Submission
FAMILY COURT PROCEEDINGS REFORM BILL

To the **Justice and Electoral Committee:**

This submission is from the Equal Justice Project.

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The Equal Justice Project is an independent pro bono initiative run by law students at the University of Auckland Law School. The objective of EJP is to promote equal access to justice by encouraging, organising and engaging in voluntary legal work in partnership with community groups, practitioners and academics.

We support the intention of this bill to "ensure a modern, accessible family justice system that is responsive to children and vulnerable people, and is efficient and effective".[1] Unfortunately however, we do not believe that the Bill lives up to this goal. We believe that it has some serious deficiencies in regards to protecting vulnerable children and victims of domestic violence. Furthermore, we believe the Bill does not ensure an accessible family justice system for Court users, and in fact raises some serious issues in regards to access to justice.

We do not support the Bill in its current form for the following reasons:

(1) The proposed restrictions on appointments of Lawyer for the Child will prevent children's views from being heard;

(2) The proposed restrictions on use of lawyers in the Family Court raises serious issues in regards to access to justice;

(3) The proposed restrictions on requests for specialist reports under s 133 Care of Children Act 2004 may prevent an effective hearing of children's views;

(4) Proposed changes to the Domestic Violence Act 1995 will endanger victims and fail to hold perpetrators to account;

(5) The Family Dispute Resolution Service in its proposed form will act as a barrier to access to justice as well as creating a dangerous environment for vulnerable people.

[1] Explanatory note.

JUSTIFICATION

Clause 5 – S7 CARE OF CHILDREN ACT 2004

I Introduction

Clause 5 of the Family Court Proceedings Reform Bill is planning to replace the existing s 7 of the Care of Children Act 2004 with the new s 7. The existing section states that the court must appoint a lawyer to act for the child in all situations where the proceedings involve custody and access issues, and looks likely to proceed to a hearing, unless the court is satisfied that the appointment would serve no useful purpose.[2] The new section will only require the court to appoint a lawyer in cases where there are concerns about the safety or well-being of the child.[3] This clause implies a serious lack of understanding about the role of the lawyer for the child and has the potential to breach the highly important obligation on the court to give the child a reasonable opportunity to speak.

II Role of Lawyer for the Child

The role of the lawyer for the child is outlined in the Court of Appeal case, *R v H.*[4] In that case, Richardson P outlined 5 functions of the lawyer for the child:

1. To interview the parties and anyone else involved in parenting, and ensure that all the relevant facts are presented to the Court
2. To ascertain the wishes of the child and pass the information on to the Court
3. To negotiate or mediate in the most appropriate way the welfare of the child
4. To advocate by submissions the welfare of the child
5. To protect the child from unnecessary examinations, tests and evaluations

It is evident from this that the role of lawyer for the child is far more important to Family Court proceedings than this bill recognises. The lawyer for the child provides the most effective route for the child's interests to be presented in an unbiased way to the court. Without a lawyer for the child, it is unlikely that the court will be able to ascertain what is best for the child. Warring parties are not likely to present the child's views in an unbiased manner, for they will simply say whatever they think is most likely to win them custody. Labour MP Charles Chauvel emphasized this issue, stating in parliamentary debate that children need 'their own advocate who can speak to their interests, rather than the interests of the warring parents'.[5]

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[2] Care of Children Act 2004, s 7.
[3] Family Court Proceedings Reform Bill, clause 5.
[4] *R v H* [2000] 2 NZLR 257.
[5] (4 December 2012) 686 NZPD at 7028.

III Obligation to give the child a reasonable opportunity to speak

Section 6 (2) (a) of the Care of Children Act states that 'a child must be given reasonable opportunities to express views on matter affecting the child'.[6] This obligation was emphasized in the decision in *B v* K.[7] At present, this obligation is met through the lawyer for the child, who speaks for the child in court. If, however, there is not a lawyer for the child in the proceedings, it is unlikely that the child will speak for himself or herself in court, especially if the child is very young. The responsibility to speak for the child will then probably have to be taken on by the parties, who are highly unlikely to present an unbiased view, and may not present the actual views of the child, like a lawyer for the child would do. The court then may risk breaching its statutory obligation to give the child a reasonable chance to speak.

IV Conclusion

This Bill underestimates the importance of the role of lawyer for the child in Family Court proceedings, and that removing this role from more proceedings may impact on the welfare of the child. If the child cannot present an unbiased view to the court, then the court may not be able to do what is best for the child.

[6] Care of Children Act 2004, s 6 (2) (a).
[7] *B v K* [2006] NZFLR 1040.

CLAUSE 5 – S7A CARE OF CHILDREN ACT 2004

I Introduction

The new section s 7A Care of Children Act 2004, as inserted by clause 5 of the Family Court Proceedings Reform Bill 90-1, seeks to restrict the use of lawyers by parties in the Family Court. Currently, the Care of Children Act 2004 imposes no restrictions on the use of lawyers by parties in the Family Court.

The bill seeks to restrict the use of lawyers in the Family Court in the following ways:

1. A lawyer may act for a party to a proceeding commenced by applications made without notice, or by applications under the Property (Relationships) Act 1976 proceedings;
2. For a party to a proceeding where that party is the Crown;
3. For a party to a defended proceeding if a Judge has directed that the issues in dispute between the parties proceed to a hearing;
4. For a child who is a party to a proceeding if a lawyer has been appointed to represent that child.

It is our view that this proposed change will cause serious problems for access to justice. Without lawyers, the Court will be a closed and intimidating space, with the result that some people will forgo filing applications or will drop out during the process. Those who do continue will be hindered by a lack of knowledge of the law and of Court process, and subsequently will be unable to advocate effectively in their own best interests.

II Impact on access to justice

In demonstrating the intrinsic barriers that will confront Court users by the restriction of the use of lawyers, we refer the Committee to the Law Commission Report *Delivering Justice for All: A Vision for New Zealand Courts and Tribunals*.[8] As stated in that report:

> "Submitters told us that, at present, information about the law, courts and their processes is not easy to come by. In fact, *our court system is an impenetrable maze for most non-lawyers*. Submitters described the court experience as disempowering, and many felt that *their lack of understanding was a hindrance in accessing justice*." [Emphasis added]

This assertion is supported by findings from the Ministry of Justice report, "Self-Represented Litigants: An Exploratory Study of Litigants in Person in the New Zealand Criminal Summary and Family Jurisdictions", excerpted below:

> "The most common disadvantage reported by self-represented litigants was their lack of legal knowledge. They said this meant they were not always

[8] Law Commission *Delivering Justice for All: A Vision for New Zealand Courts and Tribunals* (NZLC R85, 2004) at 26.

> aware of the options or how to respond to the other party. A lack of access to reference material was also noted as a disadvantage."[9]
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> "A few [self-represented litigants interviewed] felt they would have benefited from having a lawyer to support them and explain what was happening."[10]
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> "Many key informants said litigants were unlikely to know how to present an affidavit which clearly sets out the relevant information to support an application. Self-represented litigants were said to range from producing too little information, to producing large volumes of information that did not address the relevant points of law. Many key informants felt self-represented litigants could not objectively separate the relevant facts from the rest of the information. Process and protocol mistakes included self-represented litigants failing to serve documents on the other parties and writing letters to the judge or the case manager instead. Self-represented litigants were also felt to poorly understand the purpose of different hearing types, such as judge's lists, often turning up for administrative appearances expecting a full hearing."[11]
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> "Many felt that self-represented litigants did not have the legal knowledge to achieve the outcomes they desired. This was thought to be due to a lack of preparation, lack of knowledge about the options, or because they refused to consider options for settling the case. In some cases problems occurred when litigants acted on inappropriate information from either the Internet or unqualified advisers."[12]

Beyond these clear barriers to effective access to the Courts, it is clear that restricting the use of lawyers has collateral negative effects on other aspects of the litigant's experience:

> "More than half the key informants felt that being self-represented had a large emotional toll… other reported effects included self-represented litigants having to spend more time away from work and their children and losing faith in the court system."[13]

Furthermore, lack of representation is especially concerning in cases arising in the Family Court:

> "Lack of representation has a number of disadvantages. An unrepresented person is in a vulnerable position in court… They may lack the skills and knowledge to represent themselves, and *they may be*

[9] Melissa Smith, Esther Bradbury and Su-Wuen Ong *Self-Represented Litigants: An Exploratory Study of Litigants in Person in the New Zealand Criminal Summary and Family Jurisdictions* (Ministry of Justice, research report, July 2009) at 66.
[10] At 68.
[11] At 69.
[12] At 69.
[13] At 69.

> *too close to the situation to maintain objectivity, especially in cases arising from a personal relationship.*"[14]

In particular, it is this latter point raised by the Law Commission report that explains why the restriction of the use of lawyers in the Family Court will cause serious barriers to access for justice. In the Family Court, matters are by default already stressful and difficult. Often parties have difficulty communicating with the other side (often an ex-partner or other family member with whom the relationship is strained), with damaging communication patterns already in place. It seems quite clear that this is the likely case with most Family Court users – otherwise their cases would not have ended up in the Family Court.

The role of lawyers in the Family Court is thus an important one. Not only can they assist clients to put their best case forward, when these clients may not have the skill set to do this on their own, they also fulfil an incredibly important role in regards to the interpersonal relationships inherent in Family Court cases. The lawyer can: prevent tensions from arising or being sustained by becoming the mouthpiece of the client in communications with the ex-partner; and can provide objectivity to the client on potential causes of action or circumstances which have arisen.

The importance of the lawyer's role in providing objectivity is explored in the Self-Represented Litigants report:

> "Some litigants felt they were disadvantaged because *they were too emotionally involved and not necessarily able to be as objective as a lawyer*."[15]

The lack of lawyers will also be a huge problem for people facing additional barriers, such as language and literacy problems, hearing or sight impairments, or mental health issues, for whom it is especially important to have an experienced guide to the Court sytsem. As the Self-Represented Litigants report states:

> "Many [key informants] said that self-represented litigants with undiagnosed or borderline mental illness may have difficulties because they could not comprehend and retain information…Some key informants were concerned that some litigants with mental health issues may not defend orders or may drop out after finding that representing themselves was too difficult."[16]

[14] Law Commission *Delivering Justice for All: A Vision for New Zealand Courts and Tribunals* (NZLC R85, 2004) at 26.
[15] Melissa Smith, Esther Bradbury and Su-Wuen Ong at 67.
[16] At 71.

III Conclusion

The new section 7A Care of Children Act 2004 should not be incorporated into law in the form provided by the Family Court Proceedings Reform Bill, due to the fact that this will prevent Family Court users from effectively accessing justice.

CLAUSE 22 – S133 CARE OF CHILDREN ACT 2004

I Introduction

The new s 133 Care of Children Act 2004, as inserted by clause 22 of the Family Court Proceedings Reform Bill 90-1, seeks to change the circumstances in which a Court may obtain a specialist psychological, cultural, or medical report. Currently, the Care of Children Act 2004 allows the Court to request a specialist report "if it is satisfied that it is necessary for the proper disposition of an application."

The bill seeks to restrict this discretion to request specialist reports, so that the Court may request such psychiatric, cultural or medical reports to be written "only if satisfied that – (a) the information that the report will provide is *essential* for the proper disposition of the application; *and* (b) the report is the best source of the information having regard to the quality, *timeliness*, and *cost* of other sources; and (c) the proceedings will not be unduly delayed by the time taken to prepare the report; and (d) any delay in the proceedings will not have an unacceptable effect on the child." These requirements apply to requests for psychological reports, with the further criteria that "(e) the court does not seek the psychological report solely or primarily to ascertain the child's wishes."[17]

It is our view that this proposed change will have the effect of unreasonably restricting access to a necessary service, particularly in the sense that children's views will not be effectively ascertained.

II Concerns arising from proposed section 133(6)(a)-(d)

We are concerned by the primacy the bill appears to place on timeliness and cost in requesting psychological or other reports. As former Chief Family Court Judge Peter Boshier stated, "Specialist reports play a key role in ensuring children's views are put to the Court accurately and in a way which gives real effect to the child's right to participate."[18] Where issues as important as children's welfare are at stake, it is our view that cost and timeliness should not be at issue, so long as neither have an adverse effect on the child.

III Concerns arising from S 133(6)(e) – court may not seek a report solely or primarily to ascertain the child's wishes

This provision is particularly problematic as in many cases, particularly with young children or those who have been manipulated by warring parents, it is only through a psychological report that the Court is able to ascertain the child's views. As Judge

[17] Family Court Proceedings Reform Bill 2012 (90-1), cl 22.
[18] Judge Peter Boshier "New Trends in the Family Court – How Psychologists Can Best Help Children" (New Zealand Psychological Society Annual Conference 2007) available at <http://www.justice.govt.nz/courts/family-court/publications/speeches-and-papers/new-zealand-psychological-society-annual-conference>.

Boshier stated, "[W]here the child's views are not so easily obtained or clearly expressed, specialist reports can be used as an invaluable tool to clarify the child's position."[19]

We refer the Committee to Chief District Court Judge Jan-Marie Doogue's article "A seismic shift or minor realignment? A view from the bench ascertaining children's views", where she stated [emphasis added]:

> "If a child is truly to be given a reasonable opportunity to express their views [as mandated by s 6 Care of Children Act 2004] then it is essential that the person to whom they communicate them has the capability and training to understand that children and adults see the world differently and use different language to articulate their experiences. The recipient of the views – both in the very questions that are asked and how they are asked. This person also needs to have the ability to listen to the child with some understanding of the relationship between the child's developmental capability, their language and their culture."
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> "*There will be many cases where for the reasons given the only way a child will be provided with a genuine opportunity to express their views*, perceive themselves that they have participated and expressed their views and that their views have been understood, *is if the recipient of the views is a suitably qualified expert who can create this environment*. There will be children who present at an age or with special qualities or special needs that make it impossible for an lawyer for the child, no matter how competent, to get "instructions"."[20]

As Judge Doogue stated in the article, Lawyer for the Child will not always have the requisite specialist training to ascertain the children's views. Thus it is in our view unreasonably restrictive to prevent by way of proposed s133(6)(e) the Court from requesting a specialist psychological report solely or primarily to ascertain the children's wishes – when often this may be the only way to effectively ascertain the children's views.

IV Conclusion

To restrict the Court's discretion to request a specialist psychologist report in the ways proposed by the Bill is to underestimate the necessity of this service in effectively ascertaining children's views. The existing s 133 should remain in force.

[19] Ibid.
[20] Chief Judge Jan Doogue "A seismic shift or a minor realignment? A view from the bench ascertaining children's views" (2006) 5(8) NZFLJ.

CLAUSE 40 – S31 DOMESTIC VIOLENCE ACT 1995

I Introduction

The new s 31 Domestic Violence Act 1995, as inserted by clause 40 of the Family Court Proceedings Reform Bill 90-1, proposes that, provided certain conditions are satisfied, a protected person to whom a domestic violence support programme is provided may attend a non-violence programme at which a respondent or associate respondent is present, or that the respondent to whom a non-violence programme is provided to attend a domestic violence support programme at which a protected person is present.

Currently, the Domestic Violence Act 1995 at s 31 states "A protected person and a respondent, or, as the case may be, a protected person and an associated respondent, cannot be required to attend programme sessions at which the other person is also present."

The conditions the Bill suggests are that: "(a) the protected person agrees; and (b) the respondent or, as the case may be, the associated respondent agrees; and (c) the programme provider is satisfied that no safety issues exist; and (d) the programme provider is authorised to undertake both domestic violence support programmes and non-violence programmes.

It is our view that this proposed change will provide potential for the exploitation of the vulnerability of victims of domestic violence.

II Concerns arising from this section – risk to vulnerable persons

The criteria proposed by the bill at s 31(a)-(d) is insufficient to protect properly victims of domestic violence from the risk of harm which arises when the victim is in close proximity to the perpetrator.

Criteria A and B is based on a false assumption that both parties are capable of giving fully informed consent. Where violence occurs in a relationship, there is often a pattern of dominance which allows the perpetrator to control the victim – both physically and psychologically. Where in this instance a protected person agrees that the respondent may attend the same programme, it is too difficult to tell whether this is a fully conscious agreement – or a coerced agreement based on existing patterns of control between the victim and perpetrator.

Furthermore, Criterion C is also based on a false assumption that a programme provider is able to accurately establish whether safety issues exist. Every relationship of violence is different, and even though no safety issues may be apparent to an outside observer, does not mean that such safety issues do not exist.

Criteria A – C do not sufficiently safeguard vulnerable protected persons from the risk of harm, physical and psychological. Regardless of the nominally risk-avoiding

characteristics of these criteria, the actual fact of protected persons and respondents attending the same programme raises serious safety issues arising solely from the proximity between the two people, such as: greater ease of identifying information being provided, greater knowledge of the protected persons whereabouts and lifestyle, potential for interaction between parties before and after the programme hours, greater potential for physical abuse and *especially* for psychological abuse.

The risk of problems (and risk of violence and abuse) arising from such a provision cannot be outweighed by the unlikely and/or marginal gains which may be achieved from such a provision.

III Conclusion and recommendation

The existing section 31 Domestic Violence Act 1995 should, therefore, be preserved so that protected persons and respondents may not attend the same programmes.

CLAUSE 40 – S32(2) DOMESTIC VIOLENCE ACT 1995

I Introduction

Under the new section 32(2) of the Domestic Violence Act 1995, as proposed by the Family Court Proceedings Reform Bill, the court need not direct the respondent to a protection order to attend a non-violence programme if there is no appropriate programme available having regard to the person's character and personal history. This is a concerning change for many reasons.

II Risk of further violence

For one, it presents a serious issue for protected persons, leaving them even more vulnerable to potential violence than they were before. It is well and good that a protection order may be issued, but the respondent to the protection order may breach it nonetheless. While there would be consequences for the respondent if this occurs, the protected person may have still had violence committed against them before the police or court system intervene to enforce the protection order. By making sure all respondents to a protection order must attend a non-violence programme, the possibility of the breach of a protection order resulting in further violence against the protected person, and the seriousness of this potential violence, is reduced. Furthermore, after the protection order has lapsed or been removed, the protected person and the former respondent to the protection order may reconcile and return to some sort of shared domestic relationship. It is not unusual, for example, for women to return to violent partners even if a protection order had been issued against that partner in the past, as women's refuge has recognized.[21] If the former respondent to the protection order had been ordered by the court to attend a non-violence programme, there is a greater possibility that domestic violence would not re-occur or would not be of the same severity.

III Importance of rehabilitation

It is also desirable that courts play a role in a rehabilitative system. New Zealand has endeavoured to implement rehabilitative measures within the justice system and these techniques have been useful both in New Zealand and overseas. If the courts directed all respondents to protection orders to non-violence programmes, it is arguable that many of these people would learn how to function both in domestic relationships and in society without resorting to violence. This would improve their lives and reduce the risk of future offending, allowing them to live the rest of their lives without trouble with the law. This would benefit them enormously as well as reduce the risk of further victims of violence.

[21] Women's Refuge New Zealand "The challenges of leaving an abuser" <https://womensrefuge.org.nz/WR/Domestic-violence/Why-doesnt-she-leave.htm>.

IV Failure to hold perpetrators of violence to account

Lastly, it is worrying that such a general sort of discretion would be conferred on the courts by this section – the criteria of "character", "personal history" and "any other relevant circumstances" is far too vague. Could it mean that respondents to protection orders of a high social status could avoid attendance of a non-violence programme based on their "personal history"? How are the courts to evaluate a person's character satisfactorily so as to ascertain that a non-violence programme is not required during the brief period during which he or she appears before the judge? It is clear how unfairly this section could be applied in practice.

CLAUSES 60 – 69:
FAMILY DISPUTE RESOLUTION SERVICE

I Introduction

The main issue with the proposed Family Dispute Resolution Service is the proposed cost of $897 that will be shared between the parties. As noted by the Family Law Section, the imposition of this fee is likely to cause serious issues regarding access to justice.[22] We note that that the Bill is meant to make sure the system remains 'affordable in the future, and that the court is able to support those children and vulnerable people who most need its protection'.[23] By imposing this fee, access to the court which was set up for costs to be as minimal as possible, [24] is now contingent on parties' ability to pay $897. The harmful effects of this fee on families and the separation process are detailed below. FDR as a whole also needs to be examined in regards to domestic violence cases where there is no disclosure of abuse.

II Proposed costs and effects on families

The fee is likely to be a huge deterrent to parties who want to resolve their issues expediently. By having the fee split between parties, it gives the power to one party to delay, control or even prevent proceedings from occurring. Since a separation means that parties are already at odds with each other, this sort of behaviour is likely to exacerbate the situation between spouses and cause tension as well as imposing unnecessary stress on their children. This is a serious issue in regards access to justice, given that that there is no other option available to the parties, since they cannot access the Family Court without having gone through the FDR process.

Another issue with the fee is that separation will have already caused economic disruption to the parties. If one party can pay the bill, while the other cannot, this will again prolong the separation process between parties. For example, if one party has been economically dependent on the other prior to separation, they will already likely to be in a difficult economic situation in regards to management of their own living and costs of caring for their children. They may not be able to afford splitting the fee in half. However, they may not meet the threshold for legal aid. Therefore, they may need to reduce costs in other areas to pay for FDR, again adding to emotional stress and economic hardship on the party. For the other party who can afford to pay, they may not be willing to pay more than their half to make up for their spouse's shortfall. This again will lead to tension between the parties and prolong the separation process. This is likely

[22] Family Law Section, *Compulsory Family Dispute Resolution Service fee will cause problems*, (http://www.familylaw.org.nz/__data/assets/pdf_file/0008/55682/Compulsory_FDR_fee_will_cause_problems_FLS2.pdf).
[23] Family Court Proceedings Reform Bill, Explanatory Note at 2.
[24] Peter Boshier, *The Role of the State in Family Law,* 2012 at 6 (http://www.justice.govt.nz/courts/family-court/publications/speeches-and-papers/The%20Role%20of%20the%20State%20in%20Family%20Law%20-%20Thursday%207%20June%202012%20-%20C.pdf).

to be a serious deterrent to parties, especially ones who need the assistance of the Court to help them separate.

As noted above, for parties who need the assistance of the Court, FDR is likely to become more of an impediment to access to justice than a way of assisting the parties. For spouses who have not able to resolve their issues themselves and have reached a stage in their relationship where they cannot be amicable, it is unlikely that FDR will help resolve their issues, since it is largely a counselling service. Therefore it will become an unnecessary obstacle to them gaining access to the court as well as being a large and unnecessary cost. Therefore the Bill should be amended to provide for other situations, aside from domestic violence issues, where it is possible to fast-track access to the courts. Given that separations are generally complex and multi-faced, the Bill should not look at a blanket imposition of FDR for all separations because it may not always be useful or cost-effective.

Parliament has argued that costs of FDR are less than what parties currently spend on lawyers. However, it overlooks the fact that currently parties are able to receive six counselling sessions free of charge.[25] By imposing the fee now for essentially the same service, it means that parties may actually be at risk of spending more. If FDR is not successful, parties will still have had to pay the $897 and further costs, if FDR is unsuccessful and they need the help of a Family solicitor once they reach the Court.

Another issue is that in order for an individual to get legal aid eligibility they will need to go to the Court and ask for a waiver to the fee. As noted by former Principal Family Court Judge Peter Boshier, legal aid has increased markedly to about $50,582,000 in 2010.[26] This shows that more and more people need support for legal matters. The fee means there is a risk that many individuals may not choose to access the court system at all. Even if they do choose to apply for a waiver, they may not be successful. The embarrassment that may come from asking for financial assistance coupled with the already stressful separation means individuals are likely to feel disenfranchised by the system, which again a barrier to access to justice for all.

Therefore ultimately there are a number of great issues in regards to the costs of FDR that are a serious breach to parties' access to justice. Not only can it be a huge deterrent, it can also give a party the ability to control and abuse the separation process. It also sidesteps situations where Court assistance is necessary for parties and where a counselling process will not be effective. To waive the fee however, a party may be subjected to embarrassment and shame in order to apply for an exemption. Ultimately, Parliament must seriously consider making FDR free if it is likely to have any positive effects for parties.

[25] Family Law Section.
[26] Legal Services Agency *Annual Report 2009 – 2010* (29 December 2010).

III Family Violence

Although the Bill provides special exemption from FDR in cases of domestic violence, this is premised on the fact that the parties will have to disclose details themselves. Parties in abusive relationships will often be fearful of disclosing details or may not even be aware that they are in an abusive situation. In this case, mandatory FDR will put the abused party in the same room as the perpetrator. This may have damaging emotional effects on them as well as preventing them from speaking out freely. It may even give abusive parties a forum to further intimidate their partners or pressure them to reconcile with them.[27]

Another issue is that if an abused partner is reluctant to participate, they fear that they will be seen as an 'obstructive or alienating presence'.[28] This means that partners will attend FDR and will negotiate for what they think they can get, as opposed to what may be actually in their and their children's best interests. This poses serious risks as to access to real justice for both the abused party and the child if they cannot freely negotiate.

Another issue is that the moderators involved in FDR may not have the necessary training to deal with domestic violence cases. If abused parties do not disclose domestic violence and attend FDR, there may be the risk that moderators unknowingly collude with abusive partners as a result. For example as noted by Shine Domestic Abuse Helpline, abusive partners may apologise for their actions and moderators may conclude that the process has been successful. This will exacerbate the emotional harm suffered by abused partners and the separation process may be prolonged.[29]

IV Conclusion

Therefore there must be serious consideration taken by Parliament in regards to the potential dangers that FDR may expose abused partners and children to, in cases where there is no disclosure of domestic violence. The potential damaging effects of bringing a victim and the perpetrator of domestic violence together is well-documented and should be taken into serious consideration.

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[27] Shine Confidential Domestic Abuse, *"When negotiating is not a fair fight."* *http://www.2shine.org.nz/negotiating-not-fair*
[28] Ibid.
[29] Ibid.

RECOMMENDATIONS

(1) The existing s 7 Care of Children Act 2004 should remain in force, due to the importance of the role of Lawyer for the Child for all children involved in the Family Court.

(2) The proposed new section 7A Care of Children Act 2004 should not be incorporated into law, due to the important role lawyers play in ensuring effective access to justice for Family Court users.

(3) The existing section 133 Care of Children Act 2004 should remain in force; the restrictions posed by the Bill will have serious and dangerous consequences for effectively ascertaining children's views.

(4) The existing section 31 Domestic Violence Act 1995 should remain in force; the changes proposed by the Bill allow a measure of risk to the safety of victims of domestic violence and fail to hold some perpetrators to account to an extent disproportionate to any gains achieved by such changes.

(5) The proposed Family Dispute Resolution Service should be reconsidered and amended so as to allow full and effective participation by all parties, both in financial contexts and in the context of family violence.