of those parents who either did not have any involvement with FDR or who did have some contact but did not attend a mediation session. The sampling method and sample size mean that the evaluation findings cannot be generalised across all parties and practitioners in the FJS.

In addition, interviews were held with 16 parents who had been required to represent themselves in the Family Court (self-represented parents), five Family Court Judges and nine Family Court staff members (legal/court professionals).

1.3 Key Findings: FDR Service

Interviewed FDR parents and FDR professionals generally supported the concept of resolving parenting disputes through out-of-court mediation. Parents often anticipated that court proceedings would be daunting, lengthy and costly.

A few parents and FDR professionals mentioned the ministry's family justice website and thought that information on FDR was reasonably easy to locate and understand.

Overall, parents who had attended mediation were able to move through the out-of-court FJS fairly easily.

Parents were generally satisfied with the assessment of their case's appropriateness for mediation, preparation for mediation, and the initial legal advice they received on the new FJS.

Parents' perception of the FDR service was influenced mainly by their experience of the joint mediation session. Regardless of the outcome of the mediation, parents perceived the joint session (and by association the FDR service) positively when:

- The joint session was run in the way they expected
- The mediator was able to create a safe environment in which the parents felt heard
- Parents did not feel pressured to reach agreement
- The mediated agreement (where applicable) was presented to them professionally by the mediator.

A reasonable proportion of parents mentioned feeling pressured to reach a parenting agreement at mediation. Agreements reached in what parents perceived as a pressured process tended to be broken shortly after the mediation was completed.

FDR organisation representatives, FDR professionals, FLAS lawyers and parents believed that the inclusion of a child's wishes, as expressed by the child, in FDR mediation is an area that needs further consideration. The evaluation findings suggest that children are not involved in the mediation unless the parents request this. Interviewed parents whose children were involved in the mediation, at the parents' request, spoke positively about their children's involvement.

Several FLAS lawyers mentioned a potential issue with semi-urgent cases which did not meet the threshold for a without notice application to the court. One FDR organisation representative suggested creating a fast track in the FDR service for fairly urgent matters.

Several FDR organisation representatives and many FDR professionals said they had received fewer referrals than they expected. They offered a range of explanations for this and suggested ways of improving parents' awareness of, and access to, the FDR service in order to increase the volume of referrals. Some mediators and FLAS lawyers also said the flow of referrals was erratic. They believed the flow of referrals was erratic partly because of administrative delays in the suppliers' referral

process. Further investigation of the flow of cases into and through the family justice system is part of the Ministry of Justice Research and Evaluation Team's 2015/16 work programme

The level of payment for some FDR services was another issue identified by the evaluation. Some mediators commented that the payment for FDR mediation does not compensate mediators for the time they spend on this service. Mediators noted that, in addition to funded hours, they spend time on administration and extended mediation sessions.

In addition, several FLAS lawyers considered that the payment lawyers receive for assisting parents to fill in Family Court forms does not compensate them adequately for the service they provide.

1.4 Key Findings: Mandatory Self-representation

Interviewed parents found the concept of self-representation appealing as they thought that excluding lawyers would simplify things and reduce costs. A few parents did find representing themselves straight forward but most found it difficult to represent themselves in the Family Court. They struggled to find information on the ministry's family justice website about how to make an application to the court and state their case well in the on notice court forms². Parents suggested that the ministry make it easier to find the relevant information on the website and they also wanted examples of what they called 'high quality' answers to the questions in the application forms so that they could fill in the forms well.

Some parents were unclear about the process for serving court papers.

Parents felt anxious about representing themselves in court because it was an unfamiliar environment, and they knew the judge's decision would affect their contact with their children. The evaluation findings suggest that parents felt reassured when:

- They received legal advice, especially about how to complete the court forms and represent their case well in court
- They were assisted by friendly court staff
- Their court documents were processed correctly
- They believed the judge made allowances for the parents' lack of legal expertise.

Some parents mentioned feeling disadvantaged in court because they believed that they were unable to express themselves well, and/or that their ex-partner had been able to access more legal advice than they had.

Most legal/court professionals believed that requiring parents to represent themselves expected too much of them. They acknowledged that the ministry had produced guidelines on self-representation but felt that parents were too focused on contact with their children to read this information.

It was thought that Family Court staff spent more time answering parents' questions since the new FJS was implemented.

Court events involving self-represented parents were perceived by several judges and court staff as taking longer than those where lawyers represent parents, mainly because parents lack the

² These forms have since been revised.

knowledge and experience to present their case succinctly. Legal/court professionals expressed concern that power imbalances could be played out in court due to differences in litigants' ability to self-represent. Almost all of the legal/court professionals suggested that parents be allowed to use a lawyer to file their papers and represent them in all stages of Family Court proceedings. They believed that lawyers would even out any power imbalances between parents and keep cases moving through the court.

2. Introduction

2.1 Background

In 2011 Cabinet directed the ministry to review the Family Court. In essence, this review found that the Family Court was not able to focus enough on the most serious matters, was adversarial, had complex processes and increasing costs. In response to this review, the Government passed the Family Court Proceedings Reform Bill. The purpose of these reforms, which took effect on 31 March 2014, was "to ensure a modern, accessible family justice system that is responsive to children and vulnerable people, and is efficient and effective" (Family Court Proceedings Reform Bill p.1).

Two major features of the reforms that differentiate the new FJS from the previous system are:

1. The new FDR service that supports families to reach out-of-court agreements on matters like day-to-day care and contact arrangements for children
2. People who ask the Family Court to formalise a private agreement, or to settle non-urgent disputes about caring for children, are not able to use a lawyer when:
 - Providing their documents to the Family Court
 - Meeting with a judge (if required) in the early stages of the court process (Ministry of Justice 2014a).

2.2 FDR Service

FDR is a service that helps people reach agreement on parenting arrangements where there is a dispute relating to the care of children. FDR is not just for parents, but for all the adults who are involved in such a dispute. This may include grandparents or other whānau. This service aims to encourage people to make decisions that are in the best interests of children and resolve conflict without needing to go to the Family Court. As a consequence, the Family Court can focus on disputes that do need a judicial decision, such as those involving family violence (Ministry of Justice 2014a and 2014b).

FDR is free of charge for people who meet the eligibility criteria for full government funding. People who do not qualify for full funding pay a total set price of \$897 (including GST) to access FDR from a government provider (Ministry of Justice 2014a). This total cost is divided among the number of people involved in the mediation. People who wish to attend FDR have their identification and eligibility for funding verified. This can occur when a parent has their initial contact with an FDR supplier, during the FDR assessment (see below), or when they receive free legal advice (see section 2.4).

The ministry has contracted three FDR suppliers to provide the fully funded FDR service and another two suppliers to provide partially funded FDR³. These suppliers employ or sub-contract FDR providers (mediators) to provide the FDR service. The mediators must be accredited by an Approved Dispute Resolution Organisation (ADRO).

The FDR service consists of three parts: an assessment, preparation for mediation (previously called preparatory counselling) and mediation:

- **FDR assessment:** Each case is assessed by an FDR supplier to ensure that mediation is appropriate. People are exempt from FDR and referred to the Family Court if they or their children have been subject to family violence, or they cannot take part in FDR for a specific reason (e.g. if one of the parties refuses to take part in mediation).
- **Preparation for mediation:** This is a service that helps people prepare for FDR.
- **Mediation:** Trained FDR mediators assist people to resolve their parenting disputes and work out parenting arrangements that put their children's needs first. FDR mediators also focus on giving people skills to resolve future problems. If people reach agreement then a parenting agreement is written up; they can then choose to take no further action, or apply to the Family Court to have their agreement formally recognised as a Parenting Order that is enforceable by the court. If people do not reach agreement in FDR, they can try to reach a private agreement or apply to the Family Court for a judge's decision (Ministry of Justice 2014a and 2014b).

People who qualify for government funding can get free legal advice prior to accessing the FDR service (see section 2.4).

2.3 Mandatory Self-representation

People who take their agreement to the Family Court for formal recognition, or who would like a judge to help them reach agreement or make a decision for them, are required to:

- File their own documents with the Family Court.
- Meet with the judge (if required) in the early stages of the court process. The judge will decide whether these people can be represented by a lawyer in any further stages of the process (Ministry of Justice 2014a).

New tracks through the Family Court, and simplified processes and forms, support people to represent themselves in the court. Matters that do not require extensive judicial involvement follow the simple track (e.g. making a Consent Order, which formalises a private agreement about child care arrangements). More serious matters follow the standard track (e.g. making a decision about a Parenting Order when the parties are unable to agree) (Ministry of Justice 2014a). A Family Court

³ The suppliers who provide partially funded FDR only were out-of-scope for this evaluation because the ministry wanted to assess the fully funded FDR service.

Judge can direct that a case on the standard track be classified as a complex case, in which case the court track is termed complex-standard.

Requiring people to represent themselves in parts of the FJS is a mechanism for resolving straightforward matters promptly and in a less adversarial manner, thereby reducing stress on families and children. Mandatory self-representation is also a mechanism for reducing expenditure on lawyers in the system in order to reduce costs, ensuring the FJS remains affordable in the future.

People who meet the eligibility criteria for government funding can get free legal advice before or at the same time as accessing the Family Court (see the next section).

2.4 FLAS

Family Legal Advice Service (FLAS) is available to low income people involved in a family dispute any time before they go to the Family Court. FLAS is provided in two parts:

1. Initial advice to (a) help people understand family justice processes and the legal aspects of settling a dispute about caring for their children, and (b) provide realistic expectations of possible outcomes if their case proceeds to the Family Court
2. Assistance with filling in Family Court forms. This may be an application for a court order or a response to an application.

People who do not qualify for funded FLAS may seek legal advice from a lawyer through a private arrangement.

3. Purpose of Evaluation

This evaluation explored how the FDR service and mandatory self-representation were working one year after their implementation. The evaluation objectives were to:

- Explore the experiences of FDR clients and self-represented people on the simple and standard tracks
- Investigate the effect of FDR and mandatory self-representation on the FJS
- Assess what is and is not working with FDR and mandatory self-representation on both the simple and standard tracks
- Identify any opportunities for improvement with FDR and mandatory self-representation.

The evaluation findings are intended to inform the ministry's understanding of (a) the factors that influence the delivery of FDR, and (b) how mandatory self-representation affects people who represent themselves on the simple and standard tracks, as well as professionals who work in the FJS. The evaluation findings include suggestions from the people who were interviewed for improving the FDR service, and ideas about assisting people who are required to represent

themselves in the Family Court. The legislative, financial and practical implications of these suggestions have not been assessed.

4. Approach

The planning phase of the evaluation consisted of stakeholder consultation, a literature scan and the establishment of an advisory group⁴.

The fieldwork was undertaken from March to July 2015 inclusive. The interviewers were a senior ministry researcher, and two contractors with expertise and experience in undertaking qualitative research with Māori and Pacific communities.

Semi-structured interviews were conducted with 67 FDR parents who had been to at least one session of FDR mediation (referred to in the report as FDR parents), 28 mediators and/or providers of preparation for mediation (referred to as FDR professionals), 10 FLAS lawyers and 11 representatives of FDR accreditation or supplier organisations (referred to as FDR organisation representatives). The researchers used purposive sampling⁵ to select these participants. FDR parents were selected from records stored in the online Resolution Management System (RMS) in which parent information and completed FDR events are recorded. FDR professionals and organisation representatives were selected from lists supplied by ADROs, FDR suppliers and suppliers of preparation for mediation. FLAS lawyers were selected from a ministry database.

Semi-structured interviews were also undertaken with 16 self-represented parents, five Family Court Judges and nine Family Court staff members (referred to as legal/court professionals). The researchers used a purposive sampling method. The self-represented parents were selected from a ministry database. The judges and court staff were chosen from lists supplied by court service managers.

The interviews were conducted in four areas, namely (1) Auckland, (2) Wellington, (3) Porirua and the Hutt Valley, and (4) Christchurch and Timaru. These areas were chosen to give a range of main cities, smaller towns and ethnic groups. They were also selected to ensure that fieldwork costs could be met within the capped travel budget.

Refer to Appendix 1 for a detailed description of the evaluation approach (including the sample).

⁴ The ministry kept a wider group of stakeholders informed about the evaluation.

⁵ In purposive sampling participants are selected based on the purpose of the study.

5. Limitations

The ministry chose a qualitative research method because the purpose of the evaluation is to understand, in depth, parents' and professionals' experiences of the FDR service and mandatory self-representation. Those parents who were interviewed about FDR had all attended at least one mediation session and could therefore talk about their experiences of FDR. This means that the qualitative data about FDR does not provide information on the experiences of those parents who either did not have any involvement with FDR or who did have some contact but did not attend a mediation session.

The purposive sampling method and sample size mean that the evaluation findings cannot be generalised across all parties and practitioners in the FJS.

The legal aid reforms that took place alongside the FJS reforms introduced user charges for some family legal aid and interest on legal aid debts. One reason for these changes was to encourage people to resolve more straightforward matters themselves (Ministry of Justice 2014a). Given that the legal aid reforms are likely to influence whether and how people use the FJS, they are a confounding factor in the evaluation of the FJS reforms (they may have an impact on the family justice system which is independent of FDR and mandatory self-representation).

6. Evaluation Findings: FDR Service

The following statistics come from administrative data and provide context for the evaluation findings. Administrative data shows that (as at 30 June 2015) since the implementation of the reforms, there have been:

- 1,364 mediation events⁶, of which 897 (66%) were fully resolved
- 413 preparation for mediation events
- 4,528 FLAS⁷ events, where 3,622 (80%) were initial advice and 906 (20%) were assistance with filling in Family Court forms.

⁶ This is a count of each event that has proceeded as far as it can in relation to a single parenting dispute. It is not a count of individual sessions.

⁷ While FLAS is not part of the FDR service, findings related to FLAS are presented alongside findings about FDR because low income people can get free legal advice before or at the same time as accessing FDR.

In addition, as at 30 June 2015, 1,281 exemptions from FDR had been granted. The reasons for these exemptions were:

- 1,012 (79%) one of the parents refused to take part in FDR
- 189 (15%) it was inappropriate to continue with FDR
- 47 (4%) one parent was unable to participate effectively in FDR
- 16 (1%) one parent was at risk
- 17 (1%) no reason was provided.

The structure of section 6 of this report follows broadly how parents move through the FDR service. Findings about the concept of out-of-court mediation and FDR professionals' development are presented first. Accessing and navigating the FDR service is covered next. This is followed by parents' experience of going through FDR, and FDR professionals' and FLAS lawyers' experience of delivering their services. Section 6 concludes with findings about the environment in which the FDR service operates and the administration of this service.

6.1 Concept of Out-of-court Mediation

6.1.1 Parents and professionals liked the concept of out-of-court mediation

Parents

Most of the FDR parents believed that taking part in out-of-court mediation was preferable to going to the Family Court. This was because court proceedings were perceived as daunting, lengthy and costly. FDR parents believed they would benefit from having an independent mediator who could facilitate discussion in a neutral space, help manage emotions and assist the parents to reach an agreement.

My ex and I had no means of communication without arguing. So it was good to have a third person there who wasn't biased, who wasn't on either side so we could communicate without having to argue with each other. (FDR parent)⁸

The main concerns that parents expressed about going to out-of-court mediation were around not knowing what the outcome of the mediation would be, whether their ex-partner would behave appropriately, and how they would manage their own emotions.

Some of the responding parents⁹ believed that going to the Family Court was inevitable; past experience had taught them it was highly unlikely they would reach a lasting agreement with their ex-partner in mediation.

As I said we were hopeful that the mediation would achieve a result and put a stop to the demands of my ex. But five years of history tells us that this won't be the case, and we'll end up back in court. (FDR parent)

A few of these parents hoped that taking part in FDR mediation would benefit their case when it went to court because they would be perceived as a reasonable party. Others said they would have preferred to save time and money by going directly to court, especially in cases where they wanted to get a legally enforceable order.

⁸To preserve parents' confidentiality no demographic details have been provided in the attributions for quotes.

⁹The responding parent is the parent who is contacted by an FDR supplier, or the initiating parent, about taking part in FDR mediation. The term initiating parent refers to the parent who accesses the FDR service and initiates the request for FDR mediation.

Professionals

Several FDR professionals and FDR organisation representatives spontaneously mentioned that they liked the idea of out-of-court mediation.

I think it's a good service, it's the right thing to do, it makes sense, we just have to give it time and fund it properly. (FDR organisation representative)

I really hope it works because I do still think, despite the frustrations, that inserting that step of family mediation is so valuable for families and the purpose of keeping families out of court is so good...from my point of view it's just [finding] a way of refining the processes so that that purpose gets met. (FDR organisation representative)

More specifically, FDR professionals commented that research and practice-based evidence shows that parents achieve better outcomes for themselves and their children when they work co-operatively to sort out their parenting arrangements.

A few Family Court Judges and court staff also spontaneously voiced support for the concept of out-of-court dispute resolution¹⁰. They noted that settling a dispute about parenting arrangements in court is usually more straightforward if parents have managed to resolve some issues in FDR.

6.2 FDR Professionals' Practice

6.2.1 Assistance for mediators to develop their professional practice was appreciated

Two FDR organisation representatives expressed appreciation for the funding the ministry provided for FDR mediator education. Two mediators also remarked favourably on how their FDR supplier assists mediators to access peer support and develop their professional practice; the supplier sends a newsletter to their mediators and has organised hubs where mediators meet regularly to discuss their experiences of providing FDR mediation. One provider of preparation for mediation was particularly pleased to see that the training for FDR mediators emphasised creating safety rules for children (e.g. supervision of children at home).

WAYS OF DEVELOPING FDR PROFESSIONALS' PRACTICE¹¹

FDR professionals spontaneously suggested ideas for professional development:

- Introduce uniform accreditation for FDR mediators
- Put in place mentoring for FDR mediators who have little or no experience of mediating family disputes
- Have agreed guidelines on how to prepare FDR agreements that would be enforceable in the Family Court
- Enable providers of preparation for mediation with no experience of FDR mediation to become familiar with what happens by watching a video of FDR mediation.

¹⁰ The interviews with Family Court Judges and court staff focused on mandatory self-representation. Some of these participants did, however, express views about FDR, which have been included in the findings about FDR.

¹¹ Evaluation participants suggested the improvements presented in this report. The legislative, financial and practical implications of these suggestions have not been assessed.

6.3 Access to FDR Service

6.3.1 Parents became aware of FDR service through various sources

Initiating parents' natural instinct was to go to a legal/court information source to find out how to settle their parenting dispute. Typically they learned about the FDR service from their own lawyer, a Child, Youth and Family (CYF) lawyer, a community law agency, court staff, other ministry staff, or the ministry website. They also learned about this service through the Citizens Advice Bureau.

Initiating parents said they requested FDR mediation because they wanted to sort out parenting issues, formalise current parenting arrangements, or gain more certainty about their legal rights as a parent.

I had trouble with my children's father and I had to start sorting that out and I looked on the Ministry of Justice website for information on how I could go about doing that. (FDR parent)

Responding parents were usually contacted by an FDR supplier, or the initiating parent, about taking part in FDR mediation. Some of the responding parents had found out about the FDR service from a legal advisor before the FDR supplier contacted them. This was either in response to contact from the initiating parent, or because they had also been thinking about changing their parenting arrangements.

In cases where the separating parents had been "in and out of the Family Court" over a number of years, responding parents were "not surprised" about being contacted to take part in FDR mediation.

We were not surprised to receive a phone call and just a little bit hopeful that this might stop some other stuff. We've spent over \$25,000 over the last five years, and this was just another action that she was initiating. (FDR parent)

In other cases, the responding parent had not foreseen that their ex-partner might want to change existing parenting arrangements and so felt "caught off guard" when the FDR supplier contacted them "out of the blue" about FDR mediation.

I thought things were working out well until I got a call from [the FDR supplier] to attend mediation. (FDR parent)

I had no prior warning when [the FDR supplier] called. My ex-husband has obviously gone to them and they called me. (FDR parent)

6.3.2 Generally the volume of work in FDR service is lower than expected

One FDR organisation representative said the take-up of their FDR mediation service had been higher than they had estimated. They attributed this to having a known brand in the community and customer service staff who clearly explained the benefits of FDR mediation to parents. Two mediators also mentioned receiving a steady flow of referrals for FDR mediation from their supplier since the service began.

In contrast, several FDR organisation representatives and many FDR professionals said that the amount of work received through the service had been lower than they expected. The professionals' expectations were based on their work in the previous system and the messages they received while the FDR service was being set-up.

I don't know where everybody who needs mediation is going because I did...at least one [court-ordered mediation], if not more than one a week, under the old system...what happens now is I've had four over 12 months. I'm disappointed personally because I enjoy mediation, but I know other people are not getting them either, so I'm asking myself where are all these

people going who need it and [benefited] from mediation because they're obviously not being picked up... (FDR professional)

Two FDR organisation representatives also expressed concern that the lower than expected uptake meant parenting disputes were “missing” from the FJS. One FDR organisation representative, however, spoke about the low volume of FDR referrals as beneficial because it meant that FDR suppliers had more time to support FDR mediators to develop their practice.

FDR professionals believed there was a lack of work because the volume of parents accessing the FDR service was low. Some professionals were unsure why this situation had occurred. Others offered a range of what they thought were possible explanations:

- Parents are not accessing the service because: they do not know about it; they may have to pay for the service; the responding parent has no incentive to take part in FDR mediation so refuses to do so; or parents are sorting out their parenting arrangements privately.
- Suppliers are not contacting parents referred to them for FDR by mediators.
- Suppliers lack the skills and time needed to encourage the responding parent to take part in the service so parties are exempted from FDR.

Had a client who was concerned about the approach by [the FDR supplier]. The initial approach. He just got a telephone call...he was taken by surprise, he wasn't really given any information and at the end of the call the FDR [supplier] took that as a refusal to attend and that was the end of it and then she [the other parent] applied on notice... (FDR professional)

- Family Court Judges are holding “round table meetings”¹² with parents whose without notice application has been declined, rather than referring these parents back to the FDR service (see footnote 13 for data about without notice applications).

FDR organisation representatives also offered possible explanations for the apparently low volume of parents accessing the FDR service:

- There is a perception amongst the representatives that family lawyers are advising responding parents to refuse to take part in FDR mediation. There is also a perception amongst the representatives that Family Court Judges are not referring parents to the FDR service. It is believed that these lawyers and judges do not trust the FDR service yet as it is new. It is also felt that lawyers and judges believe that it will take longer for the parenting dispute to be resolved in the FDR service than in the Family Court and that such delays will lead to parenting disputes becoming urgent cases (FLAS lawyers spoke about a gap in the FJS for managing fairly urgent cases — see section 6.5.7).
- The responding parent cannot afford to pay for the FDR service, does not want to be in the same room as the initiating parent, or believes that the initiating parent is using the service to “harass” the responding parent.
- The responding parent has to pay for the service while the initiating parent is funded. FDR organisation representatives reported mixed views on whether enabling responding parents to pay after (rather than before) their initial meeting with the FDR mediator had led to an improvement in take-up. One FDR organisation representative believed that allowing both parents to attend preparation for mediation free-of-charge, in cases where one parent is funded, had increased uptake of this service.

A few of the judges cited the increase in the number of without notice applications¹³ since the FJS reforms, as evidence of parents wanting legal representation and wanting to avoid delays in

¹² The judge asks the lawyer for the child (referred to as ‘lawyer for child’) to meet with the self-represented parents to see whether they can reach their own agreement before the judge assists them to settle the matters in dispute at a settlement conference.

accessing FDR. A court staff member spoke about the problem of managing day-to-day court work in the face of increased without notice applications that staff have to “drop everything” to process.

An FDR organisation representative indicated that mediators could make it easier for separating parents to get in touch with them by, for example, having an answering machine; she indicated that none of the FDR mediators in her area had voice mail so calls to them go unanswered.

A few mediators noted that there is no guarantee they will get work as a result of referring parents who contact them directly, on to an FDR supplier.

Some FDR organisation representatives believed that their efforts to establish and maintain links with other FJS professionals (e.g. Family Court Judges and Family Court lawyers) had improved the professionals’ awareness and understanding of the FDR service (e.g. the actual time it takes for most of a supplier’s FDR mediations to reach an outcome).

WAYS TO INCREASE AWARENESS OF FJS IN ORDER TO INCREASE UPTAKE OF THE FDR SERVICE

Several FDR organisation representatives and FDR professionals spoke about the need to increase parents’ uptake of the FDR service by promoting the FJS better to separating parents and relevant professionals (including Whānau Ora providers). Some suggested having well trained and experienced staff in the District Courts who can answer parents’ questions about the FJS. Others spoke about having printed material available in the courts, mediators’ offices, the Citizens Advice Bureau and the Community Law Centre. Another suggestion was to provide an information pack to each parent when they accessed the system. Public advertising/education campaigns were also suggested.

IDEAS FOR REVIEWING THE FUNDING AVAILABLE FOR PARENTS ACCESSING THE FDR SERVICE

FDR organisation representatives and FDR professionals suggested the following changes to government funding that they believed would make the FDR service more affordable and/or easier for separating parents to access:

- Simplify the funding eligibility assessment by setting an individual income threshold; an individual parent whose income was under the threshold would be funded, and a parent whose income was on or above the threshold would not be funded
- Review the funding thresholds as they seem too high, particularly for a parent with more than one child, or a parent who received a one-off payment during the 12 weeks prior to the eligibility assessment. Current ministry policy is that FDR suppliers are able to assess a parent’s income over 12 months if it is believed that three months will not provide a true representation of the parent’s income
- Introduce a flat fee for all parents, as some parents are reluctant to show their proof of income to a stranger
- Provide the service to parents for free, if not to all parents, then to parents who are sorting out a parenting dispute for the first time.

SUGGESTIONS REGARDING EXEMPTIONS FROM FDR SERVICE

A few FDR professionals identified improvements that they thought could be made in relation to exemptions from the FDR service.

¹³ Ministry data shows that from the 12 months ending 31 March 2014 to the corresponding period ending 31 March 2015, the number of without notice applications increased from 7,885 to 11,582 (an increase of 3,697 or 47%). However, almost a third of these applications were directed to proceed on notice within seven days of the application being filed.

- Make it compulsory for both parents to obtain an FDR exemption certificate from an FDR mediator to overcome the current situation where one parent can refuse to engage with the service at all. This suggestion is based on the belief that a responding parent will be less likely to refuse to take part in FDR once they have met a mediator.
- Clarify whether having one parent in prison automatically exempts both parents from the FDR service.
- Automatically exempt from the FDR service cases in which CYF is involved in arranging the children’s care, rather than making them go through the exemption process.

6.3.3 Flow of referrals is erratic

Along the same lines as the volume of referrals, some mediators and FLAS lawyers said that the flow of referrals from FDR suppliers was erratic. They presumed the irregularity was due to logjams created by administrative delays in a supplier’s referral process (e.g. delays referring parents to a mediator). An FDR organisation representative said that delays in getting proof of identity and funding eligibility from parents can create a backlog in a supplier’s referral process.

Mediators and FLAS lawyers spoke about the flow-on effects of the apparent delays in the process:

- Mediators get frustrated by the lack of updates from a supplier on how referrals are progressing
- Mediators have to complete the FDR assessment with parents again to check whether their circumstances have changed
- Lawyers end up filing without notice applications on behalf of parents whose circumstances have become urgent during the delay to go to mediation.

IDEAS FOR STREAMLINING THE REFERRAL PROCESS

One FDR organisation representative believed that FLAS lawyers could help to streamline the referral process by verifying parents’ identification and funding eligibility as part of providing FLAS 1¹⁴, and then entering these details into the Resolution Management System (RMS) immediately following their meeting with the parents.

Several FDR mediators suggested that before appointing a mediator, FDR suppliers should (a) explain the mediation process “properly” to parents (including that the mediation focuses on the child’s welfare), (b) complete parents’ ID verification and funding eligibility assessment, (c) complete the agreement to mediate, and (d) put in place arrangements for securing payments from unfunded parents.

SUGGESTIONS FOR STREAMLINING SUPPLIERS’ ADMINISTRATION PROCESSES

Several FDR mediators commented that suppliers need to streamline their administration processes. For example, one mediator suggested that, rather than having to complete one checklist for her supplier after the individual meeting with each parent, and then one after the joint mediation session¹⁵, mediators be required to complete one checklist after the joint session only. Another mediator commented that she would be able to work more efficiently if her FDR supplier provided her with one form that had the name, email and phone number of each parent on it and that identified the initiating party.

6.3.4 Ministry’s information about FJS useful although website could be improved

The ministry has produced information about the FJS for parents. This information is provided in brochures and on the family justice website.

¹⁴ The term FLAS 1 refers to the initial legal advice that FLAS lawyers provide to parents. The term FLAS 2 refers to the assistance that FLAS lawyers provide to parents in terms of filling in Family Court forms.

¹⁵ A joint FDR mediation session involves both parents (with or without support people) and the mediator.

A few initiating FDR parents mentioned going to the ministry's family justice website to find information about how to start the process for settling a parenting dispute. They said they found it reasonably easy to locate mediators' contact details on the website. In contrast, self-represented parents mentioned struggling to find information about how to make an application to the Family Court (see section 7.2.1).

A few FDR professionals praised the ministry's information for being easy to understand and based on good practice for negotiating parenting arrangements. Others believed the ministry could make its family justice website easier to use.

IDEAS FOR MAKING FAMILY JUSTICE WEBSITE EASIER TO USE

FDR organisation representatives suggested making it easier for parents to find resources on the ministry's family justice website such as the funding eligibility tool (the funding calculator) and the list of FLAS lawyers. More specifically, a provider of preparation for mediation thought the instructions for how to use the funding eligibility tool could be set out more clearly. She mentioned that some parents had commented on how they felt exposed using this tool because they did not know who was going to see their income information or what it would be used for. Parents also felt unsettled by the message that they were 'likely' to be entitled to government funding as they were left wondering whether or not they would receive funding.

Other suggested improvements were:

- Completing a stocktake of FDR professionals and FLAS lawyers and only listing on the ministry's Family Justice website those who actually provide part of the family justice service
- Ensuring that FDR professionals' and FLAS lawyers' contact details are kept up-to-date.

6.4 Learning About and Navigating the FDR Service

6.4.1 Overall parents found their initial contact with an FDR supplier satisfactory

FDR parents were mostly satisfied with the initial contact they had had with an FDR supplier about taking part in the FDR service (although FDR professionals did report that some responding parents had expressed concern about their initial contact from a supplier — see section 6.3.2).

According to the parents, this initial contact usually covered (a) an overview of the FDR service, (b) the parents' situation and whether their dispute was suitable for the service (including if there was a history of family violence), (c) parents' eligibility for government funding, and (d) the selection of a mediator. Some parents mentioned requesting mediators based on geographical location (e.g. close to where the parent lives) or on specific attributes (e.g. gender, ethnicity).

I did my research and chose a mediator who was male, white and older to encourage my ex to attend mediation. The mediator was really good and managed the process well. (FDR parent)

Two of the fully funded FDR suppliers used the initial contact to collect information that they passed to their mediators to complete the FDR assessment with each parent face-to-face. The other supplier used this initial contact to complete the FDR assessment with each parent by telephone.

Most of the parents living in Auckland had an assessment by telephone. In Wellington and Christchurch there was a mix of in-person assessment (approximately two-thirds) and assessment by telephone (approximately one-third). Parents were generally comfortable with the content and

method of FDR assessment. A few expressed frustration when the in-person assessment was shorter than expected, especially if they had incurred travel costs.

6.4.2 Generally the method of FDR assessment is working well for mediators

As outlined in section 2.2, each case is assessed by an FDR supplier to ensure that FDR mediation is appropriate. Two of the suppliers contract their mediators to complete the FDR assessment with each parent face-to-face. The other supplier employs FDR Resolution Co-ordinators to complete the assessment with each parent by telephone. Both methods of assessment appear to be working well for mediators.

In-person FDR assessment

The mediators who completed FDR assessments in-person appreciated being able to complete the assessment themselves. According to one FDR organisation representative, the face-to-face FDR assessment is an opportunity for the mediator to establish a relationship with each parent, which is important for achieving “good outcomes”.

Mediators did express frustration at apparent delays in a supplier’s process for referring parents to a mediator for an FDR assessment.

I have to negotiate with [FDR supplier] who has to negotiate with the parties about when I’m going to meet them [to do the FDR assessment]. And sometimes that can take weeks. So I’m sitting there having blocked out time in my diary because I’ve offered it to the [FDR supplier]...that takes a long time for them to get back to me and often then they get back to me and they say ‘no’ they can’t do any of those times, ‘can you give us more’. So from a business point of view that’s silly for me. That just doesn’t work at all. (FDR professional)

Telephone FDR assessment

For the supplier who completes the assessment by telephone, if the case is appropriate for mediation then the supplier contacts the mediator who is going to work with the parents and passes on the information from the FDR assessment to the mediator. Several mediators contracted by this supplier described the information as comprehensive and helpful.

One mediator liked the separation between the FDR assessment and the individual mediation meeting with each parent, as she believed the assessment questions could “get in the way” of the mediation process.

A few mediators said they had referred at least one case back to the supplier because of safety concerns, but that these were a small proportion of the total referrals they had received from the supplier. One mediator stressed that the telephone FDR assessment should be conducted by senior mediators only. Another acknowledged that parents will always “slip through the cracks”, which is why mediators must be vigilant for family violence risk factors at all times. On balance, mediators were comfortable with telephone assessments, which were regarded as practical, particularly for parents living in rural areas.

No matter what process you employ you’re never going to be able to guarantee that you’ve actually screened out everybody and so there’s always going to be an onus, a responsibility on the mediators to be aware of the fact that somebody might have got past the screening who shouldn’t have ...you’ve got to be efficient and I just don’t think it’s efficient to set up a process where everybody who wants the service has to be screened face-to-face...that just seems too idealistic or unrealistic...and impractical...you can’t expect the farmer who’s on a quad bike miles and miles from anywhere up the back blocks to come all the way into some city to be interviewed. (FDR professional)

6.4.3 FLAS 1 is straightforward to provide and appreciated by parents

Professionals

FLAS lawyers believed that their clients understood the new FJS after receiving FLAS 1. To assist this, FLAS lawyers gave clients a written summary of their FLAS 1 advice and, in some cases, ministry brochures about the system.

Several FLAS lawyers mentioned that they found it straightforward to provide FLAS 1 and that the amount of funded time for this service was adequate. FLAS lawyers were clear with their clients about the boundaries of the FLAS 1 service and that clients would have to pay for any additional ongoing legal advice themselves. However, one FLAS lawyer stated that it was only financially viable for him to provide FLAS 1 because his legal executive completed the associated paperwork and entered data in RMS.

IDEA FOR ASSISTING LAW FIRMS TO PROVIDE FLAS

One FLAS lawyer suggested allowing junior lawyers, who are supervised providers of legal aid, to hold a FLAS approval as she believed that providing FLAS would be good experience for these junior lawyers and a good use of law firms' resources.

Parents

FDR parents commented positively on the initial advice received from FLAS lawyers. Parents said their lawyer described the new family justice processes and explained likely outcomes if the case went to the Family Court.

I should put a shout out to my lawyer actually. I thought she was fabulous. Every single piece of advice she's given me, I thought has turned out to be exactly as she's explained. I loved that she maintained that line between being supportive and being realistic, and not setting up expectations that couldn't be met. (FDR parent)

6.4.4 FDR organisation representatives try to ensure parents can navigate the out-of-court system

There was a general concern amongst professionals that parents might fall through the gap when transitioning from one part of the FJS to another, or from one part of the out-of-court system to another. A few FDR organisation representatives identified ways in which they are trying to prevent this from happening:

- Streamlining their service offering through partnering with providers of complementary services (e.g. an FDR supplier partnering with a provider of preparation for mediation)
- Offering a one-stop shop by up-skilling their own staff to provide a range of services (e.g. Parenting Through Separation (PTS)¹⁶, FDR mediation and preparation for mediation)
- Developing their own pamphlets and website information about the out-of-court system.

¹⁶ PTS is a free information programme that assists separating parents to better understand the effects of separation on their children and work out ways of keeping conflict away from their children. People applying to court for a Parenting Order are required, in most cases, to have attended PTS.

6.5 Experience of FDR Service

6.5.1 Parents experienced different types of FDR mediation process

Typically the FDR mediation process involves the FDR mediator meeting with each parent individually and then later meeting with both parents in a joint mediation session. Some initiating parents spoke about their ex-partners delaying making appointments, changing appointments multiple times and/or not turning up for appointments.

A few parents described having one appointment in which the individual meetings and the joint mediation session were conducted. These parents believed that their mediator was “winging” the mediation and felt as though they were being processed through a system.

For the remaining parents, each of whom met separately with the FDR mediator and then took part in the joint FDR mediation session at a later time, the type of joint session varied:

1. The FDR mediator and both parents (with or without support people) in the same room physically or via teleconference, with the discussion facilitated by the mediator
2. Each parent in a separate room (with or without a support person) with the mediator going back and forth between the rooms; this means that the parents do not talk directly to one another
3. One parent and the FDR mediator draft a parenting agreement which the mediator presents to the other parent; the mediator goes back and forth between the parents who do not discuss the agreement directly with one another.

In some cases one parent (party A) did not know that the other parent (party B) was going to bring a support person. This meant that party A entered the joint mediation session feeling as though they were going into an unfair process.

Parents whose joint mediation session took place in separate rooms were taken aback initially as this process was different to what they had expected; the parents’ expectation was based on how the FDR mediator had explained the mediation process to the parent in an individual meeting. These parents were comfortable with this form of mediation once it had been negotiated and agreed with them.

The parents who were presented with a draft parenting agreement were unhappy with this approach as it differed from the process they expected and had not been agreed with them.

While parents did not express any concerns about the venues in which FDR mediation sessions were held, a few FDR mediators indicated that some of the premises their supplier required them to use were unsuitable for holding joint mediation sessions.

6.5.2 Several factors influenced parents’ perception of joint FDR mediation sessions

Skill of mediator

For joint FDR mediation sessions where both parents were in the same room, most of the parents felt they were able to have their say and felt they were listened to, while the mediator ensured that each parent had time to speak, managed interruptions and calmed heightened emotions. In this situation, parents believed they had been heard even if the outcome of the mediation was partially or not at all what they had wanted.

I thought the mediation was really fair. I was definitely heard; my concerns were definitely addressed and acknowledged by the mediator. I felt safe to talk and it was very controlled and very much kept to what the issues were. (FDR parent)

Other parents’ sense of being heard depended largely on whether the outcome of the mediation was in line with most or all of their wants.

For joint FDR mediation sessions in general, the time required for the mediation and the extent of agreement reached depended partly on the skill of the mediator and partly on both parents' willingness to compromise and reach agreement.

I don't blame the mediator [for him and his ex-partner not being able to reach a mediated agreement]. I think the actual mediation was good but my ex was very difficult and did not want to participate. (FDR parent)

Feeling pressured into agreement

Twenty-seven of the 67 interviewed parents (40%) mentioned feeling pressured to reach a parenting agreement. Almost all of these parents felt pressured due to the long duration of the mediation process and/or the mediator's desire to get a signed agreement in place. This resulted in some parents signing agreements that they were unhappy with, thought were impractical, or believed would not last. Some parents wondered whether mediators' performance measures or pay rate were based on the number of signed agreements achieved.

The mediation took over five hours. By the end of it we were exhausted and pressured into agreeing on an outcome so we could get out of there. (FDR parent)

[The] mediator wanted an outcome and didn't care about the actual content of the document. She just wanted signatures on the agreement. (FDR parent)

The remaining parents who felt pressured indicated that this was because of what they perceived as the mediator's desire to achieve an outcome in a fixed amount of time.

I felt like the mediator just wanted out. That she had more important things to do with her time and she wanted to get the mediation out of the way and get out. (FDR parent)

One FDR organisation representative mentioned hearing that some FDR mediators were pushing parents into agreements.

I hear that some people are really pushed into agreements...The FDR system actually allows you to go 'that's where we've got to today...let's stand-down for three months and just have a wee think about things, you might want to do a parenting course...then you can come back together again'... (FDR organisation representative)

Of the 27 parents who believed they had reached agreement in a pressured process, 19 said that the agreement had been broken, at least in part, soon after the mediation was completed.

There was no opportunity to go away and consider the way forward. We were under pressure to agree right then and there about the outcome. Some of the things turned out not to be practical and not stuck to. (FDR parent)

Presentation of mediated parenting agreement

Parents expected that if they reached a mediated parenting agreement, they would each receive a handwritten copy of the agreement, which they would sign at the end of the mediation process and, later, would receive a typed copy of the agreement for signing. While this occurred for some parents, others received a blank parenting agreement to sign or handwritten notes with cross-outs and illegible words. The latter were perceived by parents as unprofessional practices that diminished the importance of the mediation.

6.5.3 Parents found preparation for mediation useful, while professionals were unsure of its purpose

Parents

A few parents had attended preparation for mediation. They found this service helpful for preparing to reach agreement with their ex-partner in FDR mediation.

I did a block of counselling before mediation. We talked about what I wanted in terms of the outcomes of the mediation. You need the counselling and the Parenting Through Separation. You can't isolate one from the other, you need all of it to prepare you for reaching an agreement with your ex. (FDR parent)

Professionals

Two FDR organisation representatives were unsure of the purpose of preparation for mediation. One noted that if preparation is intended to cover communication skills and how to manage personal responses then a separate service might be useful, but if it is about what to expect from FDR mediation, then mediators could provide this because providers of preparation for mediation do not necessarily know about mediation.

Another FDR organisation representative suggested that rather than having parents go to different types of provider, the ministry could offer an integrated model where parents would only need to see (a) an FLAS lawyer and an FDR mediator with skills in counselling newly separated parents, or (b) one mediator with knowledge of family law and counselling skills.

One FDR organisation representative and a few providers of preparation for mediation believed it was important to separate preparation for mediation from FDR. Two reasons were given for this. Firstly, separate preparation for mediation enables each parent to work through issues that might hinder their ability to focus on what is best for the child in joint mediation. Secondly, it allows two practitioners to check for family violence risk factors independently of one another.

6.5.4 Payment thought to be insufficient for time spent providing FDR mediation and FLAS 2 but adequate for preparation for mediation

FDR organisation representatives, FDR professionals and FLAS lawyers commented on the adequacy of the payment for fully funded preparation for mediation, FDR mediation and FLAS 2.

Preparation for mediation

FDR organisation representatives and providers of preparation for mediation were satisfied with the time and payment allocated for preparation for mediation. One provider stated, however, that it is "unfair" that providers of preparation for mediation receive part payment rather than full payment if a parent does not turn up for their appointment, particularly if the counsellor has blocked out the time and cannot book in another client.

FDR mediation

The ministry contracts the suppliers to provide FDR assessment and mediation services for a payment of \$1,227 (exclusive of GST) per completed case. This is an 'overs and unders' payment model based on an average of two hours assessment and five hours mediation.

Each of the three FDR suppliers fund their sub-contracted FDR mediators differently:

- One offers a total of five funded hours per case, which covers an individual meeting with each parent (usually one hour each) and a joint session (usually three hours)
- Another offers eight funded hours per case, which includes an individual meeting with each parent and the FDR assessment (usually 90 minutes each) and a joint session (usually five hours)
- The third has one fixed fee for standard cases and another fixed fee for complex cases.

Some mediators (across all three FDR suppliers) stated that the payment for an FDR mediation does not cover their actual costs. They estimated that administration and extended mediation sessions generally added several hours to the funded hours. The administration time included contacting the parents, drafting the mediated agreement, getting the mediated agreement signed by the parents and sent to the FDR supplier, filling in RMS data and completing paperwork. Some mediators also

mentioned the unpaid time they spend reading communications from their supplier, attending meetings and going to training.

The difference with private practice is that if something takes 10 hours to settle then I charge those people for 10 hours. So if you're doing two hours of administration and half an hour when you are typing up the agreement for them and winding up all those loose ends, if you're doing an extra two and a half hours and you're getting paid for 10 you're fine. If you're doing an extra two and a half hours and you're only getting paid for five that starts to get a bit harder to manage. (FDR professional)

One mediator took the low effective hourly rate, and the lack of differentiation in pay rates based on experience, as an indication that FDR mediation is regarded as being low value work.

They're [FDR mediators] not getting as much work as was expected and they've invested time, effort and so on and the work is underpaid having regard to the amount of time that's involved...when someone is essentially underpaid that speaks volumes as to how they are regarded in fact, so it doesn't matter what people say about what a wonderful job you're doing if they're actually not prepared to pay you in a commensurate way their statements become...insincere... (FDR professional)

Two FDR organisation representatives wondered whether more time than expected was required for FDR mediation because parents with complex (rather than straightforward) disputes were accessing the service. Another FDR organisation representative indicated that an FDR supplier was developing a model that FDR mediators could use to complete an FDR mediation in five hours.

The low volume of FDR work and perceived low effective hourly rate led some mediators to question their continued involvement with the service. One year after FDR had been implemented these mediators had not recouped their costs for FDR mediation training, supervision, ADRO membership or, in one case, for hiring mediation rooms.

I've probably had about six to eight [FDR mediations] through [FDR supplier]. So that's of major concern because one of the things that [the FDR supplier] said was required when we first signed up was that we...provide a venue and so three colleagues, other FDR mediators and myself, went in and hired offices thinking we were going to have a fairly steady stream of work, and we've got other work too to support those offices, but we haven't had anything at all from FDR for three months, over three months. Now I'm actually starting to really question my investment in it and whether I can continue to do it... (FDR professional)

Two FDR mediators requested that mediators be reimbursed for costs such as mileage and hiring mediation rooms. Currently the ministry pays for time and mileage for travel that exceeds 50 kilometres, and where there is a need that cannot be met by a more local supplier.

FLAS 2

Several FLAS lawyers commented that the funding for FLAS 2 is inadequate. One reason given for this is funding does not cover the expectation that some parents have, that the lawyer will continue to provide advice after the parents have appeared in the Family Court on the simple or standard track.

Another reason these lawyers gave is the funding does not cover the service that some lawyers actually provide. Rather than just helping clients fill in court forms, some FLAS lawyers are completing these forms and preparing affidavits for their clients. The reasons given for this were clients' illiteracy, clients not knowing how to prepare an affidavit that would be accepted in court, and wanting to make it easier for other lawyers and Family Court Judges to progress the case.

I had one particular client...and she would have really struggled to do it all by herself and in the end she applied to court and I went to the court with her but didn't go into the courtroom and prepared all the memoranda for her so she could just hand to the judge what she wanted,

and she managed it fine but it was quite scary for her having to do all that... ..we're just trying to streamline the process and make it as easy for the judge as possible and sometimes that takes a bit more involvement than just sort of explaining to them [the parent] how to do it. (FLAS lawyer)

SUGGESTIONS FOR IMPROVING FUNDING OF THE OUT-OF-COURT FJS

FDR organisation representatives and FDR professionals suggested ways of making the FDR service more financially viable for FDR professionals and FLAS lawyers. They suggested that:

- The funding model for the whole out-of-court FJS be revised
- There be a set number of hours that parents can use for funded mediations in a 12 month period.

6.5.5 Actively include voice of child in FDR mediation

FDR organisation representatives, FDR professionals and FLAS lawyers believed that the inclusion of a child's wishes, as expressed by the child, in FDR mediation is an area that needs further consideration.

The current system really neither facilitates or precludes involvement of children in the mediation...I think it's an area that really does need to be explored more...the key thing is it needs to be really carefully considered and really skilfully handled but I think it is the missing part of the system... (FDR organisation representative)

FDR professionals stated that research has shown that consulting children during parental separation leads to parenting arrangements that are better for the children and their parents.

Parents commented that children were only included in FDR mediation if this was requested by one of the parents and the other parent agreed; mediators did not offer a child-inclusive mediation process to parents. Parents whose children were actively involved in the mediation spoke positively about their involvement.

I was happy because my daughter who is 13 years old had her say. She was included in the mediation; she attended mediation with her grandmother and agreed to my drafted parenting agreement. (FDR parent)

IDEAS FOR ACTIVELY INCLUDING CHILD'S WISHES

Several FDR organisation representatives, FDR professionals and FLAS lawyers suggested things that could be done to increase the inclusion of children's wishes in mediation sessions:

- The ministry could consider a range of options for including the child's voice and funding providers of preparation for mediation and/or mediators to develop their skills in this area
- The ministry could develop clear guidelines around how to bring the voice of the child into mediation in a way that fits with the Care of Children Act 2004
- Emphasise the use of child-inclusive mediation
- Have a suitably qualified practitioner represent the child's wishes in mediation.

Along the same lines, one provider of preparation for mediation suggested running a programme for children that helps them through their parents' separation.

6.5.6 Provide more support in the FDR service for parents' emotional wellbeing

A few FDR organisation representatives and FDR professionals noted that separation is usually a distressing time for parents. An FDR organisation representative acknowledged the importance of parents still being able to receive judge-referred therapeutic counselling. However, an FDR

professional described the usual three court-referred counselling sessions as “insufficient” when working with parties who have “entrenched issues”.

FDR organisation representatives and FDR professionals believed the FDR service could do more to support parents working through any emotional pain related to the separation. Their suggestions were:

- An 0800 number for FDR suppliers and mediators to refer parents to so they can arrange emotional support (such as therapeutic counselling) immediately following their FDR assessment
- Providing therapeutic counselling for parents alongside FDR mediation
- Scheduling mediation sessions over a few months so that parents have time to reflect on the negotiations and go to therapeutic counselling if they want
- Co-locating family service providers as is done in the Family Relationship Centres in Australia.

6.5.7 Gap in FJS for managing fairly urgent cases

Several FLAS lawyers spoke about how they dealt with fairly urgent matters which were below the threshold for a without notice application to the court. Under the previous system, they contacted the other parent’s lawyer to get an interim agreement, or filed an abridged application that reduced the time for access to the court. In the current system, these FLAS lawyers believed they were forced to choose between the FDR service which they thought could lead to delay, or making a without notice application knowing that a Family Court Judge would likely direct the application to the on notice track with a reduced time.

Along the same lines, one FDR organisation representative reflected how the legal definition for family violence has broadened to include forms of psychological and emotional abuse. While he believed this is a good thing philosophically, he has heard that operationally it creates a volumes problem for the Family Court because those experiencing what he considered to be “lesser instances” of family violence can bypass FDR and go straight to court. A Family Court Judge requested more clarity around the threshold for family violence as he believed judges were reluctant to refer cases “with a sniff of violence” back to FDR as they might be exempted from this service and sent back to the Family Court.

SUGGESTION FOR MANAGING SEMI-URGENT CASES IN FDR SERVICE

One FDR organisation representative suggested creating a fast track in the FDR service for fairly urgent matters.

6.5.8 Aspects of the existing FDR service are believed to support parents to achieve sustainable agreements

The FDR service is intended to support parents to reach agreements about the care of their children which remain in place over the longer term.

FDR organisation representatives identified aspects of the existing FDR service that they believe assist parents to achieve sustainable agreements from FDR mediation:

- Both preparation for mediation, and the individual meeting between each parent and their mediator prior to the joint mediation session, help parents to “get their heads around” the fact that they are going to have a long-term co-parenting relationship¹⁷.
- For funded mediations, enabling parents to access the FDR service twice in a twelve month period, with a three month stand-down from the time that parents complete their

¹⁷ This is also a focus of PTS which parents are able to attend before going to FDR.

mediation to when they can return for a separately funded mediation. This mitigates the risk of a parent being pushed into an agreement during their first mediation attempt (see section 6.5.2).

While some parents knew that they could return for a separately funded mediation after a three month stand-down, others were unaware of this feature of the reforms. Amongst the parents who knew about the feature, funded parents tended to view it as an opportunity to trial their mediated parenting agreement and, if required, revisit it in a separate mediation. Self-funded parents, however, were concerned that they would incur additional costs if their ex-partner requested mediation after the stand-down.

SUGGESTIONS FOR BETTER SUPPORTING PARENTS TO ACHIEVE SUSTAINABLE OUTCOMES

Parents believed that the criteria and process for revisiting a trial agreement needed to be explicit and agreed on.

FDR organisation representatives, FDR professionals and FLAS lawyers also suggested ways in which the service could better help parents to achieve sustainable agreements and/or resolve any future parenting disputes themselves. Their suggestions included:

- Make it mandatory for parents to attend PTS before they can access the FDR service. This idea is based in the belief that parents who attend PTS first are better prepared to focus on the best interests of their children in both preparation for mediation and FDR mediation (interviewed parents benefited from PTS, see section 6.8.2).
- Make preparation for mediation mandatory. One mediator believed the parents she had seen were “too engrossed in their own issues” to reach a durable agreement and none of the parents she had spoken to about preparation for mediation had taken it up (interviewed parents benefited from preparation for mediation, see section 6.5.3).
- Allow for multiple joint mediation sessions so that parents can reach an interim agreement, try it out in the real world and then come to a final agreement. One FDR organisation representative noted, however, that holding the joint session in multiple stages would exacerbate mediators’ travel costs.
- Make funding available for parents to access legal advice during the mediation process, and for lawyers to attend FDR mediation sessions as legal advisors; lawyers provide “reality checks” for their client and assurance that the mediated agreement is sound.
- For parents who reach a mediated agreement, allowing them to meet with their FDR mediator a few months later to undertake a funded review of how their agreement is working in the real world.
- Provide more funded time for FDR mediators to educate parents on how to settle parenting disputes themselves.

6.5.9 Need to make it clear to parents that FDR agreements are not legally enforceable

One FDR organisation representative and one FLAS provider appeared to believe that FDR is “messy” because the agreements are not legally enforceable unless they are put into the court system to be turned into a court order.

The agreements that are reached in mediation are not...legally binding. It needs to be quite clear to people that it's not, that this is just an agreement between them, because they think having gone through a formal process that they have an enforceable order when it's not. They're left with this impression they've got something stronger than it is... (FDR professional)

Some parents had not been told by their mediator that the agreement was not legally enforceable and were surprised when they found out through other means, such as asking the police to enforce

the agreement. A few parents commented on the oddity of having a signed agreement that was not enforceable in court.

But the agreement isn't legally binding. It's funny because even though you sign a parenting agreement witnessed by two lawyers, [it's] completely unenforceable, you can do whatever you want with it. You can ignore it and nothing happens. (FDR parent)

IDEAS FOR IMPROVING PARENTS' TRANSITION TO FAMILY COURT

FDR professionals and FLAS lawyers suggested ways to help parents transition from the FDR service to the Family Court:

- Have FDR mediators explain to parents, who reach an agreement, that their agreement is not legally enforceable and what could happen if they go to the Family Court to get their agreement made into a court order (e.g. a judge may want to meet with the parents to get assurance that the agreement is consistent with the welfare and best interests of the child)
- Allow lawyers to file applications and evidence in the Family Court on behalf of parents on the simple or standard tracks.

6.6 Environment in which FDR Service Operates

6.6.1 Relationship between FDR suppliers perceived as competitive, which is unhelpful for FDR mediators

FDR organisation representatives supported having multiple FDR suppliers who each provide a different model of FDR mediation because they believed it was good for parents to have choice. Notwithstanding this, several FDR organisation representatives and FDR mediators remarked that the relationship between the current fully funded FDR suppliers was competitive, and that this was unhelpful for FDR mediators. One mediator felt that the competitiveness between the suppliers discouraged her from sharing lessons she learned from providing mediation for one supplier, in forums organised by the other supplier; she believed this was to the detriment of improving FDR mediators' practice.

You can't just talk about your experience because I have to constantly be remembering who my audience is. If I've got an experience that actually would be useful for [supplier A] I can't talk to them about it if I acquired that experience doing a referral for [supplier B]. (FDR professional)

One FDR organisation representative seemed to indicate that providing suppliers with visibility of their market share would help their investment decisions (such as which geographical locations to provide services in) which may, in turn, reduce the sense of competition between suppliers.

6.6.2 FLAS lawyers would like to be notified of the outcome of parents' cases

Several FLAS lawyers stated that more parents had asked them for FLAS 1 than for FLAS 2. The lawyers were unsure whether this was because parents settle at FDR mediation and/or had decided not to go to court as the lawyers received no information about the outcome of the parents' cases.

I do feel a little bit like an island. Normally you would have your clients ringing or coming back or you can see how the matter is progressing, but I feel that they just sort of disappear off the edge of a cliff and it's like 'oh, ok, see ya!' (FLAS lawyer)

REQUEST TO NOTIFY FLAS LAWYERS ABOUT CASE OUTCOMES

FLAS lawyers would like to be notified of the outcome of the parents' cases (e.g. whether parents reach agreement in FDR mediation, go to Family Court) so that they have a sense of closure and feel more connected to the out-of-court FJS.

It would be quite good for us to know 'agreement reached' or 'agreement not reached'. We don't need the agreement, but it would be good to have some sort of result we could put on our file...it would be good to know how they got on. (FLAS lawyer)

6.6.3 Improve information flow in relation to Family Court referrals back to FDR

According to several FDR professionals, information could flow better between the Family Court, FDR suppliers and mediators in cases where the Family Court Judge refers the case back to the FDR service and directs that legal counsel and/or lawyer for child attend the mediation session.

One mediator cited an example where a Family Court Judge had referred a case back to the FDR service and directed that legal counsel attend the mediation session. Following weeks of correspondence about funding for counsel, the mediator learned two hours before the mediation session that the ministry would provide legal aid funding for counsel to attend the session.

SUGGESTION FOR ENHANCING INFORMATION FLOW IN RELATION TO COURT REFERRALS BACK TO FDR

Some FDR organisation representatives suggested that the Family Court inform an FDR supplier when parents are referred back to the FDR service, so that the supplier can initiate contact with the parents.

6.6.4 Request for an end-to-end description of the FJS and throughput data

One FDR organisation representative and one mediator commented that it would be beneficial to have a description of the FJS that covered the entire system from start to end. In the same vein, an FDR organisation representative expressed interest in receiving throughput data for the FDR service (e.g. the number of parents referred to the FDR service, the number referred to preparation for mediation and the number of mediated agreements). Another suggestion from a FLAS lawyer was to produce a newsletter that provides an analysis of FLAS provision nationwide and feedback for FLAS lawyers.

One FDR organisation representative commented that it costs an FDR supplier a lot of time to put together the monthly reports required by the ministry, with little perceived benefit to the supplier.

6.7 Administration of FDR Service

6.7.1 Apparent anomaly in verifying a parent's identity and funding eligibility

Parents who wish to attend FDR mediation have their identification and eligibility for funding verified. This can occur when a parent has their initial contact with an FDR supplier, during the FDR assessment, or at FLAS 1.

An FDR organisation representative highlighted an apparent anomaly between the ministry's messaging to FDR mediators about liability for verifying a parent's identity and funding eligibility. The FDR organisation representative's understanding of the ministry's message was that the parent is signing the acknowledgement of their identity and funding eligibility, but the structure of the form makes it look as though the professional (e.g. the FDR mediator) has a "statutory decision role" regarding identity and eligibility. One provider suggested having separate forms for identity

verification and funding eligibility verification as some parents do not need to complete the funding eligibility section.

6.7.2 Resolution Management System (RMS)¹⁸ is not intuitive

FLAS lawyers and mediators who contract to two of the three suppliers are required to enter data directly into RMS. The other supplier sends print outs of the RMS screens to their contracted mediators to fill in by hand and return to the supplier, who then enters the data from the print outs into RMS. One of the supplier's mediators was relieved that she did not have learn how to enter data into RMS, while another described it as inefficient double-handling.

Many of the FDR professionals and FLAS lawyers who use RMS directly described difficulties navigating this system because they did not find it intuitive. The long time periods between providing services to FDR parents exacerbated their difficulties, as they had to re-learn the system each time they used it, and they found this time consuming.

The other thing that I'm kinda really, really frustrated at is the amount of space between having FDR mediations...trying to remember my way through the RMS is a nightmare...the last one [FDR mediation] I had was the 20th of January, almost nine weeks and I haven't got another client... (FDR professional)

One provider was unsure whether entering his client's personal details in RMS, before he had met with the client, breached the RMS agreement.

One FDR organisation representative stated that the fields in RMS were not aligned with the sections in the hard copy FDR form that mediators must give to parents. This form states the decision made in respect to a mediation under section 12 of the FDR Act 2013 (e.g. FDR mediation is inappropriate, all the matters on which resolution was reached or not.) This FDR organisation representative believed that it was "silly" for the form to include a question about whether, in the opinion of the mediator, a settlement conference and legal representation would facilitate settlement in court, because the mediator does not know whether such proceedings have commenced.

6.7.3 Ability to respond to parents' complaints about FDR mediation is limited by privilege section in FDR Act

One FDR organisation representative noted that the requirements of privilege in section 14 of the FDR Act 2013 put a limitation on ADRO's ability to consider parents' complaints about their FDR mediation. The FDR organisation representative indicated that FDR mediators are encouraged to be mindful of the privilege section in the Act when they respond to a complaint, as it is an offence to disclose a statement from the mediation unless permitted to do so by the parent who made the statement.

6.8 Other

6.8.1 Support for name change for preparatory counselling

Part way through the fieldwork for this evaluation the term 'preparatory counselling' was changed to 'preparation for mediation'. One provider of this service interviewed prior to the change felt that the term 'preparatory counselling' was an incorrect use of the word 'counselling' because parents

¹⁸ RMS is an online data management system in which information on parents and completed FDR and FLAS events is stored.

did not receive therapeutic counselling; rather, they received assistance designed to help them take part in the mediation. An FDR mediator interviewed after this change said that she liked the new name because it reflected the actual focus of the service.

6.8.2 Generally PTS assists parents to think through parenting arrangements

Of the parents who had attended PTS, the vast majority indicated that they gained practical ideas for making child care arrangements from other participants and from the course information.

The Parenting Through Separation course was excellent; the information booklet, the practical suggestions in the booklet and from others on the course, it was all helpful. (FDR parent)

PTS helped parents to communicate with their ex-partner and agree on arrangements that were in the best interests of their child.

Parenting Through Separation was awesome or I wouldn't have known what to say to the other party to try and avoid the argument. They [PTS] gave me a book to talk about school holidays and the day-to-day care of the children. (FDR parent)

IDEAS FROM FDR ORGANISATION REPRESENTATIVES AND FDR PROFESSIONALS FOR IMPROVING PTS

Unless exempt, parents who want to make an application to the Family Court for orders about parenting issues must have attended PTS within the past two years. An FLAS lawyer commented that this time period should be extended as she believed the course content had remained the same for “years”.

One FDR organisation representative, based on feedback from a colleague who had attended PTS programmes delivered by different providers, suggested the ministry ensure consistency between how different PTS providers deliver this programme.

7. Evaluation Findings: Mandatory Self- representation

Section 7 of this report presents findings about (a) the effect of mandatory self-representation on parents and professionals and (b) assistance for self-represented parents.

From 1 April 2014 to 31 March 2015, 5,674 new applications under the Care of Children Act 2004 were filed on notice in the Family Court. Of these, 3,103 (55%) were self-represented at the time the application was filed. The remaining 2,571 (45%) had legal counsel because the applicant had at least one other application either (a) under the Care of Children Act 2004 and that was active prior to 31 March 2014, or (b) under another Act in the Family Court and for which they could have a lawyer.

7.1 Effect of Mandatory Self-representation

7.1.1 Overall parents found it difficult to represent themselves

Parents found the concept of self-representation appealing because they thought that excluding lawyers would simplify court proceedings and reduce costs. A few of the parents found representing themselves in the Family Court straightforward. These parents believed that they (a) already had a good understanding of court processes in general, and (b) were requesting minor changes to existing parenting arrangements which, in some cases, their ex-partner had agreed to already. These parents felt confident about being able to complete the court forms and verbally articulate their requests clearly, factually and unemotionally.

I didn't have many concerns. As a [justice sector employee] I have been to court many times.
(Self-represented parent)

Most interviewed parents, however, found it difficult to represent themselves in the Family Court. They were anxious about representing themselves well in court, especially as the outcome of the court proceedings would be a care arrangement that would affect their day-to-day interaction and longer term relationship with their children. The courthouse and formal court protocols were unfamiliar territory for many of the parents, so they found being in court intimidating.

As a layperson, first time representing yourself in court, it was overwhelming and daunting.
(Self-represented parent)

It was weird 'cause you have to stand in the presence of the judge when they walk in or when you speak to them... I didn't know that, no one told me that. (Self-represented parent)

Some parents felt disadvantaged because they believed they were unable to express themselves well. Feelings of inadequacy were exacerbated for parents for whom appearing before a judge represented going into battle with an ex-partner. Parents also felt disadvantaged when they believed their ex-partner had been able to access more legal advice than they had.

It felt unfair as I got his affidavit responding to mine and it was written by a lawyer and not by him. There were all these terms in it that I had to look up because I had no idea what they were. And he wouldn't have known what they were. So he must have had a lawyer tell him what to write, or write it for him. (Self-represented parent)

Several parents had sought formal and informal legal advice to help them understand the Family Court process and complete the court forms and, in doing so, provide them with a sense of reassurance.

I received most of the information from my lawyer and she helped me draft the Parenting Order. (Self-represented parent)

My friend who is doing a law degree provided me with legal advice and she explained to me all about care and protection of the child. (Self-represented parent)

Self-represented parents' perception of having to represent themselves in court was influenced in part by the extent of the legal advice they received. Amongst lawyers there appears to be variable practice around, for example, advising self-represented parents about what to expect in the courtroom.

The lawyer said she couldn't represent me in court, but advised me on what to expect and what to prepare for. (Self-represented parent)

I did get some free legal advice, but I didn't find it particularly helpful. The lawyer I spoke to reiterated that she would not be getting involved, that her role was to offer me assistance in explaining the process and filling out forms. There was no strategy from her about how to proceed in court. (Self-represented parent)

Parents' perception of self-representation was also influenced by the helpfulness of Family Court staff, the efficiency of court administration, and the demeanour of the judge who presided over the court proceedings. Some parents reported positive interactions with court staff and/or the judge, while others mentioned negative experiences.

Positive

The registrar in the [city] Family Court was really good. He had case-managed my previous Family Court appearance and he knew my history, and he was good to deal with. (Self-represented parent)

I think the judge was very patient. I don't think my written application was very good. I could see by the expression on her face that I probably wasn't doing a good job explaining myself. But she asked some questions to help me explain things more. (Self-represented parent)

Negative

When I handed in the paperwork at the [city] office, she got angry that I had gone to a lawyer; I should have done it myself and not with a lawyer. (Self-represented parent)

We filled out our affidavit, fully detailed and everything. I then found out we were given the wrong application form, so we had to redo everything on the correct one [form]. ...One attachment was on the wrong page. It wasn't us who put it on the wrong page, it was the person at the court who stapled it to the wrong page, and it couldn't be changed. So we had to do that again, and then get it re-sworn ...[then] they lost our application. We went straight down to the court and did it all again. (Self-represented parent)

I actually felt the judge was incredibly unsympathetic about the fact that I didn't have legal representation. I was upset by that and felt penalised and told off when that was the only course of action open to me. (Self-represented parent)

7.1.2 Most legal/court professionals do not support mandatory self-representation

Most Family Court Judges and court staff members expressed concern about the concept of mandatory self-representation. More specifically, several Family Court Judges and court staff members felt that it was unreasonable to require parents to represent themselves in some proceedings without a lawyer. Separating parents are usually in a heightened emotional state when they enter court and are thought by judges to lack objectivity. Legal/court professionals indicated that power imbalances could be played out in court due to differences in the litigants' confidence, verbal communication skills and access to legal advice.

Self-represented people go into all sorts of things...that are very relevant to their feelings but are not relevant to the law. (FLAS lawyer)

I've just observed this anxiety and apprehension that isn't present when parties have [legal] counsel with them, and you tend to get the overbearing and more dominant one that monopolises the conversation... (Legal/court professional)

One FLAS lawyer spoke about the difficulty of inheriting a file that has been prepared by a self-represented parent, and of not being able to file new evidence in the Family Court, when a case on the standard track goes to a hearing and the lawyer is appointed as legal counsel.

Concern was expressed by one judge and one staff member who felt that that mandatory self-representation may have led some separating parents to avoid the FJS altogether. The staff member believed that Pasifika parents in particular liked talking to lawyers about family issues because they are perceived as "experts".

7.1.3 Self-representation lengthens court events, according to professionals

Several staff members and judges stated that court proceedings involving self-represented parents are longer than those where lawyers represent parents. A variety of reasons were given for the lengthening of events:

- Self-represented parents lack knowledge of legal jargon, family law and how to present their case well in court so judges need to spend time explaining Family Court procedures to these parents
- Lawyers have the necessary training to present issues succinctly and move the case towards settlement, while providing “reality checks” for their client and reassuring them that a fair process is being followed
- Some self-represented parents use delay tactics as a means of exerting power and control over the other litigant.

It's not logical to exclude lawyers of the parties...in those very important early stages, because they are very important to ensure...the issues are defined quickly and fairly...a judge...can do so much more to progress something well when that definition of issues, that clarification of issues, is done up front... (Legal/court professional)

The staff members and judges described a variety of flow-on effects from judges needing to interact more with self-represented parents than with lawyers:

- In some proceedings, self-represented parents appear to believe that the judge is constantly correcting the person's presentation of their case; as a consequence these people can lose confidence in their ability to represent themselves and disengage from the process (e.g. they give up trying to present evidence in support of their case)
- One parent may believe the judge is helping the other parent more and is biased towards them; two judges were concerned that this perception of bias would undermine the integrity of the court process
- When court staff give self-represented parents a form at the end of a court proceeding (which sets out the next steps in the process)¹⁹ they can find themselves having to explain to self-represented parents what happened in the court proceeding. They also have to provide reassurance in some instances (e.g. assurance that the judge had appointed lawyer for child to satisfy themselves the child's best interests were being taken into account, and not because the judge believed the self-represented person to be a bad parent).

SUGGESTIONS FOR ASSISTING SELF-REPRESENTED PARENTS

Almost all of the judges and court staff, and a few of the FLAS lawyers, mentioned that parents should be allowed to have a lawyer in all stages of the Family Court process. They felt court proceedings would be fairer because lawyers provide a “level playing field”, and more efficient because lawyers can summarise the issues under dispute and “reality check” their clients' requests. They noted that parents could still be asked to contribute to the cost of legal aid lawyers.

In the same vein, two staff members suggested that subsidised or free legal advice be made easily available to self-represented parents once they start court proceedings on the standard track. This legal advice would cover topics relevant to parents who are further along the court process than the parents who go to FLAS. Suggested topics were how to present a case in court and self-represented parents' options following a court proceeding (e.g. an Issues Conference).

¹⁹ A judge noted that whether this form is physically given to self-represented parents depends on the availability of court staff to do so; the form is posted to self-represented parents who do not receive it in person at the end of the court proceeding.

One Family Court Judge said it was “pivotal” for judges to retain the discretion they have now to allow parents to have lawyers represent them at a Settlement Conference, because lawyers provide “reality checks” for their clients.

7.1.4 Some legal/court professionals expressed doubt about cost savings

Two judges and one staff member expressed doubt about whether mandatory self-representation had led to cost savings. One of the judges thought the cost of administering the system would outweigh any savings. The other judge and staff member believed that under the previous system judges appointed a lawyer for child and requested “round table meetings” in most cases on the standard track, as well as requested specialist reports, and that judges were still doing this under the new FJS.

7.2 Existing Assistance for Self-represented Parents

7.2.1 Parents struggled to find information about how to make an application and complete the on notice court forms well²⁰

Many parents struggled to find information about how to make an application to the Family Court to resolve their dispute about caring for their children.

Finding the information as to which forms to complete from the Family [Justice] website was not clear at all. I could not have done it without the help of the lawyer and the registrar and I am not a stupid man. (Self-represented parent)

Went to court with no idea about what it was going to be like. Couldn't find the information on the website... (Self-represented parent)

When parents had found the correct on notice court forms they found it difficult to work out what information they were required to put in the forms, and how to complete the forms ‘well’.

It's not clear what information is required when filling out the forms. It's not self-evident and I'm educated, in a middle management position in the Government. (Self-represented parent)

It's kind of scary, because you don't want to put the wrong thing in [into the court form], but you don't know what the right/wrong this is... you don't know whether you need to word it better, using court terms... which I don't even know what they are. Or whether you write it in your own language. (Self-represented parent)

Filling in the on notice court forms left some parents with the sense that the Family Court was focused on the process rather than the substance of the parents’ application, which in turn left them feeling ‘unheard’.

The application form and review process should focus more on the intent and content of the information...allow people to feel like they have been heard and to put forward a clear, honest and open submission of what they think is best for the child. (Self-represented parent)

IDEAS FOR ASSISTING SELF-REPRESENTED PARENTS

²⁰ Part way through the fieldwork for this evaluation the ministry introduced revised on notice court forms; the interviewees are referring to the previous forms.

Parents suggested that the ministry make it easier for self-represented parents to find relevant court forms, and information about appearing before a Family Court Judge, on the ministry's family justice website.

These parents also wanted examples of 'high quality' answers to the questions in the on notice application forms so that they could do a good job of representing themselves.

7.2.2 Mixed views amongst professionals about on notice court forms

On notice court forms easier to complete than those used in the previous system

Two court staff commented that the on notice application forms that self-represented parents need to complete are clearer and easier to understand than the forms used in the previous system. Another found that printing the form and going through it with parents helped parents to understand the court process better.

On notice court forms too long and ineffective

In contrast, one staff member and an FLAS lawyer commented that the application forms are too long. A judge mentioned that while the ministry has produced guidelines for completing the application forms, self-represented parents still file a lot of irrelevant supporting information.

SUGGESTED EXEMPTION FOR COMPLETING ON NOTICE APPLICATION FORMS

A judge stated that lawyers should be exempt from completing the on notice application forms that self-represented parents have to complete. This was because lawyers are trained to summarise issues and judges typically only look at the sections on the chronology and directions seeking.

7.2.3 Professionals believe that self-represented parents do not read the information provided to them

The ministry provides information to help self-represented parents do some things themselves in the early stages of the standard track (e.g. guidelines for procedures in the Family Court, guidelines on completing the application forms). Two staff members and one judge believed parents did not read this information because they were focused on getting contact with their children and it was easier for them to ask court staff questions than read guidelines. One staff member said this had led to staff with technical knowledge of the Family Court being required to answer questions at the court's customer counter more often than under the previous system. The enquiries were also taking longer as the questions were more complex.

I know that there's paperwork telling people in many ways about that [the timeframe for court proceedings] and lawyer for child and cost contributions...but my impression is they're very focused on the real concern 'can I see my children?'...all of these other procedural things I think they're not really taking in. (Legal/court professional)

We're having to do a lot more face-to-face stuff at the counter. Those interactions are taking longer than they have in the past, where you're actually having to tease out with the parties what's going on and what they need. (Legal/court professional)

IDEAS FOR IMPROVING INFORMATION PROVIDED TO SELF-REPRESENTED PARENTS

One court staff member suggested that there should be clearer information on the court process and court events in that process.

One judge requested that self-represented parents be provided with more information about what they will need to do ("their obligations") at a Family Court hearing related to a parenting dispute.

7.2.4 Parents confused about process for serving court papers

Some of the parents were unclear about the process for serving court papers. Parents who had applied to the Family Court did not realise that they may be required to organise and pay for a bailiff to serve the papers on their ex-partner. Parents getting served with the papers felt they were being treated like a “criminal”.

8. Conclusions

8.1 FDR Service

Interviewed FDR parents and FDR professionals generally supported the concept of resolving parenting disputes through out-of-court mediation. Overall parents who had attended mediation were able to move through the out-of-court FJS fairly easily; they were satisfied with the FDR assessment, preparation for mediation and FLAS.

Parents’ perception of the FDR service was influenced mainly by their experience of the joint mediation session. Regardless of the outcome of the mediation, parents perceived the joint session (and by association the FDR service) positively when:

- The joint session was run in the way they expected
- The mediator was able to create a safe environment in which the parents felt heard
- Parents did not feel pressured to reach agreement
- The mediated agreement (where applicable) was presented to them professionally by the mediator.

Agreements reached in what parents perceived as a pressured process tended to be broken shortly after the mediation was completed.

Several FDR organisation representatives and many FDR professionals said they had received fewer referrals than they had expected. Some mediators and FLAS lawyers also said the flow of referrals was erratic. Further investigation of the flow of cases into and through the family justice system is part of the Ministry of Justice Research and Evaluation Team’s 2015/16 work programme.

The level of payment for some FDR services was another issue identified by the evaluation. Some mediators commented that the payment for FDR mediation does not compensate mediators for the time they spend on this service.

In addition, several FLAS lawyers considered that the payment lawyers receive for assisting parents to fill in Family Court forms (FLAS 2) does not compensate them adequately for the service they provide.

8.2 Mandatory Self-Representation

Interviewed parents found the concept of self-representation appealing. A few parents did find representing themselves straight forward but most found it difficult to represent themselves in the Family Court. They also struggled to find information on the ministry's family justice website about how to make an application to the court and state their case well in the on notice court forms²¹. The evaluation findings suggest that parents felt reassured when:

- They received legal advice, especially about how to complete the court forms and represent their case well in court
- They were assisted by friendly court staff
- Their court documents were processed correctly
- They believed the judge made allowances for the parents' lack of legal expertise.

Legal/court professionals believed that requiring parents to represent themselves expected too much of them. They acknowledged that the ministry had produced guidelines on self-representation but felt that parents were too focused on contact with their children to read this information. Court events involving self-represented parents were perceived as taking longer than those where lawyers represent parents. Almost all of the legal/court professionals suggested that parents be allowed to use a lawyer to file their papers and represent them in all stages of Family Court proceedings. They believed that lawyers would even out any power imbalances between parents and keep cases moving through the court.

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²¹ These forms have since been revised.

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10. Appendix 1

10.1 Detailed Evaluation Approach

The planning phase of the evaluation consisted of a number of steps as described below:

- Stakeholders with an interest in the FJS were consulted about the objectives and scope of the study from August to October 2014; this consultation was undertaken jointly with a research team from the University of Otago that was scoping its own study of the 2014 FJS reforms
- Existing research about alternative resolution processes in parenting disputes was reviewed (Barlow et al 2014, Barwick and Gray 2007, Carson et al 2013, Federal Magistrates Court of Australia 2012, Kaspiew et al 2009, Morgan et al 2012)
- Existing studies about self-represented litigants were also reviewed (Richardson et al 2012, Smith et al. 2009)
- An advisory group was established to ensure that the evaluation was guided by input from relevant stakeholders across the ministry, as well as the FDR suppliers²².

The fieldwork was undertaken from March to July 2015 inclusive. The researchers used purposive sampling to select the evaluation participants. Purposive sampling is widely used in qualitative research. It is a method of identifying and selecting a sample so that it contains cases which provide in-depth information about the topic that is being investigated.

²²The ministry kept a wider group of stakeholders informed about the evaluation.

Semi-structured interviews were conducted with parents who took part in FDR, FDR mediators and providers of preparation for mediation (FDR professionals), FLAS lawyers, and representatives of FDR accreditation or supplier organisations (FDR organisation representatives). Semi-structured interviews were also undertaken with parents who were required to represent themselves in the Family Court, Family Court Judges and Family Court staff members (legal/court professionals).

The interviewers were a senior ministry researcher and two contractors with expertise and experience in undertaking qualitative research with Māori and Pacific communities. The interviews were conducted in four areas, namely (1) Auckland, (2) Wellington, (3) Porirua and the Hutt Valley, and (4) Christchurch and Timaru. These areas were chosen to give a range of main cities, smaller towns and ethnic diversity. They were also selected to ensure fieldwork costs could be met within the capped travel budget.

10.1.1 Interviews with FDR Parents

Parents were eligible to take part in the evaluation if they had chosen, or had been directed by the Family Court, to go to FDR and had been to at least one session of mediation. Eligible parents were identified in RMS. A letter or email and an information sheet (see the separate technical appendix) were sent to eligible FDR parents in each of the selected areas notifying these parents of the evaluation and giving them the opportunity to opt-out of it. The researchers then contacted those who had not opted out and invited them to take part in an interview. A consent form was provided to parents (see the technical appendix).

Sixty-seven FDR parents were interviewed (refer to the technical appendix for the interview guide); one of 67 parents was a grandmother but is included with the parents because she had a parenting role.

Table 1 below shows that an even number of men and women took part in the interviews. The majority of the parents were New Zealand Europeans, with a quarter identifying as Māori. Just over half had received government funding for FDR. Most said that some or all of the matters in their parenting dispute had been resolved in FDR mediation.

Table 1: Characteristics of FDR parents who took part in the evaluation (n=67)

Characteristic	Number	%*
<i>Gender</i>		
Male	33	49
Female	34	51
<i>Ethnicity</i>		
NZ European	39	58
Māori	16	24
Pacific	8	12
Other	4	6
<i>Area</i>		
Auckland	26	39
Wellington	9	13
Porirua and Hutt Valley	15	22
Christchurch and Timaru	17	25
<i>FDR supplier</i>		
FairWay	45	67
Family Works	22	33
<i>Government funded FDR</i>		
Yes	38	57
No	27	40
Unknown	2	3

<i>Level of agreement reached in FDR</i>		
All matters resolved	26	39
Some matters resolved	32	48
No matters resolved	9	13

* Percentages may not add to 100% due to rounding.

The researchers based their interview questions on areas of interest outlined in an interview guide (see the technical appendix). Detailed notes were taken during the interview and, where permission was granted, interviews were audio taped. The researchers manually coded their interview notes and transcripts around key themes.

10.1.2 Interviews with Self-represented Parents

The self-represented parents were selected from a ministry database. Self-represented parents who met the following selection criteria were eligible to take part in the evaluation:

- Had filed a substantive application under the Care of Children Act 2004 on, or after, 31 March 2014 with this application being inactive at the time the recruitment list was generated (being 22 March 2015)
- The application was disposed on the simple or standard case track
- Were an applicant or a respondent on the application filed
- Had no other active applications under the Care of Children Act 2004 as at 22 March 2015
- Had their address recorded as being in one of the selected areas
- Were recorded as self-represented or unrepresented (no legal counsel was recorded in the ministry's Case Management System for the application)
- Had not been exempted from FDR.

Twenty eligible self-represented parents were recruited through a process similar to that described in section 10.1.1 above (see the technical appendix for the letter, information sheet, consent form and interview guide).

Three of the interviewed self-represented parents were grandparents but are referred to as parents in this report because they were in a parenting role. While completing the fieldwork the interviewers discovered that four of the 20 self-represented parents had in fact received legal assistance from CYF lawyers as this agency was involved in arranging care for the parents' children. The lawyers provided legal advice to the parents, completed the court forms on their behalf, liaised with the Family Court and appeared with or for the parents in court. The four parents have been excluded from the analysis due to the high level of involvement from CYF lawyers.

Self-represented parents were asked about their experiences of going to FDR before applying to the Family Court. While their experiences have been taken into account in the findings about the FDR service (refer to section 6), these parents are not included in the sample of FDR parents.

Table 2 shows that three-quarters of the self-represented parents who took part in the study were women, and two-thirds were New Zealand Europeans.

Table 2: Characteristics of self-represented parents who took part in the evaluation (n=16)

Characteristic	Number	%*
<i>Gender</i>		
Male	4	25
Female	12	75
<i>Ethnicity</i>		
NZ European	11	69
Māori	3	19

Pacific	1	6
Other	1	6
<i>Area</i>		
Auckland	2	13
Wellington	7	44
Porirua and Hutt Valley	2	13
Christchurch and Timaru	5	31

* Percentages may not add to 100% due to rounding.

The interviewing, coding and analysis were completed as described in section 10.1.1 above (see the technical appendix for the interview guide).

10.1.3 Interviews with Professionals and FDR Organisation Representatives

Professionals working in the FJS were invited by telephone to take part in the evaluation, as were FDR organisation representatives with an interest in the FDR service. Interviewees who agreed to participate were sent an information sheet (see the technical appendix for the information sheets, consent forms and interview guides).

FDR professionals and organisation representatives were selected from lists supplied by ADROs, FDR suppliers and suppliers of preparation for mediation. FLAS lawyers were selected from a ministry database. The judges and court staff were chosen from lists supplied by court service managers.

The notes from these interviews were analysed around key themes. A total of 52 professionals were interviewed. Ten FDR organisation representatives were interviewed and one chose to submit written responses to the interview questions (see Table 3).

Table 3: Type of professionals and FDR organisation representatives who took part in the evaluation (n=63)

Type of interviewee	Number of interviewees
<i>Professional</i>	
FLAS lawyer	7
FLAS lawyer and FDR mediator	3
FDR mediator	19
Provider of preparation for mediation	5
FDR mediator and provider of preparation for mediation	4
Family Court Judge	5
Family Court staff member	9
<i>Representatives of FDR accreditation or supplier organisations (FDR organisation representatives)</i>	
ADRO	3
Supplier of fully funded FDR	6
Supplier of preparation for mediation	2



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