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Tēnā koe Ruth

Thank you for your correspondence of 7 August and 23 September 2018.

On behalf of the Panel, we really appreciate the effort both you and Deborah have already put into your engagement with us on this important work. We acknowledge the wealth of information you have provided including through Backbone's published reports.

An appendix to this letter answers the questions in your letter of 7 August.

First, however, a response to your proposal to contract with the Panel to facilitate written feedback from Backbone members. Thank you for the offer but we won't be taking it up but do want to suggest an alternative approach.

We acknowledge the importance of your members and others being able to participate in a way that is safe for them. The Panel is very aware of the concerns that many people may have in disclosing sensitive information about themselves and their experiences with the Family Court and related services as part of the consultation process. With this in mind, the Panel has provided two ways in which people can provide their submissions anonymously:

1. Have Your Say (public consultation paper)

The consultation paper (available at <https://consultations.justice.govt.nz/policy/rewriting-family-justice-reforms/#online>) allows people to make a submission completely anonymously. There is an *optional* question at the end of the paper where people can provide their name and contact details should they wish to be contacted by the Panel in future. But there is no requirement for them to do so.

2. Korero Mai/Tell Us Your Story

This is an online tool (available at <https://consultations.justice.govt.nz/policy/korero-mai-tell-us-your-story/>) that allows people to tell their family justice experience to the Panel. This tool does not ask any specific questions - people can share whatever they want to. Submitters are not required to enter any personal details. There is an *optional* text box to enter an email address should the submitter want to receive a receipt and PDF copy of their contribution.

Because we were concerned some people might not feel confident about how their information might be used, we included significant information in the consultation paper about this. The consultation document states that:

- Submissions will only be used by the Panel for the purpose of considering the 2014 family justice reforms. Submissions won't be shared with government agencies other than the Ministry of Justice who is providing secretariat support to the Panel.
- The Ministry of Justice only collects personal information that submitters *choose* to give it while using the consultation website, for example, email addresses. People *can* submit anonymously.
- Submissions will become official information noting that the Ministry of Justice may, however, withhold all or parts of submissions if it is necessary to protect privacy or if the information has been supplied subject to an obligation of confidence. Submitters may ask for all or part of their submission to be treated confidentially.
- The Panel does not want submitters to share documents about any Family Court cases they have been or are currently involved in (such as affidavits) or any specific details about their case (such as case numbers). This will help protect the privacy of the people who are involved, such as children and whānau. It will also help to make sure that submissions do not breach the provisions of the Family Court Act 1980.
- The Panel is not asking submitters to share names or any other information that could identify any other person, including children and whānau. If they do share such details we will ensure they are treated confidentially and will not use them in any way that could result in adverse effects on the submitter.

In evaluating options and developing the process for submissions, the Panel carefully considered the potential effects of the submission on individual privacy, and undertook to mitigate any detrimental impacts where possible.

#### *Talking about court proceedings*

Proceedings under the Care of Children Act 2004 (CoCA) are subject to section 139 of CoCA and sections 11B, 11C and 11D of the Family Courts Act 1980 (FCA) concerning the publication of proceedings. These provisions enable people to talk about their CoCA proceedings with us or to make a submission referring to their case. However, submitters should not identify any children, or vulnerable people who are the subject of the proceedings, or parties to the proceedings, a person who is related to, or associated with, a party to the proceedings or who may be involved.

I understand that the provisions in the FCA were intended to enable people to tell their stories, without names and identifying details so that people's privacy was protected, and that this would help improve public understanding of how the Family Court works. A standard feature of all CoCA decisions is a reminder that any report of proceedings must comply with section 139 CoCA and sections 11B, 11C, and 11D of the FCA. More information about this can be found on the Ministry's website: [www.justice.govt.nz/family/about/restriction-on-publishing-judgments/](http://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/)

We will continue to remind people when we meet with them of their obligation not to include prohibited details of a court case in their submissions.

We cannot change the law, but for our part, we will not publish in any form any identifying information, or any information that may suggest a submitter has breached any COCA or FCA provisions.

### *Contempt of court*

You have raised the issue of being in contempt of court if individual submissions go into too much detail about the circumstances of a Family Court case to which they are party. While we expect a certain level of scrutiny and comment on judicial decision-making to be part of submissions, I reiterate the assurance above: we will not publish or allow to be published in any form any identifying information, or any information that may suggest a submitter has breached any COCA or FCA provisions.

### ***Assistance the Backbone Collective could further provide the Panel to hear the voices of women and children***

We have exchanged several emails about the potential role the Backbone Collective could play in facilitating the Panel to hear directly from the women you represent. Hearing the experiences of those people who have been through the system since the reforms were implemented in 2014 is essential to the Panel's work and we would welcome your assistance to help arrange this.

We agree with the points you raise regarding the appropriateness of the venue, the support available, and ensuring the safety and privacy of the participants. With that in mind, we consider that meetings could be arranged along the following lines:

- The Backbone Collective identify a group of women who have taken part in proceedings under the Care of Children Act 2004 after the reforms were implemented on 31 March 2014 to meet with the Panel in two locations (see further below for discussion on where those locations may be). The Panel would be happy to meet with the participants individually or in a group.
- The identity of the venue will only be disclosed to the Panel members, the participants, support workers, yourselves and the Secretariat (who arrange logistics for the Panel's meetings).
- A support worker specialised in supporting domestic violence victims would be at the venue to welcome participants, support them before and during the meeting with the Panel, and be available for a debrief immediately after the meeting. We would welcome any suggestions you have on who can best provide this service.
- Only the Panel members would attend the meeting. Please note we are not "recording" any of the Panel's meetings. To date the Secretariat has been present to take notes capturing the key points made (and actions) from our many meetings so that the Panel can have written material to draw on at the end of the consultation period. However, I can advise that the Secretariat do not need to be present. Please note though that when we meet with

your members I expect the Panel members may like to take a few notes of issues raised. This would be about the issues or sentiments expressed and would not include identifying information. I would summarise at the end of the session what issues we have noted.

- The participants would be able to bring a support person with them. This is something that we have encouraged in any of our meetings with the public.
- People meeting with the Panel do not need to disclose their names, or any other private details unless this is something they would like to share. This is consistent with the approach we have outlined in the consultation paper – submissions *can* be anonymous.

The material shared with the Panel during these meetings would stay with the Panel only. If we agree on these points, the next step is to work with you to arrange the meetings. We need to do this quickly as we are currently organising meetings in the various places we are travelling to.

I note that your preferred locations for meetings are Auckland and Hamilton. If possible, the Panel would prefer one meeting in the North Island and one meeting in the South Island to provide broader geographical coverage. However, we will take your advice on what is possible to arrange in the short timeframes. To help with planning, the Panel has the following regional visits planned which could include a meeting with your members:

- Hamilton (Monday 8 October – though given the timeframes this is probably not feasible)
- Christchurch (Thursday 25 October)
- Auckland (Wednesday 31 October)

The Panel can provide the following resources and support:

- Costs of venue hire
- Cost of a support worker/counsellor to attend the meetings
- Koha for attendees travel expenses
- A small koha for the Backbone Collective for facilitating the meetings

This is a significant opportunity - the ability to advise the Minister of Justice on how the 2014 family justice reforms can be improved to make things better and safer for children and their families in Care of Children Act proceedings. The Independent Panel is taking very seriously the issues the Backbone Collective has raised about privacy and the security of information and identity of those who have been through or are going through the Family Court processes. We are committed, and have been since the beginning, to ensuring an environment where those who want to, can safely tell us of their experiences.

Nāku noa, nā



Rosslyn Noonan, Chair

**Independent Panel examining the 2014 Family Justice System Reforms**

## Appendix: Answers to your questions from your letter of 7 August 2018

1. *When women make their submission who specifically will handle and look at the information they provide, what delegation are those people, and will they be under a specific confidentiality agreement?*

The Ministry of Justice has provided a Secretariat of four staff (two Policy Advisors, a Senior Advisor and a Policy Manager) to support the Panel in its work and deliver a final report by the end of May 2019. In addition to the Secretariat, the Ministry is looking to engage a small number of people to assist with the summary and analysis of submissions. The exact number of people will be determined by the number of submissions received.

All Secretariat staff are subject to the standard Ministry of Justice employment conditions, which includes an obligation to comply with the Ministry's privacy policy (available [here](#)) and the State Services Code of Conduct (available [here](#)).

Members of the Independent Panel are subject to the confidentiality obligations contained in Schedule 2 of the Standard Government Model Contract (Schedule 2 is available [here](#)).

2. *How will personal details and submissions be stored and who will have access to that storage system?*

Submissions sent via email will be stored in a password protected folder on the Ministry of Justice server, accessible only to the four Secretariat members and shared with the Panel. Any submissions analysts contracted at a later date would also have access to this information. Any contracted staff will be subject to the confidentiality obligations contained in Schedule 2 of the Standard Government Model Contract.

Hard copy submissions will be stored in a locked cupboard at the Ministry of Justice National Office in Wellington, accessible only to the four Secretariat members and shared with the Panel on request. Any submissions analysts contracted at a later date would also have access to this information.

Submissions lodged through the online tool are stored on a cloud hosted by a data processor – Delib. The data is owned by the Ministry of Justice on behalf on the Independent Panel at all times. All data is stored in a New Zealand datacentre. Access to submissions are via a password protected login, unique to each user. Currently, the four Secretariat members have access, with a view to enabling access for each of the Panel members. The Ministry of Justice Web Team have access to the portal in an administrative capacity only. Any submissions analysts contracted at a later date would also have access to the portal for the purposes of coding responses.

The Ministry will not share any information provided through the submissions process to any other government agencies, organisations or anyone else unless one of the following applies:

- the submitter has allowed it
- it is authorised or required by law or, in exceptional circumstances, for reasons permitted under the Privacy Act 1993 such as to avoid prejudice to the prevention,

- detection, investigation, prosecution and punishment of offences; for law enforcement; or to prevent or lessen a serious and imminent threat to somebody's life or health
- the information is to be used in a way that will not identify the submitter, or it is to be used for statistical or research purposes and won't be published in a way that could result in identification.

3. *Will members of the Advisory Group know the names of submitters and/or view submission material and in what format and how will it be shared with them?*

The Panel will test with the Expert Reference Group a draft summary of submissions and will discuss its high-level findings as a result of the consultation process. The Expert Reference Group will not be given the submissions or individual names of submitters.

4. *What protocols will be in place for managing conflicts of interest? What should women do if they are aware of a potential conflict of interest between their case and either a Review Panel member, a member of the Advisory Group, or Ministry of Justice staff?*

Conflicts of interest will be managed on a case-by-case basis. As Chair, I am happy to be contacted in the first instance by anyone who has any concerns regarding conflicts of interest. As noted in answer to question 3 Expert Reference Group Members will not have access to individual submissions. If submissions are made anonymously then the potential for a conflict of interest is very small.

5. *How do you propose managing OIA requests?*

OIA requests will be considered on a case-by-case basis, with the process being managed by the Secretariat in accordance with its Official Information Act obligations. Where practicable, individuals whose information falls under the scope of an Official Information Act request will be consulted about potential release. All or parts of a submission may be withheld where necessary to protect the privacy of natural persons.

It is the Panel's expectation, based on the advice we have received from the Ombudsman's Office, that all submissions detailing personal experiences and where the submitter has requested complete confidentiality, can be withheld under the OIA.

6. *Will women be able to use pseudonyms for their submission or personal presentations to protect their and their children's identity?*

Yes. Any submission can be made anonymously or with pseudonyms.

7. *Will submissions in person (if that occurs) be recorded in any way? If so who will later have access to those recordings and will they be discoverable under the OIA?*

To date, the Secretariat has been taking notes capturing the key points made (and actions) from our many meetings so that the Panel can have written material to draw on at the end of the consultation period. The Panel may also take notes.

The notes taken from these meetings are subject to the OIA as they are official information.

8. *Who will be present at any hearings where individuals are invited to meet with the panel in person and give a verbal submission? What processes will be put in place to protect women and children in these settings?*

We are not having “hearings” but arranging meetings with individuals and groups. The Panel will be present at meetings. The Secretariat will also be present but this can be decided on a case-by-case basis. The protection of all people, including women and children will be treated on a case-by-case basis and can include the addition of support people and making professionals with experience in counselling available.

9. *How will the Review Panel ensure that victims and abusers are not present at submission hearings at the same time and that abusers (or their supporters) will not be able to ascertain when the victim(s) are meeting with the panel?*

The Panel is not holding public meetings. Instead, meetings are being scheduled well in advance with a mix of court users, court professionals and other non-government organisations to reduce the possibility that victims meet their abusers.

10. *How will women’s information be kept safe in light of previous information breaches?*

The Ministry of Justice’s privacy policy can be found here:

[https://consultations.justice.govt.nz/privacy\\_policy](https://consultations.justice.govt.nz/privacy_policy)

The Ministry will not share any information provided through the submissions process to any other government agencies, organisations or anyone else unless one of the following applies:

- the submitter has allowed it
- it is authorised or required by law or, in exceptional circumstances, for reasons permitted under the Privacy Act 1993 such as to avoid prejudice to the prevention, detection, investigation, prosecution and punishment of offences; for law enforcement; or to prevent or lessen a serious and imminent threat to somebody’s life or health
- the information is to be used in a way that will not identify the submitter, or it is to be used for statistical or research purposes and won’t be published in a way that could result in identification.

Care has been taken to ensure that all information storage processes comply with the Office of the Government Chief Information Officer’s security requirements and Ministry of Justice security standards.

11. *How can we be assured that information will not be leaked to the Law Society or the Family Court if we or our members share detail in their submission and given that two of the Review Panel members are Family Court Lawyers?*

All three Panel members have undertaken to do this work to the best of their abilities which includes acting with integrity.

Members of the Independent Panel are subject to the confidentiality obligations contained in Schedule 2 of the Standard Government Model Contract (Schedule 2 is available [here](#)).

12. *If women have particular questions about their safety in participating in the Review who will be a contact person for them and what delegation are they?*

This depends on the nature of the particular questions. As Chair, I am happy to be contacted in the first instance by anyone who has any concerns regarding their safety.

13. *Will women and children be able to have support people with them if they make submissions in person?*

Yes, anyone talking with the Panel may bring a support person with them.

14. *In light of the specific questions below we would like to know how the panel will ensure equitable access and involvement in the review for women and children who are victims of violence and abuse and under Family Court orders?*

While the Panel acknowledges that the Backbone Collective has identified a range of issues in terms of giving your members and other women the opportunity to participate in a safe way, the Panel considers the fact that people *can* make anonymous submissions goes a significant way in mitigating these issues.

15. *Many women have told Backbone they are under gagging orders, or other prohibitive orders, applications, directions and decisions from the Family Court preventing them from speaking about the violence and abuse they have experienced or the Family Court proceedings. Are these women able to submit safely to the Review?*

Yes, people can make anonymous submissions and meet with the Panel without giving names or identifying details. However, as noted in the letter above, we have asked that people do not include case details or identifying information in their submission. Information about a court case can only be released in accordance with the legislative requirements in the Care of Children Act 2004 and the Family Courts Act 1980 which I understand is a standard statement on all written decisions of the Court.

As noted in the letter, we will not publish or allow to be published in any form any identifying information, or any information that may suggest a submitter has breached any COCA or FCA provisions.

16. *Many mothers are prevented via court orders from talking with their children about the abuse. How will mothers enable their children to participate safely in the Review without breaching court orders?*

The Panel has been tasked with evaluating a package of changes to the family justice system made by the previous Government in 2014. The Panel will consider the 2014 reforms' effectiveness in protecting the interests of children, and achieving safe and durable outcomes for them when resolving disputes about their care or contact. The Panel is particularly interested in hearing about the experiences of children, from their perspective, with services, professionals and the process of reaching care arrangements. While their experience with both parents is obviously interlinked with their experience of the care arrangement process, the consultation tools have been designed so that children and young

people can give feedback about what worked or didn't work for them without having to go into detail about their case.

Young people over the age of 13 are encouraged to have their say through the online tool should they be interested in being involved, and depending on other factors such as their age, level of comprehension and ongoing impacts the process may be having on them. Any perspectives they communicate with the Panel would be extremely valuable, even at a high-level.

17. *Many children are commonly prevented by the abuser and Family Court orders from knowing about the Family Court proceedings or speaking about the violence and abuse. Backbone has heard from mothers who told us their children were prevented by the court from accessing therapeutic interventions so we assume these children would also be prevented from speaking to the Review Panel. Will children who are under these restrictive court orders be able to safely participate in the review and if so how will this be managed?*

The submissions process is not the only way the Panel is planning to hear the voices of children. The Panel will be commissioning an independent third-party supplier to capture in a report the lived experiences of children/young people, Māori, Pasifika, new migrant parents, and parents with disabilities who have had interactions with the family law system since 2014.

18. *Most fathers of children who have experienced violence and abuse and who are under COCA orders, retain guardianship rights. Will children require the consent of both their guardians in order to participate in the Review? If they do, this will place them at potentially significant risk. If these children are not safe enough or not permitted to speak with the Review Panel it will mean the panel's findings would be missing the voices of those most at risk from Family Court proceedings.*

A case by case approach will need to be applied.

19. *All women with involvement with the Family Court are bound by section 11B-11D of the Family Court Act 1980, to not publish court documents and information about their cases. It is unclear what the term 'publish' includes. Would a written submission to the Panel be classified as a publication? How will the Review Panel respond to that to ensure women are not prosecuted or punished for making a submission in writing or in person?*

Proceedings under the Care of Children Act 2004 (CoCA) are subject to section 139 of CoCA and sections 11B, 11C and 11D of the Family Courts Act 1980 (FCA) concerning the publication of proceedings. These provisions enable people to talk about their CoCA proceedings with us or to make a submission referring to their case. However, they cannot identify any vulnerable people who are the subject of the proceedings, or parties to the proceedings, a person who is related to, or associated with, a party to the proceedings or who may be involved, e.g. as a support person or any witnesses in the proceedings.

20. *How will children's submissions be kept safe by the Review Panel to ensure the information is not leaked back to the abuser or the Family Court?*

Please see the answer around confidentiality obligations at question 1 and the answer outlining storage procedure at question 2. The Panel and Secretariat are obligated to act in accordance with Principle 11 of the Privacy Act 1993 through this entire project.

*21. The Terms of Reference exclude care and protection cases from the Review. Many of the mothers who have spoken with Backbone have said that they are involved in Care of Children Act proceedings and Care and Protection proceedings simultaneously. Women have also explained that the Family Court has involved Oranga Tamariki in their domestic violence proceedings and Care of Children Act proceedings and section 132 reports and Family Group Conferences have been ordered by the Court. How can these women and children take part in the review?*

The panel is interested in hearing from anyone who has had experience of multiple proceedings at the same time post 2014, under the Care of Children Act and any other Act, for example, the Domestic Violence Act 1995.

There is also nothing preventing any submitter from raising issues outside of the scope of the Panel's Terms of Reference. The Minister of Justice has directed the Panel to collate feedback on any matters outside the scope of the 2014 reforms so he can consider these at the appropriate time.

*22. The Terms of Reference are not clear on whether or not Domestic Violence Act proceedings will also be included. Many Backbone members have DV Act and COCA proceedings running simultaneously. How can women refer to both sets of proceedings in the review given that many have told us that COCA proceedings are undermining and overtaking their DV Act proceedings?*

Please see the answer to question 21.

*23. Will the report from the Review Panel be made publicly available?*

The Independent Panel will provide its report to the Minister of Justice by the end of May 2019. It will be up to the Minister of Justice to publicly release the report.

*24. Will individual submissions or a list of submitters be made publicly available?*

A list of submitters will be included in the Report to the Minister of Justice. Proactively releasing a list of submitters to the Issues Paper is not planned at this time. We have not yet made a decision about proactive release of individual submissions.