NEW ZEALAND LAW SOCIETY
NZLS EST 1869

Law Society Building, 26 Waring Taylor Street, Wellington,
DX SP20202, Wellington or PO Box 5041, Lambton Quay,
Wellington 6145, New Zealand

TEL +64 4 472 7837 • FAX +64 4 473 7909
E inquiries@lawsociety.org.nz
www.lawsociety.org.nz • my.lawsociety.org.nz

23 February 2015

Civil Law and Human Rights Team
Ministry of Justice
Justice Centre
DX SX10088
Wellington 6011

By email: humanrights@justice.govt.nz

International Convention on Civil and Political Rights: New Zealand's sixth periodic review 2015 – draft Government report (CCPR/C/NZL/6)

EXECUTIVE SUMMARY

1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the draft Sixth Report of the New Zealand Government (draft report), to be submitted to the UN Human Rights Committee (Committee) under article 40(1)(b) of the International Covenant on Civil and Political Rights (ICCPR).

2. The Committee's aim in its work under article 40 is to "engag[e] in a constructive dialogue with each reporting State".[1] In the Law Society's view, that aim is best facilitated by State reporting that is objective, transparent, non-selective, constructive and non-politicised.[2] The Law Society's comments on the draft report are directed to that end.

3. In the Law Society's respectful view, the draft report does not fully address the issues raised in the Committee's list of issues prior to the submission of the sixth periodic report of New Zealand (LOIPR), in particular the significant legislative developments in the current reporting period (January 2008 to March 2015).[3] Several laws have been enacted during this period despite raising serious questions of consistency with the New Zealand Bill of Rights Act 1990 (Bill of Rights) and corresponding protections in the ICCPR. In many cases those laws were enacted in the face of negative section 7 reports by the Attorney-General. The Law Society refers to the:

   (a) New Zealand Public Health and Disability Amendment Act 2014;

   (b) Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010;

   (c) Immigration Amendment Act 2013;

---

1 See Human Rights Committee *Guidelines Regarding the Form and Contents of Periodic Reports from States Parties* CCPR/C/20/Rev.2 (1995) at [4].

2 Compare the principles of the universal periodic review mechanism: *Resolution on Institution-building of the United Nations Human Rights Council* GA Res 5/1 (2007) at [3(g)].

3 Human Rights Committee *List of issues prior to the submission of the sixth periodic report of New Zealand* at [1.]

(d) Criminal Investigations (Bodily Samples) Amendment Act 2009;

(e) Parole (Extended Supervision Orders) Amendment Act 2009 and Parole (Extended Supervision Orders) Amendment Act 2014;

(f) Sentencing and Parole Reform Act 2010;

(g) Corrections Amendment Act 2013;

(h) Prisoners' and Victims' Claims (Continuation and Reform) Amendment Act 2013; and

(i) Public Safety (Public Protection Orders) Act 2014.

4. Those laws are given either insufficient or no coverage in the draft report. This list also raises questions as to the effectiveness of the section 7 reporting mechanism.

5. The Law Society also recommends:

(a) that the report refer to the Human Rights Amendment Bill 2011; and

(b) an amendment to the description of the effect of the Family Court reforms.

Section 7 reporting mechanism

6. The section 7 reporting mechanism is critical: it is the sole formal mechanism to ensure the consistency of legislation with domestic and international human rights standards. The extent to which it protects civil and political rights in New Zealand depends upon its robustness and effectiveness.

7. The draft report states (at [10]):

> Section 7 of NZBORA requires the Attorney-General to inform the House of Representatives about any provision in a Bill that appears to be inconsistent with any of the rights and freedoms affirmed in NZBORA. Parliament may form a different view about whether a particular right or freedom is limited or whether the limitation is justified. However that decision is informed by the opinion of the Attorney-General. From January 2008 to September 2014, 21 section 7 reports have been tabled. A review of Standing Orders in 2014 led to an amendment requiring all section 7 reports to be referred to a select committee for consideration.

8. In the Law Society's view, the draft report does not adequately address the implications for New Zealand's compliance with the ICCPR of laws passed in the face of negative section 7 reports. Further, while the Law Society welcomes the recent amendment requiring all section 7 reports to be referred to a select committee, it is concerned that the draft report does not consider

other long-expressed concerns and recommendations directed to ensuring a robust and effective reporting mechanism.

Recommendation:

9. The Law Society recommends that the report identify and explain all examples of legislation enacted despite advice from the Attorney-General that the legislation appeared inconsistent with the Bill of Rights.

Legislation enacted in breach of the Bill of Rights

10. The LOIPR (paragraph [6]) requests that New Zealand's sixth periodic report "state the measures taken to revise the laws that have been enacted but are inconsistent with the Bill of Rights and to ensure that new legislation is consistent with the obligations of the State party under the Covenant".

11. As noted, in the reporting period a number of legislative measures have passed into law despite raising questions of consistency with the Bill of Rights and corresponding protections in the ICCPR and other international human rights treaties, in many cases notwithstanding negative section 7 reports. These enactments are given either insufficient or no coverage in the draft report.

Rights-inconsistent legislation referred to in the draft report

12. The following rights-inconsistent legislation is referred to in the draft report but with no or insufficient explanation of the rights-infringing nature of the legislation. There are important points about this legislation which should be made in the report in order to respond to the Committee's LOIPR in an objective, transparent and non-selective manner.

New Zealand Public Health and Disability Amendment Act 2014

13. The draft report (paragraphs [14] – [15]) briefly discusses the New Zealand Public Health and Disability Amendment Bill (No 2) 2013. The draft report correctly notes that the Bill was introduced in response to the Court of Appeal's decision in *Atkinson v Ministry of Health*,[4] but appears to suggest that the Bill "addressed" the Court's concerns. The draft report notes the Bill was the subject of a report under section 7 of the Bill of Rights, but provides no further detail.

14. In fact, the Bill was passed into law under urgency in a single sitting day, bypassing select committee scrutiny and precluding public participation or informed debate. The Law Society expressed its concern to the Attorney-General at the legislative process, noting that no reasons had been given as to why urgency was necessary.

15. The Act limits the Crown's liability in respect of funding disability support or health services provided by family members, limits the effects of the Court of Appeal's finding that the exclusion

[4] *Atkinson v Ministry of Health* [2012] NZCA 184, [2012] 3 NZLR 456, (2012) 9 HRNZ 572.

of family members from payment for the provision of funded disability support services was inconsistent with the right to be free from discrimination affirmed in section 19 of the Bill of Rights, and precludes future complaints and civil proceedings alleging unlawful discrimination in respect of family care policies. The Attorney-General's section 7 report on the Bill concluded that it would authorise family care policies which could breach the right to be free from discrimination affirmed in section 19 of the Bill of Rights, and appeared to be inconsistent with the right to judicial review affirmed in section 27 of the Bill of Rights. The Bill would prevent a person from challenging the lawfulness of a decision on the basis that it was inconsistent with the right to be free from discrimination.

16. The Law Society in its submission on the Bill endorsed the conclusions in the Attorney-General's section 7 report. It considers that the Act breaches section 27 of the Bill of Rights. Not allowing the courts to review decisions made in exercise of a legislative function, and failing to provide reasons for rushing the legislation through is quite alien to the expectations New Zealanders have of their parliamentary process.

Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010

17. The draft report (paragraph [22]) refers briefly to the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 and to the decision of the High Court in *Taylor & Ors v Attorney-General*.[5] The draft report notes that the Act disenfranchises all persons imprisoned in New Zealand at the time of a general election, contrary to section 12 of the Bill of Rights and Article 25 of the ICCPR, and that the High Court in Taylor regarded the amendment as "constitutionally objectionable" but was unable to intervene due to parliamentary supremacy.

18. The Law Society considers the draft report should explain the rights-infringing nature of the legislation. The Attorney-General issued a negative section 7 report in relation to the Bill, noting that it appeared to be inconsistent with the right to vote affirmed by section 12 of the Bill of Rights and the corresponding Article 25 of the ICCPR.

19. In its submission on the Bill the Law Society endorsed the analysis and conclusions reached in the Attorney-General's section 7 report. It considers the Bill's enactment was an unnecessary and retrograde step. It considers the Act breaches section 12 of the Bill of Rights and the corresponding Article 25 of the ICCPR. It notes (as did the Attorney-General) that blanket disenfranchisement of prisoners has been held inconsistent with electoral rights by the Supreme Court of Canada,[6] the European Court of Human Rights,[7] the High Court of Australia[8] and the South African Constitutional Court.[9]

---

5 *Taylor & Ors v Attorney-General* [2014] NZHC 2225.

6 *Sauvé v Canada (Attorney General)* [1993] 2 SCR 438.

7 *Hirst v the United Kingdom (No 2)* [2005] ECHR 681 (Grand Chamber, ECHR).

8 *Roach v Electoral Commissioner* [2007] HCA 43.

9 *Minister of Home Affairs v National Institute for Crime Prevention and the Re-Integration of Offenders* 2004 (5) BCLR 445 (CC).

Immigration Amendment Act 2013

20. The LOIPR (paragraph [16]) requested information on:

> ... the measures taken to ensure that the State party's policy of "safe third countries" does not breach the principle of non-refoulement. Please describe the circumstances that warrant the detention of undocumented migrants, and report on the conditions of such detention. Please also provide information on the measures taken to ensure that asylum seekers and undocumented migrants are not detained in correctional facilities together with convicted prisoners. Please provide an update on the asylum-seeking application and processing procedure for "mass arrival[s]" ... introduced by the Immigration Amendment Act.

21. While the draft report comments on "mass arrivals" and the Immigration Amendment Act 2013 (paragraphs [110] – [112]), the Law Society does not consider this coverage adequately responds to the information sought in the LOIPR.

22. The Bill would allow for the detention of "mass arrivals" (more than 10 (subsequently increased to 30) people) of asylum seekers into New Zealand, and further restricts judicial review proceedings.

23. The Ministry of Justice's legal advice to the Attorney-General concluded that the Bill was consistent with sections 22 and 27(2) of the Bill of Rights (the right not to be arbitrarily detained and the right to judicial review).

24. The Law Society respectfully disagrees with that advice. In its submission on the Bill, the Law Society noted that despite the Bill being directed at asylum seekers, the legal advice was silent as to New Zealand's obligations under the Refugee Convention. The Law Society considers that the Bill is inconsistent with section 22 of the Bill of Rights, the corresponding Article 9 of the ICCPR, the right to seek asylum contained in Article 14 of the Universal Declaration of Human Rights and the elaboration of that right in Article 31 of the Refugee Convention.

25. The Law Society notes that the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also expressed concern at the Immigration Amendment Bill, prior to it coming into force, in its latest report to New Zealand.[10] The Subcommittee noted that the amendments might have the effect of depriving persons in need of protection of their liberty based solely on the manner of their arrival in the state party.

[10] *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to New Zealand* CAT/OP/NZL/1 (2014) at [22]. Similar concern was also raised by the Committee on the Elimination of Racial Discrimination in its last report (*Concluding observations of the Committee on the Elimination of Racial Discrimination: New Zealand* CERD/C/NZL/CO/18-20 (2013) at [20]).

Rights-inconsistent legislation not referred to in the draft report

26. The draft report makes no mention of several Bills enacted in the reporting period notwithstanding serious concerns having been raised about their inconsistency with international human rights standards, including the ICCPR, and in some cases negative section 7 reports by the Attorney-General. These are discussed below.

Criminal Investigations (Bodily Samples) Amendment Act 2009 – Article 17, ICCPR

27. The draft report does not refer to the Criminal Investigations (Bodily Samples) Amendment Act 2009, which empowered the taking and retention of DNA samples without consent or judicial warrant (by reasonable force if necessary) from people charged with a broad range of offences.

28. The Attorney-General's section 7 report concluded that the Bill appeared to be inconsistent with the right against unreasonable search and seizure affirmed by section 21 of the Bill of Rights and the protection against arbitrary or unlawful interference with privacy contained in Article 17 of the ICCPR. The Bill lacked the strict substantive and procedural safeguards necessary to meet those standards (and accepted as necessary in comparable jurisdictions).

29. In its submission on the Bill, the Law Society endorsed the conclusions reached in the Attorney-General's report, and considered that no contrary view was reasonably possible. It remains of the view that the Act breaches section 21 of the Bill of Rights and the corresponding Article 17 of the ICCPR. It further considers that the Act as it applies to 14 to 16 year olds is difficult to reconcile with New Zealand's obligations under the United Nations Convention on the Rights of the Child.

Parole (Extended Supervision Orders) Amendment Act 2009 – Articles 14, 9

30. The draft report is also silent as to the Parole (Extended Supervision Orders) Amendment Act 2009. This empowered the Parole Board to impose residential restrictions such as electronically monitored home detention on an offender for up to 10 years following conviction.

31. The Attorney-General reported that the Bill (which would punish offenders twice for the same offence and authorise arbitrary detention) appeared to be inconsistent with the rights against retroactive penalties, double jeopardy and arbitrary detention affirmed in sections 26 and 22 of the Bill of Rights.

32. The Law Society acknowledges the concerns expressed in the Attorney-General's report. It believes the Act raises questions of compliance with sections 26 and 22 of the Bill of Rights and the corresponding Articles 14 and 9 of the ICCPR.

33. The Law Society refers also to the Parole (Extended Supervision Orders) Amendment Act 2014 (further extending the regime by permitting renewal of an ESO for consecutive 10-year periods), which was also passed despite a negative section 7 report by the Attorney-General.

34. The Law Society in its submission on the Parole (Extended Supervision Orders) Amendment Bill agreed with the Attorney-General that the Bill limits fundamental rights to an extent not

justified in a free and democratic society. The Act extends a regime of retroactive penalties to a wider class of offences for which offenders are effectively punished twice, and in some cases consecutively. The Law Society remains of the view that the rights against retroactive penalties and double jeopardy affirmed in the Bill of Rights and the corresponding article 14(7) of the ICCPR, are fundamental constitutional safeguards within New Zealand's system of criminal justice and should not be eroded.

Sentencing and Parole Reform Act 2010 – Article 7

35. The Sentencing and Parole Reform Act 2010 is also not addressed in the draft report. The Act provides for full sentences, including life sentences, to be served without parole for repeat violent offenders convicted of a second or third specified serious violent offence.

36. The Attorney-General's section 7 report concluded that the provision for a life sentence to be imposed for a third listed offence appeared to be inconsistent with the right not to be subjected to disproportionately severe treatment affirmed by section 9 of the Bill of Rights, noting that the Bill might result in disparities between offenders that are not rationally based and gross disproportionality in sentencing. The Law Society endorsed the Attorney-General's analysis and conclusions in its submission on the Bill.

37. The Law Society considers that the mandatory sentencing regime introduced by the Sentencing and Parole Reform Act 2010 breaches section 9 of the Bill of Rights and may well result in cruel or inhuman punishment in breach of article 7 of the ICCPR and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, because of restrictions on the ability of the courts and the Parole Board to consider the individual circumstances of each case.

Corrections Amendment Act 2013 – Article 7

38. The draft report does not address the Corrections Amendment Act 2013. This Act authorises mandatory strip-searching of prisoners in a broader range of circumstances, in a more invasive manner and with fewer safeguards than previously provided for. While the Law Society accepts that strip-searching of prisoners is necessary in certain circumstances, it notes that it is obviously degrading and that its use must be carefully circumscribed.

39. The Ministry of Justice's legal advice to the Attorney-General concluded that while a physical search is a restraint on freedom and an affront to human dignity, the Bill was consistent with the Bill of Rights (focusing on the right against unreasonable search of the person affirmed in section 21 of the Bill of Rights).

40. In its submission on the Bill, the Law Society respectfully disagreed with the legal advice to the Attorney-General, noting that it did not address the right not to be subjected to degrading treatment, and the right of persons deprived of liberty to be treated with humanity and with respect for the inherent dignity of the person, affirmed by sections 9 and 23 of the Bill of Rights respectively.

41. In the Law Society's view, the justification for the following legislative measures was not evident:

    (a) providing that a prisoner may be required to bend his or her knees, with legs spread apart, until his or her buttocks are adjacent to his or her heels in *all* strip searches (rather than only where there are reasonable grounds for believing that a prisoner has in his or her possession an unauthorised item);

    (b) extending authority to use an illuminating or magnifying device to conduct a visual examination around the anal and genital areas to all strip searches (rather than only where there are reasonable grounds for believing that a prisoner has in his or her possession an unauthorised item); and

    (c) providing for mandatory strip-searching when prisoners are placed in, and each time the prisoner is returned to, segregation areas when subject to a segregation direction because of a risk of self-harm (the Law Society noted that provision for *discretionary* strip-searching would better allow for the traumatic and potentially risk-exacerbating nature of the strip-search to be balanced against the need to mitigate the risk of self-harm).

42. The Law Society considers that the Act breaches sections 9, 21 and 23 of the Bill of Rights, and may well result in degrading treatment in breach of Article 7 of the ICCPR.

Prisoners' and Victims' Claims (Continuation and Reform) Amendment Act 2013

43. The draft report does not refer to the Prisoners' and Victims' Claims (Continuation and Reform) Amendment Act 2013. The 2013 Act continues the application of the Prisoners' and Victims' Claims Act 2005 that would otherwise have expired under a sunset clause, in restricting awards of compensation to prisoners for rights breaches. In order for a court or tribunal to make an award of damages, it must be satisfied that there has been "reasonable use" of internal and external complaint mechanisms that are reasonably available, and that another remedy would not be effective in addressing the complaint.

44. The Attorney-General concluded that the Bill was consistent with the right to an effective remedy and the right to freedom from discrimination affirmed in section 19 of the Bill of Rights.

45. However, the Law Society considers that the 2005 and 2013 Acts are unnecessary given the approach outlined by the Supreme Court in 2007 in *Taunoa v Attorney-General*,[11] which would apply if the Acts were not in place. *Taunoa* was not decided under the 2005 Act and so represents the law if the Acts were allowed to expire. The ruling establishes that: (a) the courts should award compensation for a breach of the Bill of Rights if remedies other than compensation would not provide an effective remedy for the breach; and (b) the courts should consider certain factors when assessing whether and how much compensation should be awarded. The Law Society believes that the courts should be able to determine when it is necessary to compensate prisoners in order to provide an effective remedy for rights abuses.

[11] *Taunoa v Attorney-General* [2007] NZSC 70, [2008] 1 NZLR 429.

46. The Law Society notes that the United Nations Committee against Torture observed in its 2009 concluding observations that the 2005 Act would limit the award of compensation to prisoners in breach of Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[12]

Public Safety (Public Protection Orders) Act 2014 – articles 14(7), 9(1)

47. The Public Safety (Public Protection Orders) Act 2014 allows for very high risk offenders who have served their full prison sentence to be kept in detention indefinitely. Public Protection Orders allow indefinite civil detention in a residence on prison grounds for a specific group of serious sexual or violent offenders.

48. The Attorney-General concluded that the Bill was consistent with sections 22 and 26(2) of the Bill of Rights (arbitrary detention and double jeopardy).

49. The Law Society respectfully disagreed with the Attorney-General's report and submitted that the Bill as introduced to Parliament (and as passed) provided for orders that were punitive in effect and consequent on earlier serious offending, and so engaged section 26 of the Bill of Rights (double punishment).

50. The Law Society remains of the view that the need for the Act was not established given the extensive range of sentencing and parole options already available for serious violent or sexual offenders, designed to protect public safety. Such options include the wider availability of preventive detention since 2002, extended supervision orders under the Parole Act 2002, and care orders for intellectually disabled offenders under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

51. Australia has previously introduced similar legislation with the purpose of protecting public safety including the Prisoners (Sexual Offenders) Act 2003 (Qld). An individual complaint against a civil detention order made under this Act was taken to the United Nations Human Rights Committee in 2007 – *Fardon v Australia*.[13] The Human Rights Committee concluded that the preventive orders amounted to arbitrary detention and therefore a violation of Article 9(1) of the ICCPR. The Committee held that imprisonment is fundamentally penal in character, and should therefore only be imposed following conviction of a criminal offence. In the Committee's view, the "civil detention" order was essentially providing a new penalty for the applicant that is to commence at the end of another sentence. That sentence however is sourced on the original offence for which the sentence has already been served.

52. As the central focus of the Public Safety (Public Protection Orders) Act is on public protection rather than any clear therapeutic orientation, the Law Society considers there is a strong likelihood that, in line with the findings of the Human Rights Committee in *Fardon v Australia,* public protection orders, if challenged, would be found to amount to arbitrary detention in breach of Article 9 of the ICCPR.

---

[12] *Concluding observations of the Committee against Torture: New Zealand* CAT/C/NZL/CO/5 (2009) at [14].

[13] *Fardon v Australia* (CCPR/C/98/D/1629/2007)

Recommendation:

53. The report when finalised will play an important role in promoting fulfilment of New Zealand's human rights obligations under the ICCPR and it is therefore important that the report presents New Zealand's human rights situation in a full, objective and transparent manner. Accordingly the Law Society recommends that the report should provide a full account of the concerns expressed above.

Human Rights Amendment Bill 2011

54. The Law Society notes that the government has introduced a Bill[14] proposing to broaden the Human Rights Commission's monitoring and reporting functions, to include promoting and monitoring New Zealand's compliance with, and reporting on, implementation of international human rights instruments. In its submission on the Bill the Law Society expressed the view that the amendments would strengthen the significant role the Commission can play in promoting and protecting human rights in New Zealand, and enhance New Zealand's ability to comply with its international human rights obligations.

Recommendation:

55. The introduction of the Bill is a positive development in the reporting period, and could be included in the report to the Committee.

Family Court reforms

56. The draft report (at [41]) describes the recent reforms to the Family Court system, including the new requirement for most parents contemplating Family Court proceedings to attend out of court Family Dispute Resolution, as "significant changes to enable a modern, accessible family justice system that is efficient, effective, and more responsive to the needs of children and vulnerable people".

57. These are the most significant reforms to the Family Court since its establishment 30 years ago. Most of the reforms came into force in March 2014 and have been in place for less than a year. The draft report says (at [44]) that the government will monitor the impact of the reforms and conduct an evaluation, but nevertheless states (at [43]) that "early results suggest that the reforms are having a positive effect on the process, such as more people resolving their parenting disputes without having to go to court and an obvious decrease in the number of parenting applications to the Family Court".

58. In the Law Society's view there is no evidence currently available to substantiate the statement that the new system is more efficient, effective or responsive to the needs of children and vulnerable people, and there is considerable anecdotal evidence – detailed in Appendix 1 – to

[14] The Human Rights Amendment Bill 2011 was reported back from the Justice and Electoral Select Committee on 30 April 2014, and is currently awaiting its second reading.

suggest there have been delays and other problems in the immediate post-implementation period.

Recommendation:

59. The Law Society recommends that the statement in paragraph [43] is removed from the report.

Conclusion

60. The Law Society trusts this submission will assist the Ministry in finalising the draft report. If you require further information or clarification, please contact the convenor of the Law Society's Human Rights and Privacy Committee, Dr Andrew Butler, through the Law Society's Law Reform Manager, Vicky Stanbridge (vicky.stanbridge@lawsociety.org.nz / 04 463 2912 ddi).

Yours sincerely,

Chris Moore
President

Appendix 1 attached

NZLS submission dated 23.2.15, Appendix 1

Family Court reforms

Draft Government report (CCPR/C/NZL/6)	**Law Society's comments**
Paragraph 36 *"The Government has undertaken further work to ensure the Family Court is more efficient, including initiatives to reduce delays"*	The Law Society questions this statement and notes that delays for settlement conferences and other judicial events have increased over the past year, particularly in the Auckland region. In some areas, matters are waiting 3 to 5 months for a settlement hearing date to be allocated.
Paragraph 41 *"…. the Government made significant changes to enable a modern, accessible family justice system that is efficient, effective, and more responsive to the needs of children and vulnerable people."*	While the Government has made the most significant changes to the Family Court since its establishment 30 years ago, there is not yet any evidence proving that the new system is more efficient, effective or responsive to the needs of children and vulnerable people. In fact, officials have indicated that it is too early to tell whether or not the changes made to the family justice system have had their desired effect (as expressed by Ministry of Justice officials at an Advisory Panel meeting on 4.11.14).
Paragraph 42 "For cases that do go to court, new case tracks will ensure matters are resolved more quickly and efficiently."	The Law Society questions this statement. There are significant delays in matters being allocated hearings and other judicial events in the Family Court. Matters filed in March 2014 (approximately 1,700 applications), prior to the implementation of the new family justice system, are at various stages of readiness and are still waiting to be heard (as advised by the Ministry of Justice at a meeting on 11.2.15).

Paragraph 43 "Early results suggest that the reforms are having a positive effect on the process, such as more people resolving their parenting disputes without going to court and an obvious decrease in the number of parenting applications to the Family Court."	There is not yet any evidence to show that the reforms are having a positive effect on the process, such as more people resolving their parenting disputes without going to court. Anecdotal evidence from family lawyers, FDR providers and suppliers suggests that the $897 cost of parties attending mandatory FDR before being able to access the Family Court (unless exempted) is a significant barrier with some parties disengaging from the process altogether. There will obviously be a decrease in parenting applications to the Family Court because of: • mandatory attendance at a parenting information programme prior to applying to the Family Court; • mandatory attendance at FDR (unless exempted) prior to applying to the Family Court; and • section 139A of COCA which prohibits parties filing parenting applications if an order has been made within the preceding two years. In the first few months following implementation of the new family justice system, there was a significant delay in parties accessing FDR being assessed and mediations being allocated and completed. FDR statistics received from the Ministry of Justice for the month ending January 2015 show that only 782 mediations have been completed, with 710 exemptions from FDR being issued. The Law Society is concerned about the low volume of cases where mediations have been completed or exempted (1,492) compared to the volume of applications for guardianship and

	parenting orders made to the Family Court in any one year.[15] While there has been a reduction in the number of parenting applications to the Family Court, there has been a significant increase in the number of parenting applications being made on a without notice basis, presumably because of the issues of delay.

[15] Figures received from the Ministry of Justice in November 2011 in response to an Official Information Act request show that 26,281 substantive guardianship and parenting applications were made to the Family Court in the 2010/2011 financial year.