Grandparents Raising Grandchildren Trust New Zealand
Te tautoko i nga tupuna, mokopuna me te whānau.
Te awhina ia ratou ki te whakatutuki i nga putanga
pai i roto i to raatau oranga.
Supporting grandparents, grandchildren and whānau
to achieve positive outcomes in their lives.

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31 October 2018

Family Justice System Reforms Panel
SX10088
Wellington 6011

Dear Panel Members,

2018 Family Justice Review

This submission is made on behalf of Grandparents Raising Grandchildren Trust NZ (GRG) and its member families.

1. Background to GRG

1.1 GRG is a registered charity that was established in 1999 as a support group in Birkenhead, Auckland for grandparent caregivers. It was registered as a charitable trust in 2001.

1.2 From our National Support Office in Auckland, GRG provides support services and caregiver education to its member families including; a free 0800 helpline, new member resource packs and emergency care packs (donated essentials), a specialist outreach and advocacy services team, caregiver workshops and programmes and a throughout New Zealand we have a network of 38 local Support Groups and 11 Coffee Groups.

1.3 Since 1999, its membership has grown from six to 4,413-member families nationwide.

1.4 At 31 October 2018, these member families represent an estimated 8,000 caregivers raising between 9,000 and 12,000 children.

1.5 The 2013 Census identified 9,543 families with grandparents in a parental role in New Zealand. In our experience, the number of children in grandparent care fluctuates due to various factors, however based on our membership data collected at the time each member registers with GRG, and our three major research studies (2005, 2009, 2016), we have calculated that there are likely to be over 17,000 children in grandparent care in New Zealand. Combining this figure with children estimated to be in other whānau care, it is estimated that there is likely to be well over 26,000 children in grandparent and other whānau care. This compares with around 2200 children placed in non-whānau out-of-home placements under the Oranga Tamariki Act 1989 as at 30 June 2017.[1]

1.6 The primary reason for grandparents and other whānau caregivers raising someone else's child is due to a "family breakdown"[2] in which the parents are unable or unwilling to care for, or support their children, or because of the death of one or both parents.

1.7 The ethnicity of our member families is 48% NZ European/Pakeha, 43% Maori, 3% Pacific, 6% Other including Asian, Australian, American, African and other European. Our member families that identify as Maori have been the fastest growing ethnic group in our membership over the last five years.

1.8 Research undertaken by GRG over recent years has helped inform our submission for this Review.

2. Limits and Qualifications to these Submissions on the Family Justice 2014 Reforms

2.1 As far as possible this submission aims to discuss the main issues that arise for grandparents and other caregivers in the context of the issues set out in the **Terms of Reference for the Rewrite of the 2014 Family Justice Reforms**. However due to limited time and resources since GRG first became aware of this review, we haven't been able to conduct a survey of our members specifically on the 2014 Reforms and their experiences of them.

2.2 These submissions are based on GRG's work supporting grandparent and other whānau caregivers and our research findings generally over the past decade. Individual

[1] Figures sourced from https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/cyf/kids-in-care.html

[2] "Family breakdown" in this context is used as it relates to section 29 of the Social Security Act 1964; It has been defined in [2012] NZSSAA 103 (20 December 2012) as *"the breakdown of a child's family involves the failure or collapse of the normal family dynamic which results in both parents being unable to fulfil the role of parent to their child."* Around 70% of grandparent and whānau caregivers are in receipt of the Unsupported Child Benefit

GRG members have been encouraged directly, via our newsletter and our website; to make their own submissions to the Panel either in person, via email or the online portal.

2.3 One case example, (with identifying details removed) from a member is attached as Appendix A. This grandparent's account of her efforts to keep her grandchildren safe from harm was sent to us via email and is used with her consent for this submission. It is characteristic of the context and issues that our members encounter and struggle with on their journey through the Family Court system.

2.4 There are aspects to the Family Court processes and the focus of the Panel's Review that are not applicable in the grandparent or other whānau caregiver context. E.g. separating parents where there are no children and no third-party caregivers involved in the dispute over care and this submission makes no attempt to address or make recommendations that relate to those scenarios.

3. Research and Focus on the Grandparent Care Context Relevant to this Submission

3.1 To understand the basis of our concerns about the 2014 Family Court Reforms and their impact on the timely disposition of cases before the Family Court, we submit that it is helpful to first understand the context in which grandparents and other whānau are most often coming to the Family Court to seek orders relating to the guardianship and day to day care of the children in their care.

3.2 This is also important because this cohort of caregivers seeking justice in the Courts is distinct from the parents of children who may be engaged in parenting disputes between themselves.

3.3 To assist with this understanding, below is a summary of the relevant findings from our research in recent years, the issues of concern that have been raised with GRG by grandparent caregivers and our recommendations where we've identified changes need to be made.

Our 2016 Research

3.4 In 2016, GRG undertook the largest survey of the socio-economic issues affecting grandparent and whānau caregivers in the world to date. Funded by a Lotteries Grant, and led by Pukeko Research Ltd, we surveyed 1100 caregivers with 150 questions related to the caregiver and the family, plus 40 specific questions for each child.

3.5 One hundred fields were also available for respondents to include qualitative responses. Data was collected for 1324 children and the first cut of the data from this research we published in October 2016 was authored by Dr Liz Gordon in the report titled: *The empty nest is refilled: The joys and tribulations of raising grandchildren in Aotearoa.*[3]

3.6 This study produced enormously rich data which is progressively being subjected to cross-analysis for topic specific reports to elicit further helpful information on the predominantly grandparent caregiver population surveyed.

> "The amount of data collected for this study is astounding. Participants threw their heart and souls into telling their stories. As an example, when participants were asked to describe in their own words how their grandchildren came into their care, between them they wrote 23,000 words of passion, despair and love." Dr Liz Gordon[4]

3.7 Access to justice in the Family Court was a key factor that we originally sought to investigate in this large study because the **circumstances** in which grandparents[5] find themselves before the Family Court is a major factor that impacts on their experience as primary caregivers to children and youth who can't be raised by their parents **and** their experience in the Family Court itself.

3.8 Although no reasons were given, the Lotteries grant that was made was unfortunately limited in scope to preclude any investigation of these issues.

3.9 Findings from the 'first cut' 2016 report included:

3.9.1 The most prevalent cause of family breakdown is **parental substance abuse or addiction**.[6]

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[3] Gordon, Liz (2016) The empty nest is refilled: The joys and tribulations of raising grandchildren in Aotearoa - ISBN (web): 978-0-473-37298-9

[4] Ibid note 2

[5] Reference to "grandparents" and "grandparent caregivers" throughout this submission is also intended to refer to other whānau caregivers who are raising someone else's child.

[6] Ibid note 3

3.9.2 A range of other co-morbid factors were also identified by the survey participants as reasons why children were placed in their care, with drug addiction (44%), domestic violence (40%), family breakdown (40%), neglect (40%), parent unable to cope (38%) alcohol abuse (25%) and mental illness (23%) being the top seven causes.

3.9.3 Participants were also asked whether the children had any diagnosed psychological problems. Of the 1162 responses, 481 children, or 41%, had diagnosed problems.

3.9.4 Of those with diagnosed problems, there were on average 1.63 diagnoses per child.

3.9.5 The most common diagnoses due to trauma or neglect resulting from the parents' actions were Attachment disorder (113), Anxiety disorder (110), violent or aggressive behaviour (92) and post-traumatic stress disorder (PTSD) (74). Twenty-two percent of children had also been diagnosed with ADHD (106).

3.9.6 Although it has not yet been subject to further reports to date, a quick analysis of the raw data indicates that approximately a further 18-20% of the children in the study are suspected of having undiagnosed psychological issues affecting their mental health and wellbeing, but they are either too young to diagnose or their caregiver has been unable to afford the costs associated with a professional diagnosis or there is no one available in their area to undertake an assessment.

3.10 Despite being unable to investigate the Family Court experience of grandparents in this overall study, we included an option to be contacted for a further and separately funded study on the grandparent's experience in the Family Court.

3.11 Conscious that the Otago University was also planning a study considering the reforms in 2014, we then applied for, and were granted by the New Zealand Law Foundation, funding to study this smaller group who opted in to be surveyed about their experiences of the Family Court **where their cases were on foot prior to the 2014 reforms.**

3.12 This subsequent study, also undertaken by Dr Liz Gordon is called:

Study of grandparents in family court proceedings over their grandchildren prior to the 2014 changes to the court[7]

3.13 This was a study with 138 grandparent caregivers.

3.14 Despite its focus being on cases that were on foot (and therefore arguably unaffected by the 2014 reforms), it nevertheless contains some relevant observations as to the efficacy of the court processes they experienced, the professionals involved and the costs of proceedings under the prior regime. These observations, it is submitted, can assist and have some bearing on the Panel's review of the subsequent reforms and will be further discussed below.

4. Most Common Context for Grandparent Care: Parental Substance Abuse

4.1 As referenced above, in all of our research studies, parental substance abuse has been identified as the most prevalent cause for children to be in grandparent or other whānau care. In the 2016 study[8] 44% of survey participants listed the parents' drug addiction as a cause, but none of the questions asked specifically what drugs causative in the family breakdown were leading to grandparent care.

GRG: The "P" issue – Our 2017 Research (Internal Member Survey)

4.2 Anecdotally we had noticed that roughly eight or nine calls out of every 10 received on our helpline related to caregivers whose grandchildren's parents were affected by methamphetamine.

4.3 Our membership had also grown substantially with 580 new member families in the 2015/16 year and 784 new members joining in the 2016/17 year to 31 March. Most of the new families were joining GRG because of family breakdown due to the parents' methamphetamine use/addiction.

[7] http://www.lawfoundation.org.nz/wp-content/uploads/2016/11/2016_43_20-Final-research-report-Grandparents-in-family-court-proceeding-over-their-grandchildren-pre-2014.docx.pdf

[8] Ibid note 3

4.4 However, over 15 days commencing on 18 August 2017, GRG conducted an internal member survey via Survey Monkey® to ascertain the extent to which members were raising their grandchildren because of the parents' drug addiction and particularly to identify what proportion of them were caregivers because of their parents' use of methamphetamine.

4.5 The survey link was sent only to those members who had an email address (2122): 761 members (36%) opened the email and 492 members (65%) responded, with 422 complete anonymized responses.

4.6 While the demographic statistics on the participants in this survey closely mirrored the 2016 study, it is likely, however, that a proportion of the membership receiving the link were not interested in taking part because the issues were not relevant to them. As referred to above, in the 2016 study, 44% identified drug addiction as a reason for a child coming into their care, whereas in this survey, it was much higher at 76%. It is likely that this result is skewed due to the subject matter of the survey itself.

4.7 Of statistical value, however, was the fact that of the member families identifying parental substance abuse as the reason for them raising their grandchildren, 86% said that methamphetamine was involved. 81% of these respondents also identified cannabis as a drug that the parent(s) were taking in addition to methamphetamine at the time the child(ren) came into their care.

4.8 These findings support our experience that in the majority of cases in which grandparents are seeking guardianship and parenting orders in the Family Court for their grandchildren, the parents have a methamphetamine addiction which elevates the risk of harm and neglect for the children and for the grandparents at least, heightens their concerns for the children's safety, wellbeing and best interests. Because of the interfamilial dynamics, with conflict, hostility and lack of trust being major issues of concern, this also adds a layer of complexity to their ability to reach reliable and workable contact agreements with the affected parents.

5. Child Youth and Family Involvement

5.1 Another aspect to the common context for grandparent care is the involvement of Oranga Tamariki (previously Child Youth and Family - CYF) at some point. Although we note that this review is not intended to focus on Oranga Tamariki's involvement in Family Court proceedings, it is often a factor that is, or needs to be considered more

fully by the Court where grandparents have become the caregivers following a family breakdown.

5.2 In the context of this review of the 2014 Family Court Reforms, it is therefore relevant that our 2016 Research[9] revealed that:

5.2.1 Only 28% of cases had no involvement with CYF at all and likely went directly to the Family Court via the Care of Children Act 2004 (CoCA) to resolve the guardianship and parenting issues.

5.2.2 For 72% of the 1327 children for which data was collected in the 2016 study, Child Youth and Family were involved in some capacity.

5.2.3 In 38% of cases, **Child Youth and Family asked the caregivers to get parenting/custody orders from the Family Court for the child via CoCA**. At some point this is a factor that is also relevant to the track that caregivers proceed along to obtain guardianship and parenting orders and provides further context to the ability of the Court to achieve just outcomes that meet the needs of the children.

5.2.4 In only 15% of cases, could it be interpreted from the survey results, that the resolution of long-term care arrangements in the Family Court could have occurred via the Children Young Persons and Their Families Act 1989.

5.2.5 In just 29% (380/1327) of cases a Family Group Conference was held.

5.3 The fact that nearly three-quarters of grandparents said that CYF were involved but less than a third of cases proceeded to an FGC is significant because it highlights what we have identified as a typical pattern and problem in grandparent care cases leading to applications for guardianship and parenting orders via CoCA in the Family Court.

5.4 The scenario involves what we have labelled the “Sideward Shuffle” in which a social worker, following an initial investigation, will identify a “safe” grandparent(s) to take on the care of the children, encouraging and in some cases applying undue pressure on the grandparent(s) to take on the full-time care of them, with the threat that “otherwise they will be placed in foster care and you’ll never see them again.”

[9] Ibid note 3

5.5 Once in the care of their grandparents, the children are considered to be no longer "in need of care and protection" and the State considers its role is at an end leaving the grandparents to take the next steps to attaining guardianship with no further practical or financial support. Without proceeding to the Family Group Conference, further issues and opportunities to address the child and caregiver's need for support from the State is lost.[10]

5.6 For cases that do involve a Family Group Conference, there is both the possibility that Oranga Tamariki will contribute towards the legal expenses to obtain parenting and guardianship orders, along with Social Worker support in the Family Court or the possibility of further involvement and support by the State if the caregiver satisfies the definition of *"Permanent Caregiver"* in section 2 of the Oranga Tamariki Act 1989. In this context it would involve a guardianship order and parenting order being made under section 27 and 48 of CoCA, **but only when they have been made in substitution for an order made under section 78, 101, 110 or extended whānau agreement under section 140.**

5.7 In the "Sideward Shuffle" context, these steps don't take place and the grandparent must go to the Family Court and make an application for guardianship and parenting orders via CoCA.

5.8 As the day to day care of the children and their placement with the grandparents has often stabilized (i.e. the children have been in grandparent care for weeks, months, or even years) the most common route for applications to the court are on notice, i.e. following the standard track in the same way that parents would proceed to seek assistance of the Court to obtain parenting and contact orders following separation which then requires a referral to the Family Dispute Resolution Service.

[10] Note: even following the establishment of Oranga Tamariki and the amendments to the Act in the Oranga Tamariki Act 1989 to mandate the agency to be more child-centred and focused on achieving outcomes that ensure the wellbeing and best interests of the child, this practice is still happening in many parts of the country. We are working with Oranga Tamariki to inform better practice on the frontline to obviate this practice.

6. The Effectiveness of Out-of-Court Processes

The Family Dispute Resolution Service

6.1 Over the past four years since the 2014 Reforms, we have provided support either through our Outreach and Advocacy service or our volunteer Support Group Coordinators (who have often assisted as McKenzie Friends), to literally hundreds of grandparents who have struggled with the requirement to represent themselves in the Family Court with no recourse to a lawyer in the initial stages of the dispute resolution process.

6.2 We make the following observations in cases where grandparents have stepped in to the primary caregiving role for the children and been required to first go through the Family Dispute Resolution Service (FDS):

6.2.1 The focus of FDS is designed more specifically for separating parents not situations where there are third party caregivers such as grandparents and in most cases is entirely inappropriate for settling grandparent care disputes.

6.2.2 Grandparents often don't understand the legal process and struggle with representing themselves without the assistance of a legal adviser/lawyer.

6.2.3 Grandparents often report feeling intimidated, threatened and bullied into agreements. Being in a mediation (without a support person or lawyer) with drug-addicted/affected parents who have often been verbally and/or physically abusive to them in the past and who are often quite skilled at manipulating their aged parents/parents-in-law is traumatic for the grandparent caregivers. Too often it results in either unworkable agreements being made that later fall over, or no agreement is reached at all resulting in a requirement to proceed through the Family Court. All of which involves further lengthy delays with prolonged stress and anxiety for the caregivers which also impacts negatively on the children themselves.

6.2.4 Even in circumstances that appear straightforward and ought to result in a workable consented agreement, the failure to have agreements ratified by the Court (without requiring a further application to the Court for a Consent Order) means they are non-binding and become simply a waste of time for many.

6.3 We also note that in our 2016 Family Court Study[11] with grandparents, over 60% of grandparents were not very satisfied or not satisfied at all with the mediation process involving Judge-led mediations either.

6.4 In our 2016 Family Court study, Dr Liz Gordon observed that:

> "The adverse situations from which the children were often removed were themselves a pressure point in attending the Family Court. Parents of the children with drug problems, mental health issues, prison backgrounds and often quite violent associates made for high levels of contestation in the Family Court system. In particular, it calls into question whether mediated settlements are possible with so many barriers within the families." Dr Liz Gordon (2016)[12]

6.5 It is our submission that the current FDS process is not child-centred and does not currently provide the services necessary to ensure the child's welfare and best interests are paramount in the agreements reached.

6.6 That said, we consider that mediations in cases that involve grandparents can be successful, but much depends on:

6.6.1 Identifying the cases that are likely to be resolved with the assistance of mediation – i.e. those that don't involve the imbalance of the "power and control" issues between parties to the dispute or recent threats of violence and intimidation or where the parents continue to be drug-users and are not in recovery or rehabilitated;

6.6.2 Properly preparing the parties for mediation so that they are focused and agreed as to the issues to be mediated; i.e. those most relevant to the wellbeing and best interests of the child. It is submitted that without first having recourse to gaining advice from professionals (e.g. lawyers, lawyer for child, cultural adviser, social worker, psychologist etc) and even hearing directions from a judge as to what is at issue; mediations are set up to fail if they are held too early in the process as parties have unrealistic expectations, are too uninformed and in some cases insufficient time has passed following a crisis point during which care arrangements have changed, to allow emotions to simmer and some perspective to develop;

[11] Ibid note 7
[12] Ibid note 7

6.6.3 The skill and attitude of the mediator and whether parties are able to rely on the support and guidance of professionals to help them reach agreements that meet the needs and best interests of the children during the mediation process. It is imperative in our view, that the mediator be appropriately trained and qualified as a professional mediator for these cases and be able to ensure the forum is a safe and fair process for all parties.

7. The Effectiveness of In-Court Processes

7.1 As referenced above, in many cases, grandparents become committed to the standard track for resolution of guardianship and parenting applications because they have had the children in their care (e.g. placed with them by Oranga Tamariki) for some time and where FDS has not worked they have ended up in the court itself seeking orders.

7.2 In other cases where there is urgency and a risk of harm to the children and Oranga Tamariki are either not involved or have suggested that the grandparents take action themselves; they are finding themselves compelled to seek interim parenting and guardianship orders for their grandchildren on a without notice basis.

7.3 In each of the above instances, the common complaints or concerns we hear is that:

7.3.1 The various pre-hearing conferences and the purpose of same are confusing and unnecessarily prolong and convolute the court process, resulting in significant legal costs, anxiety and stress for the caregivers and the children concerned;

7.3.2 Too often it is apparent at pre-hearing conferences where directions are made that the process is being used as an opportunity to ambush the often unrepresented grandparent with further demands by the parents (via their lawyers) relating to contact or altered arrangements for care and that Judges are often not aware of the full circumstances of the case, with the time pressures of an overloaded court system being to blame;

7.3.3 Once in the Court system, parents are too often allowed to keep bringing the matter back to Court again and again even after orders have been made with the consequence of further cost and a re-traumatising of the children and their grandparent caregivers, who themselves are often victims of the parent'(s) abusive behaviour.

7.3.4 As a result of these factors, grandparent caregivers are increasingly lacking confidence in the ability of judges and professionals to make decisions that are focused on the wellbeing and best interests of children as a paramount consideration.

8. Appropriate Role and Use of Professionals

Lawyers for the Parties

8.1 The role of the lawyer in the proceedings is a significant issue of concern for members now that they have been removed from the early stages of proceedings with the Family Dispute Resolution service stage. Dr Liz Gordon noted in our 2016 study that:

> "There was therefore a very strong opinion among the pre-2014 grandparents that lawyers did a good or great job for them, in what were often significantly contested family/whānau situations. This is important because, as Atkin (2015) notes, the new regime involved a significant withdrawal of professional legal advice and its replacement with a regime of compulsory mediation. The upcoming University of Otago study will examine satisfaction levels with the new regime, where lawyers are able to be used only under certain circumstances, and people are required to act on their own behalf in many instances."[13]

8.2 With cases on foot before the 2014 reforms, nearly 90% of participants appointed a lawyer, either by themselves or on the advice of CYF. Of those that represented themselves, 27% ended up instructing a lawyer to represent them.

8.3 Quality of legal representation questions revealed that nearly four out of five thought their lawyer was 'great/wonderful' or 'good' in the pre-2014 Reforms system.

8.4 In our experience supporting grandparents through the Family Court process, the assumption that they are capable of representing themselves is wrong in most cases. For many, the steps they take to protect their children in the Family Court are the first time they have ever had any involvement with the Family Court and for reasons cited in section 7 above, the process becomes unjust and unfairly disadvantages the grandparents.

8.5 The usual scenario in which grandparents are presenting to the court seeking orders for the day to day care and guardianship of their grandchildren (as outlined in paragraphs 2-5 above) also needs to be considered more fully in the context of their need for legal representation to assist in protecting the children and themselves. This is because there is usually an imbalance of power between the parties. Parents affected by drug abuse,

[13] Ibid note 7

(and/or including mental illness) are prone to violence and/or psychological abuse towards the grandparent, particularly in circumstances where, as a result of obtaining interim parenting and guardianship orders, the parents' main source of income (i.e. benefit to support the children) is cut off. In these cases, the hostility towards the grandparents is often severe.

8.6 It is our submission that the removal of lawyers from the initial stages of dispute resolution has not helped with the timely disposition of cases, and instead has resulted in more protracted and complex cases as parties struggle to resolve differences and reach agreements that are primarily parent-centric and not in the best interests of the child.

8.7 The difficulty for grandparents representing themselves in the Family Court has also resulted in more of them going directly to the Family Court (via the CoCA) using the "without notice" route at a time of crisis and heightened concern about the children's safety in circumstances where it would be more appropriate to involve Oranga Tamariki to investigate and address the needs of the children and ultimately (if necessary) place the children in the care of the grandparents with better support for the placement.

8.8 This route involving Oranga Tamariki would also enable more grandparents, who end up providing for the long-term care of children, to be able to access better supports for the therapeutic needs of children at a later stage as they become "permanent caregivers" of the children under the Oranga Tamariki Act 1989. It would also enable the family itself to address the concerns relating to the parent'(s) addiction or mental health issues and ensure access to better supports that may be available within the wider whānau or community. These cases are often very complex and require a multi-agency support approach that relies on the Court as a proactive forum to call for and receive information, to make decisions where no agreement is reached and to compel and enforce compliance with orders made.

Lawyers for the Child

8.9 Although the subsequent amendments to CoCA required Lawyers for Child to meet with the child to ascertain their wishes, unless directed not to by the Judge: we commonly hear complaints from grandparent caregivers that Lawyers for Child are not routinely meeting with children and in many cases make recommendations on care and contact that do not properly consider the children's wishes and best interests.

8.10 We also commonly hear complaints from grandparents who feel “bullied” (by Lawyer for Child) into agreeing to unsupervised contact orders for the parents in circumstances that focus more on the needs of the parents than the wellbeing and best interests of the children. The effect being that too many children are being re-traumatised by being forced into contact arrangements with parents before they are ready and without the kind of support needed to ensure the contact is timely and sensitive to the child’s sense of time.

8.11 The concern is that possibly due to the time and financial pressures being placed by the system on Lawyer for Child (and psychologists if they too are involved) that insufficient weight is being placed on the actual needs of the children. This is especially pertinent for those children who have been adversely affected by trauma, neglect and/or their parent’(s) violence or drug addicted behavior or children who have physical disabilities, developmental delay or are affected by other psychological/behavioural disorders. To this extent, we are concerned that the Family Court system as it currently operates, is not cognisant of evidence-based research and best practice as to the therapeutic needs of children affected by trauma.

8.12 We note that the participants in our 2016 Family Court study were *“divided on whether [the lawyer for child] role was played effectively. Some had concerns about commitment and, potentially, the counsel making up his or her mind without having the full information. In a context of significant contestation, with often a background of drug abuse, violence and family breakdown, the role of counsel for the child is complex*.”[14]

8.13 Our observation is that this role requires lawyers to be able to interview children safely and effectively. Although the training programme for lawyers to become Lawyer for Child is likely to have improved in recent years to incorporate more specialized training on the skills needed to interview children, to interpret their responses to ascertain their wishes and make recommendations as to their best interests, historically the programme didn’t. It is therefore likely that there are still many Lawyers for Children throughout New Zealand who do not have the requisite skills to do this effectively and safely. It is our recommendation that Lawyers representing children should, as a condition of their ongoing appointment, be required to undergo specialized training to interview children as well as being required to have ongoing trauma-informed care training.

[14] Ibid note 7

9. Barriers to Access Justice

Financial Costs

9.1 The financial costs of seeking parenting and guardianship orders in the Family Court is a major factor affecting grandparent caregivers and one for which we strongly advocate for significant change in the system including the legal aid system.

9.2 The 2016 Family Court study with grandparents[15] identified that:

- Nearly 90% of participants appointed a lawyer, either by themselves or on the advice of CYF. Of those that represented themselves, 27% ended up instructing a lawyer to represent them.

- Less than 30% received financial support from legal aid

- For those who **received legal aid**:

    - 60% had total costs of < $10,000
    - 35% had costs $10,001-$30,000 and
    - 5% had total costs $30,001-$50,000.

- 43% were required to repay the costs.

- For those **not on legal aid**:

    - 73% paid < $10,000;
    - 20% paid $10,001-$30,000;
    - 3% $30,001-$50,000;
    - 3% $50,001-$75,000 and
    - 1% $75,001-$100,000.

[15] Ibid note 7

9.3 Participants noted (with multiple options ticked) that the factors that contributed most to the costs were:

- A high level of contestation: 28%
- Legal delay: 15%
- Court delay: 17%
- Issues relating to the other party (e.g. family breakdown, drug/alcohol issues): 33%
- Waiting for mediation or other dispute resolution processes: 13%
- Other agency delay (e.g. CYFs): 14%
- Other, please specify: 56%

9.4 More than half of all participants noted there were other reasons. These included: the other party failing to appear; costs of travel and accommodation in attending the Family Court in another city; CYF not having reports on time; loss of business; time taken (in one case, four years); and inefficient or expensive lawyers.[16]

9.5 Although the 2014 Reforms were also designed to reduce the legal costs involved for parties to the proceedings, apart from a handful of cases that have involved self-representation and orders obtained at little cost, we have not seen any evidence of a significant reduction in the number of grandparents paying significant legal costs – either privately or via the legal aid system.

9.6 It is also evident that in most cases involving grandparents as applicants for guardianship and parenting orders (often at the behest of CYF and as demonstrated in the case example in Appendix A) that on top of this highly charged and stressful environment, there is too often inequity between the parents (on legal aid) and the grandparents (often self-funded or with legal aid to be repaid) as noted in the report (Gordon 2016).

> "The cost of legal action through the Family Court is a particular pressure point for grandparents raising their grandchildren. In the earlier study (Gordon 2016), it was reported that the majority of grandparents lost income as a result of taking on care of their grandchildren. The potential for a large legal bill, whether through legal aid or private payment, is therefore of particular concern."[17]

9.7 We have heard many horror stories from grandparents over the years regarding the costs they have been required to pay, funded either privately by taking out second

[16] Ibid note 7
[17] Ibid note 7

mortgages, selling homes, getting second jobs, or repaying statutory legal aid charges on homes where the Legal Services Agency required repayment on "loans" that were attracting 8% interest. In one recent example, one of our members had to sell her home to repay the Statutory Legal Aid charge of around $10,000. As a couple on a limited income with grandchildren to care for, she and her partner had no disposable income to repay the loan in instalments and felt there was no alternative but to sell their home. They now live in a rural part of Northland in an unlined shed! There are sadly many examples of this, where the grandparents that have stepped up to provide a safe and loving home for their grandchildren, have been financially penalized by the Family Court and legal aid system, all in circumstances where the alternative for the children would have been State-supported foster care.

9.8 We also repeatedly hear from members that the legally funded parents use the system to keep returning to Court to re-apply for parenting or altered contact orders after long-term care arrangements have been settled by the Court. The Court has the power to strike out proceedings that are an abuse of process in the case of vexatious proceedings, yet there appears to be an insufficient use of this option by the Court.[18]

9.9 We submit that there needs to be a review of the Legal Aid system as it relates to Family Court proceedings to ensure a fair and just system for determining outcomes that relate to the wellbeing and best interests of children. We furthermore recommend that the system be changed to provide:

9.9.1 That where grandparents have taken on the care of children in circumstances where the alternative course to ensure their safety and wellbeing is foster care and/or where it is not in the children's wellbeing or best interests to be in the care of either parent, that the grandparent's legal costs to determine parenting and guardianship be met by the State; and

9.9.2 In other circumstances where the Judge considers that a grandparent caregiver should not be required to pay the legal expenses involved in the case, the Judge should have a discretion to order the State and/or the parents to pay for the grandparent'(s) legal costs.

[18] Rule 193(1) Family Court Rules 2002

Other Barriers

9.10 As explained above, it is our view that the current Family Court system does not cater well for the scenario where grandparents or other whānau caregivers must be involved in the proceedings. These cases usually involve highly complex issues where interfamilial conflicts and tensions exist because of a family breakdown. They are not straightforward and should not be dealt with by referral to FDS unless and until all the key issues have been identified by the court and there is a likelihood of success at mediation. In these cases, and for cases that can't be referred to FDS, better use of external sources of information and assistance, such as social workers reports, cultural reports and reports from other professionals engaged in supporting the family need to be considered in assessing the wellbeing and best interests of children.

10. Summary of Recommendations for Change

As referenced earlier, we recommend:

10.1 The referral to mediation and the outcome of agreements reached at the FDS needs to be changed as outlined in section 6.6 above.

10.2 Lawyers should be available to parties prior to and during the commencement of proceedings to properly advise and guide parties as was the case before the 2014 Reforms.

10.3 Lawyers for Child should be required to attend more specialized training on interviewing children and the application of trauma informed care in practice as part of their ongoing eligibility for appointment to this role.

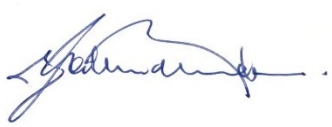
10.4 The legal aid system for Family Court cases needs to be reviewed with changes made to provide fairer access to justice for grandparent and other whānau caregivers in the circumstances outlined in section 9.9 above.

10.5 Courts should be making better use of external reports from professionals, advisers and agencies that are actively involved in providing support to families as they work towards reaching outcomes that promote the wellbeing and best interests of the children.

If there are further questions relating to this submission that arise or follow-up information required later that the Panel needs to assist with the Review, please do not hesitate to get in touch with me.

Thank you for this opportunity to present the issues that affect our grandparent and other whānau caregiver member families in the Family Court.

Yours sincerely,



Kate Bundle
Chief Executive

Appendix A

Statement from an email from client member to GRG on 18 September 2018

"My name is XXX.

I work full time as a Registered Nurse and I currently have interim day to day care and guardianship of my two grandsons now aged 2 and 3 years. They have been in my care for the past 16 months.

They are my eldest daughters' boys. My daughter has drug and alcohol addictions, severe mental health problems, prescription drug abuse, history of self-harming and severe violent issues.

When the eldest boy was 5 months old he was the victim of a violent attack by one/both of his parents.

No one has ever been held accountable due to lack of evidence, and both parents covering each other.

He received a fractured collarbone, a large contusion to his head which was described as an equivalent to an adult falling from a bike with no helmet, and he also had 11 unexplained marks to his body.

A body scan revealed an old fracture to his right forearm which had never received treatment.

CYFS were involved but the baby was returned to the mother's care straight from hospital.

The father of the baby was removed from the household, however the mother continued to see him and when a warrant for his arrest was put out, she harboured him, hiding him in her ceiling space until the police forced open the door and found him.

Meanwhile she fell pregnant with the second boy that I now have. Several reports of concern were made, one of which I was told "I'm sorry, drug and alcohol abuse and suicide attempts does not warrant a CYFS callout."

I was absolutely horrified. The mother was very good at lying to her Mental Health Worker and due to the Privacy Act, I was unable to talk to her and tell her what was really happening. The children were stripped down to their bare bottom and slapped around the bottom and face until marks appeared, then forced to cuddle her. They were subjected to hidings where the older one, then aged 2 years, would be pushed into his room and he would lay on his tummy thumping the floor screaming. The music would then be turned up to mask the screams.

These episodes were witnessed by her friends, who at the time ignored it, but who have since come forward. However, they will not write affidavits as they are too afraid of her violence. She has already verbally and physically abused two of her friends' children.

I have also learned that the younger one was fed water and milo in a baby bottle, because wine and drugs was more important than milk. They were drugged with Panadol in their bottles 3 times a day to keep them subdued so she could continue her habits.

She was so verbally abusive to me, spitting in my face whenever I tried to say anything, I eventually had to back away as I had no support from any authorities as they wouldn't believe me. I would receive phone calls late at night from her friends asking me to collect the boys as she was out of

control, passed out on the kitchen floor, wasted/intoxicated or she had been caught drunk driving and been arrested and the boys would be in the house with total strangers.

When I finally took on the care of the boys, or should I say rescued them, the younger one then aged one year would sit on the floor and slap his head with both hands continuously and the then 2-year-old would throw himself backwards bashing his head on the floor. My partner and I spent many hours just holding them, reassuring them they were safe.

The older one now suffers from anxiety and is fearful of loud music. At one time I was playing with the younger one with the 2-year-old sitting beside me playing with a car. The young one was leaning forward laughing and pretending to hit me. I said to him "Are you hitting grandma, grandma cry".

I will never do that again as the 2-year-old jumped up straight away, ran across the room, threw himself into the wall then curled up into a ball and was hysterical. He would not come near me for a few minutes and when he did, he grabbed hold of his brother, then me and wouldn't let go. He did the same when that domestic violence ad came on tv.

His behaviour had been so severely affected he was being threatened with removal from his pre-school. He finds it difficult to form trusting relationships with adults and doesn't cope with change well. He has now been diagnosed as a trauma child and has cognitive impairment and delayed development. I have advocated for him and pushed to have all the staff at his pre-school trained to deal with trauma children, as he certainly won't be the last. They have both seen so much violence in their short lives all brought on by selfish parents and their drug abuse habits.

I have 62 pages of police offences against both the parents, ranging from drug abuse, theft, child abuse, assault, breach of bail and the list goes on. I have been told by the judge that I am just the legal guardian, whereas the parents are the natural guardians therefore have more rights, even though I have day to day care of the boys.

The father of the boys has only seen the younger child once shortly after birth and until recently has shown no interest in them at all. He has 5 other children to various women around the country with multiple protection orders out against him due to violence, so doesn't see any of them. However, he is now seeking contact orders, which I have been opposing as I fear for the children's safety due to his criminal and violent background. He has just recently been released from jail.

I have been told by my lawyer and the judge that he will get access/contact as he is the natural guardian and the boys have a right to know where they are from (i.e. his family). I don't understand this as society states we are to protect our children from exposure to violence and abuse, yet the law is forcing me to return these boys to this environment.

My daughter has already had another child removed from her care two years prior to having the two boys that are in my care. Her eldest son is now 9 years old and lives with his father (a different father than the younger two boys) and his step mother. We have regular contact. I am not able to use the evidence from this case to support my current situation as it is being treated as a separate case altogether, which I understand however, there is a common denominator, which is, it is the same mother!

Since I have had the boys in my care I have been abused via texts, phone calls and verbally in the street in front of the boys.

I have been chased around the streets in my car with the boys in the back seat and run off the road. My daughter's boyfriend has driven backwards and forwards past me and the boys while we were

out walking. He would drive close to the curb, lean on the horn which would frighten them making them cry, then do the fingers to me. The only way this stopped was by contacting the lawyer.

I could go on. I feel like I could write a book, as there is so much more to my story.

My main concern now is there is a chance that they will be returned to this situation, the people that have witnessed the abuse are too afraid to come forward due to her violence and abuse.

So I am on my own.

I am fearful that in the absence of other witnesses' evidence of the abuse, the judge will disregard my account.

I am fighting this so as to keep the boys safe in my care, but it is costing me as I have to pay full costs for a lawyer at $300 an hour, while the mother (a beneficiary) gets legal aid.

I have saved the government thousands of dollars, by keeping the boys together and out of foster care, but I wouldn't have had it any other way. The authorities are aware that when the children are caught up in the middle of dysfunctional families, it pulls at the heart strings of the grandparents. I feel they play on this, to the point where we are made to feel guilty if we don't take them in.

I feel totally let down by the judicial system which quite clearly is broken as even though the parents have done this to these boys, they have more rights than me, simply due to them being the parents.

When will the courts wake up and listen/support us grandparents?

The law should state that once children are removed from the parents care through abuse or neglect, then they should lose guardianship and contact rights to them until they can prove that they can be competent parents again.

We should not have to fight like this. My lawyer has told me that I am not the one in question here.

I do not have to prove my validity as a person.

Then why am I having to be put through a four-day court trial and be cross examined on the stand as to why the children should remain in my care. This has cost me both financially and emotionally, I am fortunate to have a very supportive family behind me.

To date it has cost me $10,500 and I see no end in sight. I know that I can't afford further legal fees, but I don't qualify for legal aid, and even if I did, I would have to pay it all back, whereas both parents are beneficiaries and in reality, won't have to.

Like I said I could go on, but I will leave it here. This has been very hard for me to write, but please feel free to contact me [via GRG] if you wish."