



**CHILDREN'S COURT OF VICTORIA
COURT SERVICES VICTORIA**

**EVALUATION OF THE
CONCILIATION CONFERENCING MODEL**

FINAL REPORT

6 SEPTEMBER 2016



HEALTH OUTCOMES INTERNATIONAL

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EXECUTIVE SUMMARY

E.1 CONTEXT FOR EVALUATION OF THE CONCILIATION CONFERENCING MODEL

The Child Protection Proceedings Taskforce was formulated in 2009 to investigate and provide recommendations on measures to reduce the adversarial nature of Children's Court processes including exploring the use of alternative dispute resolution mechanisms, such as conciliation conferencing model, (CCM) where appropriate to reduce the time it takes to resolve matters in the Children's Court. One of the recommendations of the Taskforce was to introduce child protection resolution conferences in the Children's Court that were separate to Court processes.

To complement the legislative and policy changes that were implemented by the Victorian Government to improve child protection; the CCM was introduced, as a pilot program, in the 2010-11 budget with the overarching objective to achieve an agreed outcome and early resolution in a non-adversarial manner in child protection cases without having to resort to a contested hearing in the Children's Court.

The model aims to facilitate constructive and informed engagement between all parties (the child, their families, child protection workers and legal representatives) in order to reach agreement on court orders, conditions and associated approaches to care which are in the best interests of the child. Through this mechanism, all legal parties can attend a conference facilitated by a trained convenor to discuss a range of issues that impact on the safety and wellbeing of the child. The aim of reaching agreement as to the care of the child and approaches to addressing the relevant risk factors in a non-adversarial manner are core elements of the discussion that takes place between those people present in the conferences. It should be noted that in Melbourne, the conferences are convened away from the court setting, in a separate building, although this is not always the case regionally.

The Conciliation Conferencing Model (CCM) was established as a pilot program in 2010. Following an evaluation of the pilot the CCM was expanded state-wide in 2012. Court Services Victoria (CSV) appointed Health Outcomes International (HOI) to undertake an evaluation of the state-wide CCM which commenced in December 2015 and concluded in July 2016.

E.2 EVALUATION OBJECTIVES AND METHODOLOGY

Two broad objectives were established for the evaluation:

1. To undertake a statewide review of the operations of the existing CCM with a focus on the strengths and benefits and to provide recommendations on approaches to measure and manage the hidden benefits and on how the CCM might be further refined to improve the outcomes.
2. To confirm the likely impacts, on the CCM, of changes to the Children, Youth and Families (Permanent Care and Other Matters) legislation (that take effect in March 2016) and identify methods to effectively apply the strengths of the CCM within the new legislative landscape ensuring benefits can continue to be realised in the future.

The evaluation methodology included a rapid literature review that was undertaken to examine current best practice approaches to conciliation conferencing; program data and documentation review; comprehensive stakeholder consultations (n=38); online survey of stakeholders (n=95); conference observations (n=18); and an economic analysis.

E.3 SUMMARY OF KEY FINDINGS

Overall the CCM works well. It provides appropriate opportunities for parties to have a voice in a non-adversarial setting in which an independent convenor assists in helping parties to focus on the future and consider the best interests of the child. Parents reported that they prefer a conferencing (rather than a Court) process and most feel they have been able to 'have their say.'

The conference process is more time efficient and cost effective than contested hearings. Across the state, forty per cent of cases referred to conference are settled at conference.

It is unlikely that changes to legislation will adversely impact conferencing outcomes.

With regard to legislative amendments i.e. *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*, our assessment of the costs, statistics and the feedback through consultations, is that whilst there is a concern about the timeframe within which families now have to work, there does not appear to be evidence of any other significant impact.

Feedback from the stakeholder interviews and survey was consistently highly complementary of the skills, capabilities and professionalism of the CCU team. It was thought that convenors set the tone for each conference and their independence is critical to progressing dialogue between parties. We also observed that parties treated convenors respectfully within the conferences.

E.4 RECOMMENDATIONS FOR IMPROVEMENT

While the conferencing model is operating well, opportunities were identified that are likely to further enhance the model. During the 6 month period that this evaluation was undertaken a number of the opportunities for improvement were implemented.

Table E.1 provides a summary of improvement opportunities, the outcomes expected and, as a number of these opportunities are already being addressed, some commentary on the current status. More detailed commentary on the findings and recommended actions are included in the following section 'detailed findings'.

Table E.1: Summary of improvement opportunities

Improvement Opportunity	Expected Outcome	Current status
1. Maintain the focus on the child throughout the conference process	Promotion of Best Interest Principles for the child. Clarity about best practice principles for conciliation conferencing in the Children's Court of Victoria	Specialist training is provided for convenors in 'child inclusive and focussed practice'
2. Promote non-adversarial behaviour among all conference participants.	Less adversarial behaviour that facilitates constructive and informed engagement between all parties in order to reach agreement on approaches to care which are in the best interests of the child.	Restorative justice training is provided for convenors
3. Assess cases for appropriate conferencing pathways e.g. short, normal, bypass	Enhanced efficiency and effectiveness of case management	Broadmeadows Pilot Program
4. Manage attendance rates by identifying an acceptable threshold for non-attendance and strategies to increase attendance rates if they drop below the threshold	Clarity about what is an acceptable rate of non-attendance that will guide the need for improvement. Strategies to be implemented if attendance rates fall below an agreed threshold.	Exploring more flexible approaches to running conferences.
5. Use feedback from conference participants about the benefits of conferencing and develop relevant strategies to address opportunities for improvement.	Data and information is available from periodic surveys and analysis of complaints. The benefits of conferencing, that are currently hidden, can be identified and enhanced.	

Improvement Opportunity	Expected Outcome	Current status
6. Review the risks and benefits of alternatives to the current practice of exchanging information pre-conference.	Review practice guidelines to optimise effectiveness and efficiency. (If dispositions have not been received in the 14 days prior to the conference and the relevant parties cannot be contacted then the Practice Directions could state that there is an expectation that dispositions must be discussed immediately preceding the conference).	
7. Use feedback from conference participants about the benefits of conferencing and develop relevant strategies to address opportunities for improvement.	Data and information is available from periodic surveys and analysis of complaints. The benefits of conferencing, that are currently hidden, can be identified and enhanced.	
8. Develop a strategy for enhancing the safety of conferencing facilities and services especially in regional Victoria	A consistent standard of specialised conferencing services state-wide. This includes physical facilities and after conference support for families who may be distressed.	Specialist risk assessment training has been completed by intake officers. A partnership with Berry Street Family Violence Services is being explored.
9. Clarify the role of the conference convenor	Clarity about the role of the convenor in managing the dual principles of neutrality and re-balancing power imbalances during the conference process e.g. between Self Represented Litigants (SRLs) + professionals and DHS workers + Legal reps	
10. Minimise the listing delay for conferences	Reduction in delays with listing conferences	Convenors have increased their workload to reduce delays and increase the overall capacity of the unit.
11. Reduce the time spent in finalising outcomes/drafting agreements	Procurement of a software solution that will improve the efficiency of court reporting	
12. Develop and implement a suite of performance measures for ongoing evaluation and monitoring of the CCM	Clarity about the success of and opportunities for ongoing improvement of the CCM	

DETAILED FINDINGS

Overview

Overall, we believe the CCM is appropriate and is generally implemented in line with the Guidelines for Conciliation Conferences¹. We found that despite difficulties with some elements of the conference process or methods of implementation, there was general support for the CCM and for the notion of an ADR approach. Our suggestions for improvement need to be understood within this context and considered as opportunities for ongoing improvement rather than radical overhaul. We are also of the view that the introduction of the amendments to the legislation are not impacting on the CCM in any way that would require the CCM to be adapted as a direct result of those amendments.

Following are suggested actions for improvement:

Maintain the focus on the child throughout the conference process

Whilst acknowledging a focus on the issues associated with the parent(s) is highly likely to be what is necessary to ultimately meet the best interests of the child, there is a risk that the focus on the child can be lost. Accordingly:

1. One strategy that should be considered is to have the child's representative be the first party to speak in the conference, potentially setting the tone and parameters for the further discussion.
2. It may prove beneficial (without being tedious to all) that the convenor at pertinent points throughout the conference remind all parties of the purpose; for example, prior to breaks for independent discussions by parties.
3. HOI notes that in best practice, models supporting the participation of children as far as possible are encouraged. Given the interest in this area it may be informative to explore the extent of what is possible within the CCM with regard to child participation. Engaging in dialogue with groups, such as the Australian Research Alliance for Children and Youth, ARACY, may prove useful in this area due to their child and youth focus, national presence and capability. Other organisations may be known to the Court and could facilitate any discussion such as this.

Promote non-adversarial behaviour among conference participants

1. The convenor has a critical role to play in delivering a conference in which all parties feel respected and encouraged to participate. To this end we recommend that identifying effective strategies for managing adversarial practices be discussed as part of their regular professional development activities.
2. The Conciliation Conference Guidelines and other best practice principles for conciliation emphasise the importance of being non-adversarial and this principle should be promoted and reinforced. We understand that this has also been recognized as an issue within the CCM and that the CCU continue to raise this at the ADR Working Group. This situation should be monitored by the leadership of each agency (or professional group) through dialogue with the staff attending conferences. Some change is needed to ensure that all parties engage with each conference constructively from the beginning, through all stages, to the end of the conference process, in the best interest of the child.
3. Improved understanding, better dialogue and improved outcomes arise from DHHS workers being able to talk knowledgeably about the issues and being already known to the family. Unfortunately, from our observation it was common that the primary worker was not present to aid the identification of strengths and positive changes. Whilst we understand that this is not always

¹ Children's Court of Victoria, 1.3.2016, *Guidelines for Conciliation Conferences*.

possible, every effort should be made for the primary worker to be present as specified by the Guidelines.

Assess cases referred for appropriate conferencing pathways

On average, conferences are scheduled from four to six weeks from listing and where backlogs begin to occur, staff can be reallocated to help address any delays. The two key concerns with scheduling were (a) time 'pressures' associated with the new legislative amendments, and (b) lack of appropriate physical infrastructure in regional locations that might allow additional conferences to be held. Shuttle conferences were also thought to be too lengthy and in some cases returning to Court post-conference took time to be heard. To assist in these areas, we recommend the following strategies:

1. Rolling out the Broadmeadows pilot if it proves to be successful.
2. Conducting an assessment of the types of cases that could be inappropriate for conferencing and agree a means of 'flagging' these in Court or early on in the conferencing process. Assuming these can be 'categorised' for greater referral scrutiny, this should subsequently be discussed with all of the relevant parties (obviously including magistrates) and agreement reached on how these cases might be 'flagged' at the point of decision for conferencing or court hearing.
3. Reviewing physical infrastructure needs to ensure participants' safety and adequacy for purpose.
4. Minimise repetition in shuttle conferences, particularly of preliminary information.
5. Develop on-line forms for conference agreements to speed completion.
6. Monitor delays in returning to Court post-conference through ADR Working Group.

Manage attendance rates

In the last 13 months (1 May 2015 - 31 May 2016), across the State, 4,286 conferences were listed to be conducted² and of these, 2,877 (67%) proceeded. In the three-month period March 16-May 16 (since the Amendments were introduced), the attendance rate was almost 70% (with poorer attendance rates in metropolitan centres). To practically assist we recommend the following:

1. The CCU conduct a study to identify an acceptable rate of non-attendance for this cohort. e.g. compare with similar ADR programs such as NSW. This will assist in guiding the need for improvement when attendance rates fall below the acceptable threshold. Should this occur then the following recommendations apply:
 - o Explore the reasons for non-attendance and lateness by family members in order that appropriate strategies to reduce these can be identified.
 - o Parent(s) are contacted by the Intake Officer very close to the time of the scheduled conference.
 - o Working with relevant prisons/remand centres to enable parents to attend conference by video-link or in person.

Review alternatives to the current practice of information exchange

1. Given information provided to conference is often outdated the listing of issues on the white board has questionable value. The relevance of this strategy should be discussed to ensure the most appropriate and consistent approach is used.
2. Review Practice Guidelines that optimise effectiveness and efficiency. E.g. If dispositions have not been received in the 14 days prior to the conference and the relevant parties cannot be contacted, then the Practice Directions could state that there is an expectation that dispositions must be discussed immediately preceding the conference.

² Statewide Conciliation Conference Monthly Statistics, May 1st, 2015-May 31st, 2016, Children's Court Victoria.

Use feedback from conference participants to analyse benefits and opportunities for improvement

The CCU's Families' Survey provided useful insights into experiences of travelling to and attending, conferences. We believe there is merit in continuing with this activity and implementing a State-wide, on-going feedback system to identify how conferences may have benefited stakeholders but also where there may be opportunities for improvement. To assist in this area, we suggest the following strategy:

- The CCU identify key questions they wish to consistently receive responses on from stakeholders and devise a systematic approach that enables parties to feedback their responses.

Develop a strategy for enhancing the safety of conferencing facilities

The infrastructure in the regional areas is not always ideal for the purpose of appropriate and safe conferencing. Within the resources available; other suitable facilities should be identified, as has been the case in one region, and/or should resources be available for infrastructure development or modification, we would recommend that a priority list be developed with the safety of all parties being a key criterion. In addition, that opportunities should be explored to engage the services of a mental health liaison officer/mental health nurse, similar to that used in the Magistrates' Court of Victoria.

Clarify the role of the conference convenor

Concerns were raised by some survey participants that about the independence of convenors who from time to time were perceived as providing advice to unrepresented parties. A legitimate role of the convenors is to ensure that unrepresented parties are provided with adequate information to enhance their decision making. It is recommended that:

- clarity about the role of the convenor be included in the training for conference professionals
- a rigorous complaints procedure would enable complaints about a lack of independence from the convenor to be made, investigated and appropriate solutions to be implemented.

Minimise the time delay between listing and conference

Some comments were received that listing of conferences takes too long.

It would be beneficial to explore opportunities for improving delays in listing conferences especially for urgent matters.

Streamline Court reporting

Drafting and submitting orders when agreements are reached can be time consuming and problematic. This could become less time consuming (through the development/procurement of a software solution) in collaboration with other stakeholders.

Develop and implement a suite of performance measures for ongoing evaluation and monitoring of the CCM

This evaluation has highlighted a number of benefits of the CCM including those that seemed ‘hidden’ or indirect.

The CCU’s Families’ Survey provided useful insights into experiences of travelling to and attending, conferences. We believe there is merit in continuing with this activity and implementing a State-wide, on-going feedback system to identify how conferences may have benefited stakeholders but also where there may be opportunities for improvement. To assist in this area, we recommend that:

- The CCU identify key questions they wish to consistently receive responses on from stakeholders and devise a systematic approach that enables parties to feedback their responses
- A suite of measures be agreed that can be used for ongoing monitoring. These could include some of the measures provided in the following table. These measures have been categorized according to quantity, quality, cost and timeliness.

Quantity	Quality
Case settlement rates Family compliance with agreements Frequency of agreement about issues in dispute	Adherence to Best Interests Principles for the child Non-adversarial behaviour of conference participants Complaints about process problems Families involved in ADR indicate a preference for ADR than traditional court processes; a perception that the process is fairer; felt they were regarded as an important part of the process; were satisfied with their role in the decision-making process; appreciated the opportunity to tell their side of the story.
Cost	Time
Cost effectiveness e.g. savings from avoiding court proceedings	Time delay between listing and conference Time delay between completion of conferencing and listing at court
Attendance rates	Assessment and management of appropriate conference pathways
	Time to case resolution i.e. to finalise care and protection orders

The ability to provide reliable reports on the length of time to finalisation, proportion of matters that go to hearing and the length of these hearings (and those that do not proceed) would be of great benefit to the Children’s Court, not just for the purpose of evaluations such as this one but for monitoring court operations more generally. This may be as part of an enhanced and standardised care register (see above), but would most likely require the implementation of a court database.

INTRODUCTION

Court Services Victoria (CSV) appointed Health Outcomes International (HOI) to undertake an evaluation of the Conciliation Conferencing Model (CC Model) which operates state-wide in the Children's Court of Victoria (CCV). The evaluation project commenced in December 2015 and concluded in July 2016.

1.1 BACKGROUND TO THE CONCILIATION CONFERENCING MODEL

Whilst significant investment has been made in the past decade in child protection legislative, policy and service delivery reform, an alarming number of children remain at risk of neglect and abuse in their homes and come before the Children's Court for determination around their future care. This traumatic experience for children and young people has been found to be compounded in Victoria by the application of an adversarial approach to hearing child protection matters in Court.

In order to ensure a less adversarial approach to deciding child protection matters, the CC model was introduced as a referral option by the Children's Court in 2011. The model aims to facilitate constructive and informed engagement between all parties (the child, their families, child protection workers and legal representatives) in order to reach agreement on approaches to care which are in the best interests of the child. Through this mechanism, all legal parties can attend a conference facilitated by a trained convenor to discuss a range of issues impacting on the safety and wellbeing of the child with the aim of reaching agreement as to the care of the child and approaches to addressing the relevant risk factors. It should be noted that in Melbourne conference facilities are located away from the Court environment whereas this is not always the case for regional conferences.

1.2 THE CONCILIATION CONFERENCING MODEL

The Child Protection Proceedings Taskforce was formulated in 2009 to investigate and provide recommendations on measures to reduce the adversarial nature of Children's Court processes including exploring the use of alternative dispute resolution mechanisms (such as conciliation conferencing) where appropriate to reduce the time parties spend in the Children's Court. One of the recommendations of the Taskforce was to introduce child protection resolution conferences in the Children's Court that were separate to Court processes.

To complement the legislative and policy changes that were implemented by the Victorian Government to improve child protection; the CCM (previously termed 'New Model Conferences') was introduced in the 2010-11 budget with the overarching objective to achieve an agreed outcome and early resolution in a non-adversarial manner in child protection cases without having to resort to a contested hearing in the Children's Court.

More specifically, the aims of a conciliation conference are to:

- ensure focus on the child is maintained throughout the process
- identify the risks and safety concerns that have led to DHHS intervention

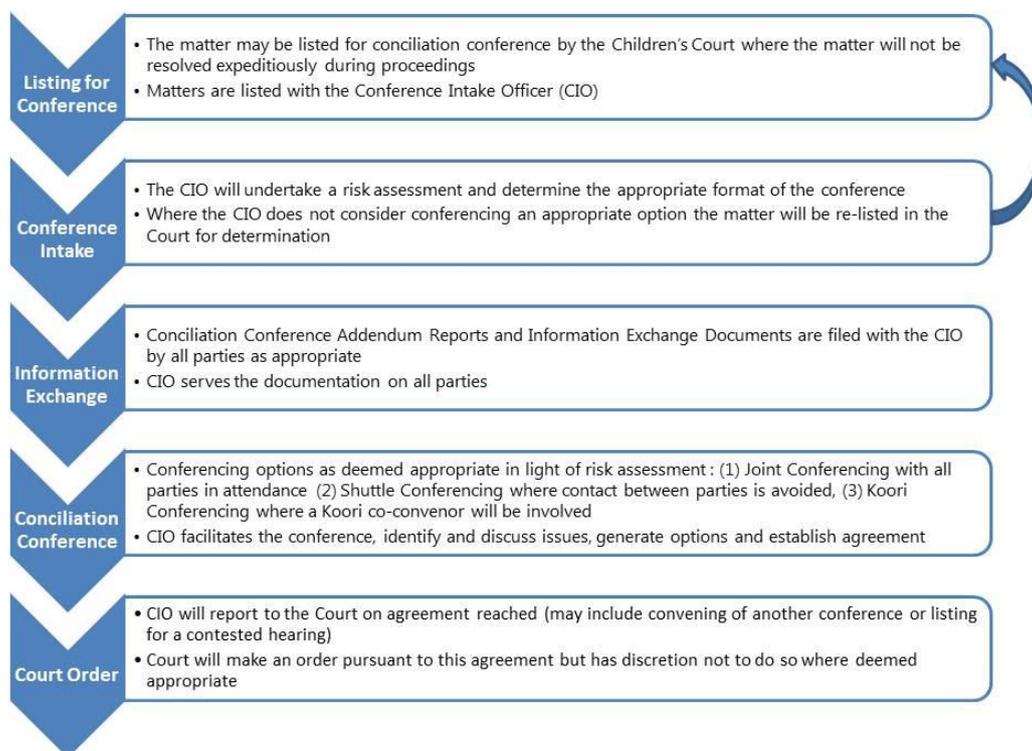
- identify and clarify the strengths of the family including progress made by family members in addressing protective concerns
- hear the voice of the children either directly (where the child attends by order of the Court) or indirectly (where the child's legal representative attends and/or there is a professional report concerning the child's views)
- identify and clarify disputed issues and areas of agreement
- develop options and consider alternatives
- enhance communication
- reach agreement on issues of dispute between parties to avoid, or limit the scope, of any hearing³.

These aims sat within a broader context of conference objectives that were focused on the following:

- deliver earlier and more collaborative agreements
- encourage less adversarial approaches
- meet the needs of children and other parties
- deliver positive client outcomes

The processes associated with conferences were designed to support the above objectives and are regarded as a pathway from court to conciliation as shown in Figure 1.1. All of these CCM steps were considered as part of this evaluation.

Figure 1.1: Pathway from court to conciliation



³ Children's Court of Victoria (2013) Guidelines for Conciliation Conferences, p. 4, available at http://www.childrencourt.vic.gov.au/sites/default/files/ccv_files/Guidelines%20for%20Conciliation%20Conferences%202013%20-%201%20Dec%202013.pdf

1.3 THE EVALUATION

A previous evaluation of the CCM conducted in 2012 found that overall the model had been effective in reaching agreements and reducing the number of contested hearings in the Children's Court, although issues were raised with respect to the barriers relating to engagement by families.

This current evaluation was precipitated by impending amendments to the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014⁴ which commenced in March 2016. As such, the focus of this evaluation was not only on determining the effectiveness of the model but to also confirm anticipated impacts or identify those already being observed as a result of the legislative change and recommend necessary modifications to the Model as required.

1.3.1 EVALUATION OBJECTIVES

Two broad objectives were established for the evaluation:

1. **State-wide review and evaluate the existing CC model operations.** Conduct a critical assessment of the existing operational aspects of the program to:
 - Identify opportunities for improving the model and the administrative processes where indicated (e.g. frequency of conference cancellation rates)
 - Identify the strengths and benefits of the CC model
 - Provide recommendations as to how the CC model can be refined to improve outcomes
 - Identify the hidden benefits (positive impacts) of the CC model (that may not be reflected in the current outcome measures of 'settlement rates')
 - Provide recommendations on approaches to measure and manage the hidden benefits in the future
 - Estimate the initiative's estimated return on investment (ROI) to the CSV.
2. **Planning to prepare for the impacts of legislative amendments (future state).** This component of the evaluation was to:
 - Confirm the likely impacts on the CCM of the changes to the Children, Youth and Families legislation implemented in March 2016
 - Provide recommendations about how the Children's Court can refine the CC model or other processes accordingly
 - Identify methods to effectively apply the strengths of the CC model (demonstrated in 1) within the new legislative landscape, and how benefits can continue to be realised in the future.

1.3.2 EVALUATION METHODOLOGY

A mixed method design was used to undertake the evaluation comprising the following approaches:

1. **Literature review.** A rapid literature review was undertaken to identify best practice approaches to the provision of conciliation conferencing (broadly) to inform the evaluation design. The elements of best practice identified have been used as appropriate to assess the performance of the CCM as discussed in this report.

⁴ Children's Court Victoria "Amendments to CYFA Act NR.61 OF 2014 – Summary for Court Officials and Court Users" available at http://www.childrenscourt.vic.gov.au/sites/default/files/CYFA_Amendments_Summary_27%20March_2015.pdf

2. **Documentation review.** A review of the following documentation was undertaken to assess the context for the conferencing model and program achievements and outcomes:
 - Previous evaluation report (the 2012 evaluation)
 - *New Model Conferences Evaluation Report and Appendices for the Courts and Tribunal Unit for the Department of Justice, February 2012, Clear Horizon Consulting.*
 - Guidelines for Conciliation Conferences (1 December 2013 and 1 March 2016)
 - Children's Court of Victoria, Eight Step process for conduct of CCM
 - Children's Court of Victoria, 2015/16 budget
 - Children's Court of Victoria, CCM Case Studies (Sept-Dec 2015)
 - Children's Court of Victoria, internal report on findings from client feedback forms, 2016.
3. **Stakeholder consultation.** Semi-structured telephone interview with the following stakeholders:
 - Children's Court of Victoria, Magistrates
 - Children's Court of Victoria, CCM personnel
 - Department of Health and Human Services, Child Protection workers and legal officers
 - Private Solicitors
 - Victorian Legal Aid Solicitors

Almost 50% of identified respondents participated in approaches made by HOI staff. It is possible that people not participating in the phone interviews engaged instead in the consultation process via the on-line survey. In total 38 contacts were made in this part of the consultation. Further details are provided at Appendix A.

4. **Online survey for people involved in conciliation conferences.** Members of the CSV Evaluation Steering Group disseminated the survey link to their contacts within CSV as well as to DHHS and legal representatives. The survey sought insights into what elements of the model worked well and where the opportunities for improvement were in the new legislative environment. A total of 95 completed responses were received. Details of the respondent by location and sector are provided at Appendix A.
5. **Conference observations.** Following ethics consent from the DHHS HREC, HOI evaluators sat in on conferences to observe how convenors implemented the model, how the various parties engaged in conciliation and to observe the extent to which the child is central to the discussion and outcomes. HOI evaluators sat in on conferences throughout the regions over a period of two weeks. Further details are provided in Appendix A.
6. **Interviews with families and children.** Ethics approval was sought from the DHHS HREC to conduct interviews with families and children as appropriate. Whilst it is considered that an ethically robust, safe and appropriate process was designed for the interview process, it was unfortunate that the HREC established too many conditions to make this process possible. The most significant barrier included a requirement for a counsellor to be on hand for every participant in every location, in case they became distressed during or immediately following the interview. This was insurmountable to

the resources available to the evaluation. This condition effectively negated the opportunity for the consumer’s voice to be heard directly in this process.

7. **Participant survey.** The Conciliation Conferencing Unit (CCU) facilitated a voluntary written survey of family participants with respect to their experience with the CCM. Aggregate information from 106 survey participants was provided to HOI by the CCM to inform the evaluation findings.
8. **Quantitative data analysis.** An analysis of service level data was undertaken with a particular focus on attendance rates, throughout and conference ‘outcome’.
9. **Economic analysis.** Service level and cost data from the Children’s Court and DHHS was analysed to inform a cost avoidance analysis as a result of the CCM.
10. **Stakeholder workshop.** Key findings from the above data collection methodologies were presented in a key stakeholder workshop (participants invited by CSV) on 22 June 2016 and feedback provided was used to refine the final report.

1.4 STRUCTURE OF THE REPORT

The structure of the remainder of this report is as follows:

Chapter 2	Governance and Management of the Model
Chapter 3	Implementation of the Model
Chapter 4	Impacts of amendments to the Act
Chapter 5	Efficiency of the Model
Chapter 6	Conclusion

GOVERNANCE AND MANAGEMENT OF THE MODEL

This aim of this chapter is to outline the framework within which the Conciliation Conference Model (CCM) operates. We include a brief discussion on the aims of the Model in this chapter, however, these are addressed comprehensively in the chapters that follow.

2.1 THE CHILDREN, YOUTH AND FAMILIES ACT, 2005

Overarching governance of the CCM in the Children's Court of Victoria, is provided for in Sections 217 – 227 of the *Children, Youth and Families Act, 2005*. Section 217(1) of the Act provides that the Family Division of the Children's Court may order any protection application made to the Family Division be referred for a conciliation conference. Section 217(2) provides that the purpose of a conciliation conference is to give the parties to the application an opportunity to agree or advise on the action that should be taken in the best interests of the child.

Section 220 provides that a conciliation conference must be conducted in accordance with any Guidelines issued from time to time by the Court.

It was our finding that the CCM is structured and is operating in alignment with Sections 217 – 227 of the Act.

2.2 THE GUIDELINES FOR CONCILIATION CONFERENCES

The Children's Court of Victoria has developed 'Guidelines for Conciliation Conferences.' The Guidelines were amended to take into account the amendments to the Act. The new Guidelines were effective from 1 March 2016. We have specifically addressed the amendments to the Act in Chapter Four of this report. These Guidelines specify that a conciliation conference:

- *is intended to facilitate early resolution of applications through a non-adversarial process*
- *enables parties to meet together in an informal environment facilitated by an independent convener*
- *gives parties an opportunity to agree or advise on the action that should be taken in the best interests of the child*

Our evaluation was informed by the Guidelines (1 March 2016) that outline key elements of the conference (as illustrated in figure 1.1 above), how they should be conducted and the roles of each party to the conference. We compared the elements in the Guidelines with a best practice framework developed for family planning conferences that comprised 17 elements. This was the most appropriate proximal best practice framework that emerged from our literature review. Whilst some elements were not applicable to the CCM, we found that the Guidelines included reference to all best practice elements. Particularly in the following areas:

- Stakeholder buy in

- Appropriate timing of referrals to conferencing
- Flexibility of eligibility criteria
- Appropriately trained and skilled conference convenors
- Attendance by family
- Participation by the children in question
- Cultural appropriateness
- Behaviour and approach of professional parties involved
- Confidentiality and the provision of information
- Number of hearings that did not proceed
- Time taken to finalise matters
- Conciliation conferencing as a preferred process
- Stakeholder participation in enhancing the service

It was our finding that the Guidelines provide clear operating parameters for the conduct of conciliation conferences, they align with the intentions of the Act and to other best practice elements of conciliation conferencing. We discuss the implications of the Act in Chapter Four of this report.

2.3 THE EIGHT STEPS OF CONCILIATION CONFERENCING

The 'eight steps of conciliation conferencing' have been established as the accepted framework for the conduct of the conferences by convenors. The eight steps include the following:

1. Preliminary documents exchanged etc.
2. Introductions and welcome
3. Preliminary information, including identification of strengths
4. List of key issues
5. Discussion of key issues
6. Generating options, negotiation and forming an agreement
7. Writing the agreement
8. Closure

As a result of our observations, we found that whilst no convenor rigidly adhered to the eight steps, overall the framework is used as intended to manage the conduct of the conference.

2.4 SUMMARY

The Act and associated guidelines and procedures that have been documented provide a clear and highly structured Governance and Management framework for the intent, structure and conduct of conciliation conferences for the Children's Court of Victoria. Whilst we discuss implementation more fully in latter chapters it is our finding that the Act and Guidelines are adhered to in the structure and delivery of the CCM.

IMPLEMENTATION OF THE MODEL

This chapter presents the findings in relation to our assessment of the implementation of the CCM. The findings are informed by qualitative data collected through the survey, phone calls and conference observations as well as quantitative data provided by the Conciliation Conferencing Unit (CCU). The findings have been presented to broadly align with the Court to Conciliation Conference pathway (Figure 3.1).

Figure 3.1: Court to conciliation pathways and themes for discussion



3.1 LISTING FOR CONFERENCE

Magistrates highly favour the CCM and as a rule almost exclusively refer child protection cases brought before them to conferencing. In the course of magistrate interviews it was apparent that they favour conferences because of their observation of the increased likelihood that areas of dispute can be resolved or reduced through the conduct of sensitive conversations between all parties in a confidential setting. They prefer any court orders (where required) are premised on agreements reached by all parties, in the best interest of the child, rather than on one imposed by the court following a contested hearing.

A further reason provided by magistrates for referring cases for conferencing is the issue of sufficient time to fully consider the case in Court. Having to deal with a large number of cases every session, magistrates prefer that the case be conferenced in an attempt to resolve and have court endorsement or narrow the issues for consideration of the court. Of this issue, one magistrate said:

'You rely on lawyers to properly inform you at mention. It's a triage system, especially family directions. You can't sit and cogitate because you'd be there until midnight.'

By adopting this referral approach, there is of course the likelihood that inappropriate cases may be referred. Magistrates' readily acknowledged that not all cases may necessarily be appropriate for a conference. However, it was their optimism (based on experience) that some positive changes might result, even if the likelihood of this occurring was somewhat remote. Additionally, that any opportunity to bring about even partial resolution prior to a contested hearing was more effective and efficient.

The propensity of magistrates to refer most cases to conciliation contrasted with the views of some professional participants (lawyers and DHHS) with one stating, *'we are forced to go to conference when there is no merit to mediating'*. This was also supported by the findings of our online survey (which did not include Magistrates) which demonstrated that almost 49% of respondents did not agree that all cases were appropriate and a further 31% only partially agreed that all cases were appropriate.

Examples of the types of conferences considered inappropriate, gathered through the phone interviews and survey included:

- No hope of settling
- Could be quickly/easily settled in court
- Representatives are using conferences to stall and to enable case plans to be developed
- Cases where the statutory timeframes create urgency for resolution
- Proof or a point of law is at stake
- Sexual abuse or harm against the child is a concern
- Parents have mental health or other problem that prevents them from participating
- Conference held before but parties haven't attended or conditions haven't been complied with
- Long-term involvement of DHHS and no sustained change in parental capability or commitment to change
- Where someone doesn't feel safe in the conference setting
- Cases with outstanding criminal charges
- Cases that present situations not agreed to by the child

As the list above exemplifies, there is great variability of opinion on the types of cases considered inappropriate for referral to conferencing and many of these undoubtedly relate to particular experiences the respondents are recalling. In our opinion, some of the cases listed above would be highly relevant for conferencing cases that could be easily or quickly settled in court.

It was noted that a two-month trial is currently underway at Broadmeadows Court, that enables cases that could quickly/easily be settled, the opportunity of one hour of Alternative Dispute Resolution to be resolved. This trial will last until 12th July and is in keeping with the Conference Guidelines that states: The Court will not order a conciliation conference in a case that appears likely to resolve expeditiously.⁵

⁵ 2.1, Guidelines for Conciliation Conferences, March 2016.

Should this trial prove to be largely successful, consideration should be given to rolling this out state-wide.

Whether the Broadmeadows trial proves to be successful or not, there would be benefit in a more comprehensive assessment being undertaken by the Children's Court into the type and extent of cases that could be deemed inappropriate for conferencing. Assuming these can be 'categorised' for greater referral scrutiny, this should subsequently be discussed with all of the relevant stakeholders (obviously including magistrates) and agreement reached on how these cases might be 'flagged' at the point of decision for conferencing or court hearing.

In conclusion it must also be noted that case conferencing is a highly efficient mechanism for addressing disputes in child protection cases and hence referrals need to be considered within that context. This matter is further discussed in Chapter Five.

3.2 RISK ASSESSMENT

Risk assessment is a critical point in the CCM with phone calls from Intake Officers being the first point of direct contact between the Children's Court staff with parents or joined parties. The risk assessment is an important focus of the conversation with family members and includes whether there are any safety concerns. Intake staff reported spending a considerable amount of time on the phone with relevant family members at this stage to ensure they are aware of the conference process, the importance of them being there and generally answering any questions about the conference itself. Intake officers indicated that explaining the independence of the conference process and the convenor running the session was important in overcoming perceptions that this was all part of an extended DHHS or other formal process in which they would have little influence. The risk assessment process is considered to be a critical factor in contributing to attendance by families.

3.2.1 SCHEDULING

The Guidelines for conferences indicate that conferences should be held as early as possible following their listing to facilitate the early resolution of applications. On average, conferences are scheduled from four to six weeks from listing (and for returning part-heard conferences). It was noted that this timeframe had been greater but 4-6 weeks is now the norm. It was noted that where backlogs begin to occur, staff can be reallocated to help address any delays being experienced.

The two key concerns with scheduling were associated with; (a) the time 'pressures' associated with the new legislative amendments, and (b) a lack of appropriate physical infrastructure and human resources to support more conferences being scheduled in regional locations. These issues are highlighted below.

LEGISLATIVE AMENDMENTS

The newly introduced amendments established timeframes within which decisions about the permanent care of the child had to be made. Examples of concerns in this area were expressed as follows:

'The new legislation is also retrospective, meaning time limitations are almost up so limited conversations can happen because only certain (orders) can be made. There is little room for negotiations.'

'Delay of case progression can have disastrous effects for families when any child is on an order to out of home care pending final determination. Lawyers may have difficulty advising clients to list the matter for CC's due to the detriment of time'

delays in their cases. Faster time frames for CC's and subsequent hearings would ameliorate this.'

'Often we are ordered by the court to go to a conference when the parties' positions are so far apart and there is no negotiation possible. This adds lengthy delays to the court process and does not achieve a settlement.'

Timeframes are therefore of critical importance and in particular, where cases are contested, the judicial process can take a considerable amount of time and in general, lawyers and DHHS staff were highly conscious that 'the clock was ticking.' In this context, timing of conferences was also important and first conferences were generally held within a four to six-week period. In some instances, a further conference might be necessary to let newly agreed arrangements settle (e.g. a regime of drug tests by the parents). Thus a period of between 3-4 months' minimum from listing may accrue and agreement about the child may still not be reached. In particular, the four to six weeks wait combined with a further delay in proceeding to a final judicial determination is a significant challenge under the new legislative amendments.

REGIONAL CONFERENCES

In two cases regional respondents indicated they had waited for 10 weeks for a conference to be scheduled. It was acknowledged that the convener was running the maximum number of conferences and travelled significantly to ensure as many conferences as possible were held. However, limitations included:

- Insufficient number of conference conveners in the area (Barwon region)
- Insufficient number of lawyers (Loddon Mallee region)
- Insufficient number of non-Court days (where the conference venue was the Court room).

Overall 62% of survey participants believed that the demand for conferences was being met although the delays in scheduling conferences is of great concern to them. There are regional factors that are of influence and largely beyond the control of the Children's Court, such as the availability of lawyers and the existing infrastructure. The former issue should be considered with respect to the level of non-attendance at conferences and the latter through considering alternative venues for conferencing in regional areas. Both of these issues are further addressed in this report.

3.2.2 RISK ASSESSMENT

Risk assessment by the Intake Officer prior to the conference is critical to assessing the appropriateness of a case for conferencing, increasing the likelihood of parent(s) attendance and to ensuring the safety of all parties that will be in attendance. The results of the 'professionals' survey were that 61% of respondents believe that risk assessment process is predominantly or highly effective and little additional comment was made on this step.

It is our understanding that multiple efforts are made by Intake Officers to contact parents prior to the conference including through phone calls and letters. However, it is also evident that not all could be contacted prior to the conference. It is possible (but not definitive) that the lawyer for the parent is aware of the parents(s) likeliness to attend and this relationship should be considered as an option for communicating with the parent and encouraging her/his participation. Although it is noted that this is not a suitable vehicle for determining risk.

Following risk assessment contact with the parent(s), we would also suggest that they are contacted again very close to the time of the scheduled conference to provide further re-assurance regarding what is involved and enhancing the likelihood of attendance. This is discussed further below.

3.3 INFORMATION EXCHANGE

Information exchange prior to a conference is a critical process but is also considered the least satisfactory with 25% of survey participants indicating it was 'not at all effective.' This was also identified as a key issue in the 2011 evaluation.

The Guidelines for Conciliation Conferences contain clear instructions on the information exchange process as follows:

- DHHS must file with the Court and serve on the legal representatives the "Conciliation Conference addendum report" at least 10 days (but no more than 14 days) prior to the date fixed for the Conciliation Conference.
- Legal practitioners representing other parties must file with the Court and serve on the other parties or their legal representatives the "Information Exchange document" at least 7 days (but no more than 14 days) prior to the date fixed for the Conciliation Conference.
- The Court will provide unrepresented parties with the "Information Exchange document" for completion; and if returned will file and serve the "Information Exchange document" on all other parties or their legal representatives.

Legal practitioners must comply with these Information Exchange provisions even in the absence of DHHS compliance. Despite clear guidelines it was our finding that the timing of information exchange and report content were issues for all parties.

REPORT TIMING

As the first step in the information exchange process, DHHS is required to serve an addendum report at least ten days prior to the conference. Our finding was that there is frequently a delay. As one survey respondent stated; *'The information exchange process appears to be superfluous at times as the Department fails to provide an Addendum Report.'*

Timing of this report is critical to enable lawyers and other parties to respond to the content. The high volume workload of DHHS staff was noted as the major reason for the late delivery of the reports.

3.3.1 REPORT CONTENT

The information exchange is intended as an important phase in the conferencing process in that it enables the parties to consider each other's positions prior to conferencing. Despite this, there is great dis-satisfaction from all parties on the basis that this is not possible from the documentation provided. This situation is exemplified in the following comment: *'There are very rarely clear dispositions presented by the parties or clear rationale to what is disputed or why.'*

Despite the lack of clarity, in some instances, DHHS reports were seen as significantly insightful and useful in informing conveners about their concerns. However, there were also comments to the contrary:

'More often than not, we found that where paperwork is exchanged the quality of the information provided was information exchange (basic) requirements or the information in the Addendum is incorrect or incomplete.'

'Information Exchange is often just a DHHS repetition of their case notes.'

Private lawyers too were often regarded as providing reports with minimal content. At times they were also thought to make use of old material and instructions if they had failed to make contact with their

client. Further, survey participants noted that parents' and children's information exchange documents were often devoid of any information. There was also a consensus that there would be benefits for all parties if there was more information from the parent(s) representative(s) regarding the parent's current situation.

In relation to the quality of content, there was a query as to whether recent changes that led to information exchange documents being lodged on the Court record had also resulted in a decrease in the quality of information entered onto the forms. There was concern that by placing these documents on the Court records where they could be openly read, the confidentiality of the conferencing process was being undermined. Of this, one respondent said; *'Now that the court sees the parties' information exchange documents, practitioners will be obliged to admit nothing and say as little as possible.'* However, there was little else in our evaluation processes to suggest that this was a widely shared position.

HOI found that information exchange is a significant area of concern given that the lack of relevant and current information meant that parties were unaware of the areas of dispute and why. This affected the convener and parties' preparation for each conference and it was often the case that the verbal updates that occurred within the conference was the point at which clarity was provided. However, this approach undermines the best practice focus in the guidelines that attempts to minimise the extent to which 'new news' is provided in the course of the conference.

We believe there needs to be a collaborative approach to ensuring the processes, as laid out in the Guidelines are adhered to, given that this will help to achieve conference aims and in particular, help to meet the needs of the children. Given the extent of the issue it should be made an agenda item on the ADR Working Group to consider what can be done to improve the timing and content of information exchange documentation.

3.4 CONCILIATION CONFERENCE

In discussing the conduct of conferences, it is important to note from the outset that most people believe conferencing to be highly effective. In all, nearly 85% of survey participants said they believed the model's processes were totally effective (44%) or to some degree (41%).

As documented in the Conciliation Conference Guidelines the conference aims are to:

- Deliver earlier and more collaborative agreements
- Encourage less adversarial approaches
- Meet the needs of children and other parties
- Deliver positive client outcomes.

Overall, over 90% of survey respondents believed conferences were conducted effectively (either to some degree, predominantly or completely effective) and the aims were being met the majority of time or completely (Figure 3.2). Stakeholders interviewed also supported the notion that the conference aims were being effectively met. A range of factors associated with the conference aims overall demonstrated high levels of effectiveness, however, as would be expected, in some areas figure better than others.

Figure 3.2: Conference aims – survey responses

	Completely	The majority of the time	Sometimes	Depends on the case	Never	Don't know	N/A
Retaining a focus on the child throughout the conference	12 14.3%	37 44.0%	22 26.2%	13 15.5%	0 0.0%	0 0.0%	0 0.0%
Identifying risks/safety issues that have led to DHHS intervention	20 23.8%	39 46.4%	14 16.7%	11 13.1%	0 0.0%	0 0.0%	0 0.0%
Identifying family strengths	22 26.5%	38 45.8%	15 18.1%	8 9.6%	0 0.0%	0 0.0%	0 0.0%
Hearing the voice of the child directly or indirectly	10 11.9%	33 39.3%	23 27.4%	18 21.4%	0 0.0%	0 0.0%	0 0.0%
Identifying/clarifying disputed issues	18 21.4%	34 40.5%	20 23.8%	12 14.3%	0 0.0%	0 0.0%	0 0.0%
Identifying/clarifying areas of agreement	17 20.2%	32 38.1%	23 27.4%	12 14.3%	0 0.0%	0 0.0%	0 0.0%
Developing options/consider alternatives	14 16.7%	29 34.5%	27 32.1%	12 14.3%	2 2.4%	0 0.0%	0 0.0%
Enhancing communication	11 13.1%	34 40.5%	22 26.2%	16 19.0%	1 1.2%	0 0.0%	0 0.0%
Reaching agreement to avoid/limit the scope of, any hearing	7 8.3%	29 34.5%	28 33.3%	19 22.6%	1 1.2%	0 0.0%	0 0.0%

Based on the survey responses, key stakeholder interviews and our observations, our discussion of the conference aims focuses in on the following four key areas.

- Retaining a focus on the child and hearing the voice of the child
- Communication throughout the conference by professionals and legal parties
- Reaching agreements
- The role of the convener

3.4.1 A FOCUS ON THE CHILD AND HEARING THE VOICE OF THE CHILD

Section 217 of the Children, Youth and Families Act 2015 identifies the purpose of a conciliation conference as offering the parties an opportunity to agree or advise on the action that should be taken in the best interests of the child.⁶ To support this purpose, the child will be provided their own independent legal representative at the age of 10 years or older. As a guide, attendance at a conference generally is available to a child aged 13 years and over at the discretion of the convener. The philosophy within the CCU is that children should be left to participate in normal life (e.g. be at school) rather than be ‘caught up’ in legal proceedings unless there is a distinctly important reason for them to be so.

⁶ Page 1, Guidelines for Conciliation Conferences, 2016.

Convenors establish a focus on the child from the outset by having their name written prominently on the whiteboard, making explicit reference to them by name from commencement and reinforcing the focus of the conciliation conference is the child's needs.

It was our observation that once the conference commenced, the focus quickly shifted to needs, requirements, issues associated with the parent(s). Whilst acknowledging that this is highly likely to be what is necessary to ultimately meet the best interests of the child, there is a risk that the focus on the child can be lost. Feedback from the interviews and survey demonstrated general uncertainty about the extent to which this aim was consistently achieved. It was felt by some respondents that the best interests of the child needed to be more directly focused on or included and that their needs were not wholly addressed or attended to by solely focusing on the parents or carers. It may prove beneficial (without being tedious to all) that the convenor at pertinent points throughout the conference remind all parties of the purpose; for example, prior to breaks for independent discussions by parties.

Respondents considered that where children were represented by lawyers, there were increased opportunities to hear their voice, although this was only effective if the lawyer was knowledgeable about their circumstances and wishes. Correspondingly, some lawyers indicated the need to see fulsome information prior to the conference in order to seek proper instructions from the child they were representing. It was also our general observation (noting we only observed a relatively small sample) that the lawyer representing the child was rarely a prominent participant in discussions and whilst this is partly understandable it is worthy of further exploration as part of the conferencing process. One strategy might be to have the child's representative be the first party to speak in the conference, potentially setting the tone and parameters for the further discussion.

We observed one conference attended by a child who readily participated when asked direct questions by the convenor and appeared comfortable with the process. However, in this circumstance of reunification with the father (also present) the process was positive. Stakeholders interviewed by phone believed it was critical to continue to enable the convenor to decide whether or not a child is allowed into a conference given that not all scenarios were delivering the same positive outcomes as in the conference observed.

We found that participants were interested in engaging in a discussion about focusing on the child and hearing the child although increased involvement of children in conferences was not promoted and convenors were believed to have exercised their discretion appropriately. Nevertheless, some participants were keen to generally explore this area to ensure the approach represents best possible practice.

HOI notes that in best practice models supporting the participation of children as far as possible is encouraged. Given the interest in this area it may be informative to explore the extent of what is possible within the CCM with regard to child participation. Engaging in dialogue with groups such as ARACY, may prove useful in this area due to their child and youth focus, national presence and capability. Other organisations may be known to the Court and could facilitate any discussion such as this. However, we do not advocate any practical changes to the model at this stage.

3.4.2 COMMUNICATION

The Conciliation Conference Guidelines provide detailed guidance on the roles of lawyers, child protection practitioners and family and community members. It is axiomatic to say that the way in which each participant conducts themselves is critical to all aspects of the conference and directly impacts on the potential for clearly identifying disputed areas and areas of agreement and delivering more collaborative agreements. The Guidelines importantly specify the need for participants to adopt non-

adversarial attitudes in order to maximise opportunities to reach agreement or at least, narrow areas of disagreement. The issues identified in relation to communication are as follows:

1. **Fixed positions.** Our findings suggest that irrespective of the Conference Guidelines, fixed positions are commonly present in conferences and in particular are exhibited by some lawyers and child-protection officers. These types of approaches are reflective of 'ordinary' Court cultures and can involve parties arriving with specific ideas about what they wanted as an outcome from the conference prior to its commencement. The convenors worked hard to open up these ideas for discussion with other parties in the conference but it was notable that attitudinal shifts were often required before positive progress could be made.

Some stakeholders pointed out that conferences held within the Court 'system' and culture were bound to suffer from adversarial approaches as this was the usual operating environment for legal representatives at least. Whilst we acknowledge this, the Guidelines and other best practice principles for conciliation emphasise the importance of being non-adversarial and hence we consider this principle should be promoted and reinforced. We understand that this has also been recognized as an issue within the CCM and that the CCU continue to raise this with the ADR Working Group. This situation should be monitored by the leadership of each agency through dialogue with the staff attending conferences. Some change is needed to ensure that all parties engage with each conference constructively from the beginning, through all stages, to the end of the conference process, in the best interest of the child.

2. **Open-mindedness, positive communication and a willingness to engage.** We found that where there was a willingness to engage with the issues listed for discussion and with the people present at the conference, considerable progress could be made in developing options to resolve or narrow the areas of dispute between the parties. This element clearly has a relationship to the extent parties are not adversarial in conferences.

We found that positive communication was notably aided by DHHS workers being able to talk knowledgeably about the issues and being already known to the family. In addition, the worker's capacity to identify and acknowledge parents' changed behaviors in order to address issues that had led to DHHS intervention opened up opportunities for the parties to engage in a dialogue about the remaining issues. On the reverse side, challenges to positive communication occurred early on if DHHS workers could not contribute in this way. Unfortunately, from our observation it was common that the primary worker was not present to aid the identification of strengths and positive changes. Whilst we understand that this is not always possible, every effort should be made for the primary worker to be present.

In several conferences we observed, positive communication between the parties assisted in exploring solutions and in defining steps forward. At times, unexpected solutions could emerge and lead to speedy family reunions and other positive outcomes. Whilst many positive outcomes were observed, it is also the case that survey respondents believed the majority of people participating in conferences did not engage appropriately with the conference and that this limited the model's effectiveness. More often than not, survey and phone participants specifically commented on the 'fixed positions' of the parties at the conferences and the barriers this presented in addressing the needs of the child. Despite the difficulties, it was felt that the conference's future focus, the informality of discussions and open-mindedness by all parties, significantly contributed to the process of developing further options for consideration as part of the conference process.

3. **How parties (families) feel about engagement and communication.** The Families' Survey conducted by the CCU indicated that almost all participants understood the purpose of the conference (99%). A small number came away not having said all the things they felt were important to their child (8%) or not having engaged with their child protection worker (17%). It was also the case that only a very small proportion (8%) of family survey respondents did not understand what

was going to happen next for their child. In addition, feedback from parties in a different survey⁷ indicated that opportunities to speak and be heard were provided and this was beneficial. Of this they said:

'Everyone got a chance to have their say'

'DHHS listened to us'

'There was a good discussion letting us know where we were going with the kids'

As could be expected in the challenging environment of a conciliation conference with respect to child protection matters, there were comments to the contrary from other people who felt that they would have liked to have had a greater chance of being listened to. Similar experiences were recorded with regard to open-mindedness. Thus, in some cases there were significant and sometimes surprising achievements whilst in others, parties felt as though little progress had been made in their case. The following quotes from both surveys highlight this situation:

'It was good DHHS were willing to compromise. I walked out of there very happy and was over the moon. I felt like doing cartwheels in the street.'

'I was surprised with the outcome as I didn't think DHHS would give us what we wanted, so it was good.'

'A conference is only good when both parties are prepared to negotiate/talk; in my experience that never happened.'

'The meeting on the DHHS side was very text book with very little room for discussion.'

It is clear from the evidence base that experiences of conferences are highly individualised, dependent on the case and peoples' expectations. In addition, the quality of communication is variable. The outcomes of conferences are influenced by the open-mindedness of the parties and the rapport that can be established between parties, principally within the conference session. Beyond this, other factors such as the informality of conferences can help participation by families.

We believe there is scope for improving communication within conferences. As we have already proposed, ensuring adversarial behaviour by lawyers is tempered and the underlying conference aims, including the need for open-mindedness, are promoted and adopted will ensure improved outcomes.

We also believe the convener has a critical role to play in delivering a conference in which all parties feel respected and encouraged to participate. To this end we recommend that discussing and identifying effective strategies for managing adversarial practices be discussed as part of one of their regular professional development activities.

3.4.3 CONVENING CONFERENCES

The Conciliation Conference Guidelines clearly state the role of the convener as an independent chairperson acting with the authority of the Court. Further, that the convenor shall be responsible for controlling the proceedings and ensuring that each participant has the opportunity to participate fully.⁸ It was our observation that on the whole, convenors are highly skilled and effective in the facilitation of the conference despite the challenge of managing parties who can be adversarial or fixed in their

⁷ Matters Returning to CC, collected by CSV

⁸ Page 3, 2016, Conciliation Conference Guidelines.

positions on occasion. In addition, convenors are fully trained and qualified and ongoing professional development is provided monthly by the CCU.

Feedback from the stakeholder interviews and survey was consistently highly complementary of the skills and capabilities and professionalism of the CCU team. It was thought that convenors particularly set the tone for the discussion at each conference and their independence was critical to progressing discussions between the parties. It was also our observation that convenors were treated respectfully by parties within the conferences despite the challenges.

Stakeholders considered that the time put aside for each conference was sufficient and also enabled the convener to build rapport with the parties prior to the conference formally commencing. Concerns relating to time, were more focused on late arrivals due to the limited time this then afforded conference parties to reach some sort of agreement.

Areas within the convenors role that raised most questions are as follows:

- 1. Preliminary conference comments.** Whilst family parties appreciated the overview of the conference processes and the reassurances relating to confidentiality and breaks, professional staff believed too much time was spent on these preliminary comments. It was suggested that more information be provided to family parties on the phone at Intake to reduce the time spent in the conference on these preliminary matters. Whilst this issue should be considered by the convenors, it is our view that given there can be a period of weeks' elapse between intake and conferencing, the preliminary comments are important to refresh family parties to the process and aids in reducing any stress and uncertainty they might be experiencing. Additionally, three hours are allocated to the conference and it was our observation that this time was not always used.
- 2. Writing issues up on the whiteboard.** The usefulness of writing issues up on the whiteboard prior to the conference starting was questioned when the documentation used to generate the list was potentially out of date at the start of the conference. It was suggested that the list be generated in discussion with the parties at the start of the conference. We noted from our observations that there was variance among convenors as to whether they listed the issues prior to commencement nor not. This activity should be discussed by the CCU and an agreed position reached.
- 3. Providing advocacy and information for unrepresented parties.** There was concern that some convenors were on occasion inclined to advocate for unrepresented parties and that this compromised their independence. However, our feedback from the CCU was that convenors act within the scope of the Guidelines and questioned whether convenors were advocating or informing parties of their rights within the conference process. Again this issue is worthy of discussion amongst the CCU to ensure all convenors are clear about the boundaries between advocacy and information provision.
- 4. Predicting Court outcomes.** There was some feedback that convenors were on occasion believed to be exceeding their levels of authority by making comment on the likelihood of whether or not a Court would look favourably on any particular agreement or arrangement connected to a child. It was acknowledged that this was an important area to get right and that convenors should exercise caution given that Magistrates may decide differently.
- 5. Diversity of convening approaches.** There was a small amount of feedback in the stakeholder survey noting that convenors had varying tolerances to 'controlling' adversarial or aggressive behaviour by parties around the conference table. Further it was noted that there was benefit in parties seeing convenors intervening early and fairly in order that all parties felt respected and supported. Survey respondents provided examples of times where adversarial behaviour had not been checked and this left workers feeling undermined. Equally, there was an occasion as an observer we noted a convener asking a party to rephrase (content and tone) during a conference as

a statement had been considered outside of the spirit of a conciliation conference. Whilst uniform practice across all conveners is considered unnecessary (and in practice highly improbable), given the relative frequency of comments made about this area in the survey, it is worthy of discussion within the CCU to ensure, to the extent possible, there is a consistent approach.

6. **Allowing support people to attend.** Within conferences, Conveners exercise discretion on many matters including whether or not support people should be allowed into the conference room. The Survey of Families conducted by the CCU highlighted the fact that parties to conferences appreciate the opportunity of bringing with them a support person who can answer questions for them or simply be with them in the room. Conveners generally take a range of factors into account when making these decisions and there was respect generally for the Convener's decision. However, participants noted the times when support people interject and wanted to see conveners be more assertive in handling these situations.
7. **Vacating a conference following long discussions.** Two survey respondents highlighted the financial imposition of vacating a conference after two hours' discussion as they are then unable to bill Victorian Legal Aid for the services they have provided. This issue is also likely exacerbated by the issues discussed above of appropriateness of cases referred and appropriate, up to date information exchange. Acknowledging that this is not necessarily always easy for Conveners to identify and manage from the outset, any view that this could be a likely outcome should be raised by parties appropriately (e.g. not within the course of the conference) to enable the Convener to manage the Conference expediently. However, this is not to suggest that the principle of trying to reach agreement by parties within a conciliation conference should not remain the primary focus.
8. **Diversity of the staff team.** There was concern that despite being well qualified in their field, the underlying skill base of the Convener team had narrowed, with a greater emphasis now on previous Court experience rather than psychology, social sciences etc. This was seen as an unnecessary move and recruiting people with more diverse skills was seen to be an asset to the team.
9. **Staff Safety.** We noted that in regional locations there were limited safety provisions to protect the safety of staff and other parties attending conferences. In many instances, Conveners have adapted their environments to address immediate needs and to ensure there is an escape route from the room wherever possible. We believe that as part of its capital projects initiatives, that regional Courts should be reviewed for Occupational Health and Safety risks.

SPECIFIC CONFERENCE TYPES

The following section provides a discussion of and challenges of specific conference types.

Shuttle conference

The results of the survey were that 81% of respondents believed the conference modes (shuttle and joint) were effective. Shuttle conferences are offered in a variety of situations and enable estranged parties to equitably participate. Whilst considered effective (and necessary) shuttle conferences attracted the most comment with regard to their duration, because of needing to talk to the parties separately. There was a view that conveners should keep opening comments and preliminary discussions to a minimum, in the knowledge that the very nature of the shuttle conference will mean there are time pressures.

Koori conference

Koori conferences were noted as being facilitated appropriately, acknowledging cultural aspects and ensuring the range of relevant issues are re appropriately canvassed. It was felt that there needed to be more than one Aboriginal convener in order that the needs of the regions could be addressed. Our understanding that the CCU is currently addressing this through recruitment.

CALD conferences

There was only one comment recorded in relation to conferences for people from Culturally and Linguistically Diverse (CALD) cultures to the effect that access to translators may be limited and had been an issue for one party in the past. Given the lack of commentary in this area, it can be assumed that there are no significant issues relating to CALD conferences.

Participation of prisoners

There were three issues raised in relation to enabling prisoners to attend conferences. These were:

1. In some conferencing locations it has been possible to link family parties who are imprisoned to the conference by video-link. In others no such facilities exist or did not consistently work. Additionally, the CCU have noted that there have been some technical issues and they have been working to have these resolved given their commitment to enabling participation by all.
2. Prison policies It is unfortunate that the Women’s prison policy is not to facilitate conferencing via video at all.
3. In some other locations, the availability of prison staff to transfer prisoners to appropriate locations so that they could participate was a barrier.

It would appear that the only option to have these issues addressed is through discussions between the Executive of the relevant agencies.

3.4.4 CONFERENCE ATTENDANCE RATES

Conference attendance was highlighted as a concern in the 2011 evaluation and remains a challenging issue. In the last 13 months (1 May 2015 - 31 May 2016), across the State, 4,286 conferences were listed to be conducted⁹ and of these, 2,877 (67%) proceeded. However, there appears to be a trend of improved attendance rates from 63% in 2011 and 65% in the 2015 calendar year. In the three-month period March 16-May 16 (since the Amendments were introduced), the attendance rate was almost 70%. Within this there are regional variations, with generally, but not unanimously, poorer attendance rates being recorded in metropolitan centres than in regional centres as illustrated in Table 3.1 below, which presents the latest regional level data.

Table 3.1: Conference attendance rates by region (1/12/15-31/12/15)

Region	No. of CC's listed to be conducted	No. of CC's conducted	% of CC's listed actually conducted
Melbourne	2573 (69%)	1582 (66%)	61%
Loddon Mallee	175 (5%)	106 (4%)	61%
Hume	283 (8%)	212 (9%)	75%
La Trobe Valley	246 (7%)	201 (8%)	82%
Grampians	224 (6%)	175 (7%)	79%
Barwon SW	213 (6%)	128 (5%)	60%
TOTAL	3714	2405	65%

⁹ Statewide Conciliation Conference Monthly Statistics, May 1st, 2015-May 31st, 2016, Children’s Court Victoria.

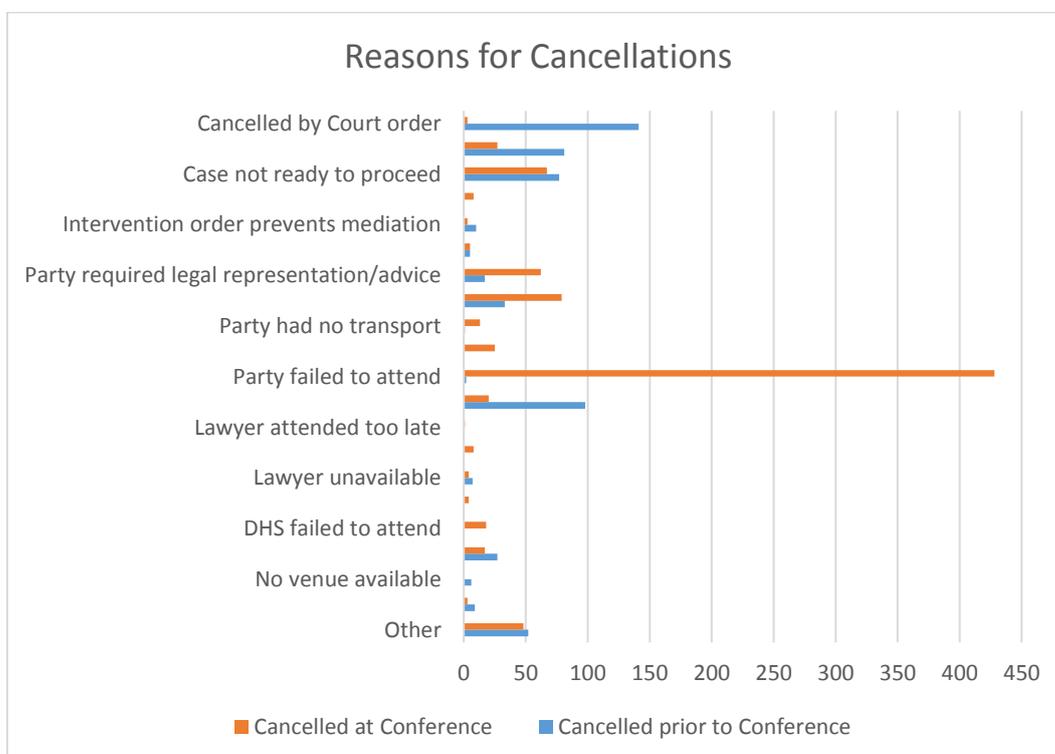
Our observations and interviews did not elicit evidence that could explain the higher attendance rate in the regions where this occurred. It was felt that travel was equally, if not more complex in the regions, with more restrictive bus services and that processes used by Intake Officers are the same for the city and the regional centres. In addition, not all regions were utilising SMS messaging to remind parties of the date/time of their conference. The predominant view was that the ‘culture’ of regional locations was likely the point of difference with enhanced communication between lawyers and parties in the country and that closer engagement at this level increases (but does not guarantee) the likelihood of otherwise hesitant parties attending conferences. However, this hypothesis has not been proven and other factors may be at play.

The CCU collect data in relation to the timing of the cancellation (pre-conference or at conference) and the reasons for cancellation (Figure 3.3). In the 13-month period ending May 2016, 566 conferences were cancelled prior to the CC and 843 cancelled at the CC. It is important to note that a large number of those that are cancelled prior to the conference are the result of a court order, the case being settled or not ready to proceed.

Cancellations at the conference are predominantly related to non-attendance by one of the family parties. Late arrival is also an issue albeit from our observations maximum flexibility is provided by all other parties to allow the conference to proceed on the day scheduled.

The Families Survey demonstrated that travelling to conferences can take a considerable amount of time. For example, 40% of families indicated they travelled for over two hours in order to arrive on time.¹⁰ In addition, some (43%) had made special arrangements, that included childcare and time off work. Non-attendance by any party is therefore a critical issue when complex arrangements have been made to enable some people to attend.

Figure 3.3: Conference Cancellations May 1st 2015- May 31st 2016



¹⁰ Families’ survey CSV, 2016

The CCU is cognisant of the impact of cancellations and have tried a range of strategies to minimise the issue, however, it has to be recognized that many factors are beyond their control. A variety of opinions have been proposed as to how to address the cancellation rate on the day of the conference (some of which have been tried or are currently occurring) including:

- Lawyers or Intake Officers making contact with parties the day before the conference. Our understanding is that this now occurs in Melbourne with SMS's sent to the parties. Some regions also use this system but others have yet to introduce it.
- Allowing a party to participate by phone if everyone else is present in the room and is happy to proceed
- Being more lenient with starting times for parties running late
- Convenors being able to exercise discretion to run if parties are late and if constructive conversation can be had between those present
- Based on the case, proceeding with the conference where a party doesn't attend.
- Starting conferences later in the day after people had dropped children off for school, noting they have already been scheduled for 9.30am to allow for this to occur
- Making conferences available closer to where parties live.

There was a suggestion of imposing a 'penalty' on any non-attending party such as making final orders or adjourning for directions hearing or withdrawing legal aid, however, we are unsure of the feasibility of such suggestions.

As noted above, the CCU is highly conscious of the cancellation rate and the impact (including financial) of not proceeding as scheduled. Other strategies being trialed or under consideration by the CCU that would contribute to minimising the cancellation rate include; the Broadmeadows ADR pilot, reviewing the adequacy of conference locations and whether there is a role for family follow-up by the Intake Officer closer to the day of the conference.

A further strategy that we would propose is a specific study of the reasons for non-attendance and lateness by family members. This would require the CCV to invest a small amount of resources (perhaps by a student on placement) in more detailed and direct information gathering with family members to understand the barriers and challenges to attendance. This could then be presented for discussion within the CCU and also the ADR Working Group meeting to discuss and develop strategies to address the key issues where this is possible.

3.4.5 REACHING AGREEMENT

A key aim of conferencing is of course to reach agreement outside of the court setting. It is our finding that the CCM performs well against that aim. Of the conferences held, 38% are settled with a final order, with a further 36% still to be determined. Only 26% are not settled and a contest booked, noting as discussed above some have been referred with limited expectation of settlement (although that is hoped) but rather to further narrow the differences between parties. This is a key 'process' aim and is additional to the aim of settlement (both of which are valid).

Table 3.2 below presents the results of the 2,877 conferences that were heard across the State in the last 13 months (May 1st 2015 – May 31st 2016).

Table 3.2: Conference Outcomes May 1st 2015- May 31st 2016

Outcomes	# and % of conferences
Settled (final order)	1080 (38%)
Settled on interim basis	111 (4%)
Adjourned for further CC	537 (19%)
Adjourned for further mention	401 (14%)
Not settled (contest booked)	748 (26%)
TOTAL	2,877

As was the case with attendance, we note that the regional areas have higher rates of settlement than observed in the metropolitan sites. This is illustrated in Table 3.3 below which shows the outcomes of the conference at the regional level in the period 1/1/15-31/12/15 (the last period where data was available at the regional level). It is noted that CCV submitted additional data for analysis but this was at state rather than regional level. It was hypothesised that better attendance might be related to the country context in which professionals, parents etc. know each other better. However, it may also be that cases in the regional areas may be less complex and hence are better attended and more readily resolved.

Table 3.3: Conference Settlements (1/1/15-31/12/15)

Region	% Settled (final order)	% Settled on interim basis (IPO)	% Adjourned for further CC	% Adjourned for further mention	% Not settled (contest booked)
Melbourne	33.88%	4.49%	20.35%	11.13%	30.15%
Loddon Mallee	43.40%	9.43%	16.98%	21.70%	8.49%
Hume	48.11%	6.60%	9.43%	11.79%	24.06%
La Trobe Valley	49.25%	9.45%	19.90%	14.43%	6.97%
Grampians	48.59%	5.08%	9.04%	19.77%	17.51%
Barwon SW	39.84%	0.00%	15.63%	21.09%	23.44%
TOTAL	38.24%	5.11%	18.12%	13.09%	25.44%

Despite the settlement rates being achieved, some stakeholders felt that few agreements were reached although areas of dispute could be narrowed. A few survey participants raised their concerns that some legal representatives were using conferences as case planning exercises and increasing documentation associated with what the parent was doing to address the concerns of the DHHS, in preparation for a contest at a later date. As we have noted these are the process benefits of the CCM and should be seen from that perspective, rather than expecting that all cases will be settled through the process.

Clearly the rate of settlement is highly dependent on the individual characteristics of each case, although the willingness to communicate appropriately and not have a fixed position (where this is not essential) as discussed above will also be an influence. With the exception of the Convenor being effective in their role (which has been demonstrated) there is little else within the control of the CCV to enhance the parties reaching settlement.

Continually looking to improve conference processes, increasing attendance, enhancing communication and ensuring that cases are appropriate for conferences will be the critical factors to improving the settlement rate.

3.4.6 COURT REPORTING

A system whereby parties are able to return to court for magistrate confirmation within an hour of conference conclusion, lessens the likelihood that parties will change their mind and also negates the need for a return on a different day. Our finding was that on the basis of the 'red slip' priority system this is largely effective. There were however examples of that system breaking down and hence there would be value in reviewing reasons for delay and opportunities for streamlining the process.

Writing up and submission of orders can also be problematic and we would propose that CCV give consideration to how this could become more highly automated. One suggestion would be to have a software program developed that included numerous drop down boxes containing the predominant responses for each section of the order. Of course this would also need to include 'Other' categories where free text could also be entered. Potentially this could be done in the conference room and projected onto the wall for all parties to visualize. This would enable clear orders to be developed efficiently and clearly and provide a ready-made electronic record.

3.5 INFRASTRUCTURE

The conferencing unit in the Melbourne CBD is new and has been built for purpose. The design and layout is a significant contributor to the safe and smooth operation of the conferences including shuttle conferences. One room has been designated for Koori conferences and this is adorned appropriately. Additionally, the location of this Unit next to the Children's Court is a benefit for final court reporting.

To varying extents, the regional centres were considered as being far less appropriate for conferences and less conducive to participants feeling safe due to shared waiting facilities, the lack of break-out rooms and therefore limitations in the conduct of shuttle conferences.

Whilst noting that CCU staff are diligent in maintaining the safety of all parties in shuttle conferences, the nature of conferencing is intense and busy proving it challenging to always know where the various parties physically are. The end of the conferences in particular is often busy with paperwork being finalised and people moving off to Court, and the focus on where the parties are can easily be lost. This places significant responsibility on the convenors.

We note that in one location conferencing is occurring in a facility (not belonging to the Courts) that has been modified for dispute resolution purposes and this is servicing the conferencing process well. Our recommendation would be that other similar opportunities be explored for other locations.

Should resources be available for infrastructure development or modification, we would recommend that a priority list be developed with the safety of all parties being a key criterion for decisions about iterative development of the infrastructure.

3.6 STAKEHOLDER SATISFACTION

A critically important conference objective was to deliver positive outcomes for the parties. However, there are few sources of data designed to collect qualitative details. In the survey, professionals believed that 28.4% of parents and children they assisted were satisfied with the conference process. This compared with 35% of professionals who were satisfied with the conference process.

In most instances the lack of detail meant that we are unclear as to what, precisely, participants were satisfied with i.e. process or outcomes. Ad-hoc studies, such as the Families Survey conducted by CCV, identified that 86% of people felt that conference days were better than court days. Beyond this, the Matters Returning to CC Survey sought information about what families liked about the conferences they had attended. Responses were focused on the following areas:

- Having a say/being heard
- Being able to discuss and negotiate the issues
- Achieving a good outcome
- Being in a relaxed environment
- Proficient convener
- Being safe
- Having a support person present

It was notable that some people commented that they appreciated the opportunity to discuss the well-being of the child even in cases where it appeared the child (or children) was not being immediately returned.

The above data highlights the ad-hoc approach to data collection. At best the data is impressionistic and a more longitudinal and systematic approach to data collection is needed if levels and areas of satisfaction are to be properly collated. This could be done throughout the CCV's existing data collection mechanisms.

3.7 OUTCOMES AND UNINTENDED EFFECTS

As with parent satisfaction, there is no consistent or systematic approach to collecting outcomes data. Our summary findings in this area are based on our consultations and observations and have been reported throughout this Chapter. We found the main outcomes were related to the following areas:

- **The potential for improved relationships** between DHHS and clients (although this can still depend on the outcome of the conference).
- **Capacity to resolve more straightforward issues** on matters that could have otherwise gone to contest.
- **The process is preferred** by families (parent's survey)

The unintended effects related to the following:

- A risk of focussing on the parents rather than the child
- Delays in getting cases (that aren't going to settle in a conference) into court
- The potential for disconnected parties due to a) children saying their voice hasn't been heard and b) parents not understanding processes
- Damaged relationships between parents and DHHS where the outcomes, are perceived as poor, by parents.
- Parties being adversarial and not being actively managed in the conference process

It was suggested that the Victorian Legal Aid may have data for assisting clients that might help to throw light on the more 'hidden' outcomes that result from the conferencing experience. In order to more

consistently collect data on outcomes, we suggest the CCV focuses on developing their own data set. We also suggest only collecting data that reflects activities over which the CCV has some control as this will make implementing change to improve satisfaction or outcomes more straightforward.

IMPACT OF AMENDMENTS TO THE ACT

One of the foci of the evaluation was to assess, to the extent possible, what impacts if any were arising from the legislative amendments to the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* which commenced in March 2016. Further, to give consideration to what changes might have to be applied to the CCM to ensure it continued to be effective.

Our evaluation processes for this project did not commence until shortly after the amendments were introduced, so there was limited opportunity to gather peoples' predictions and equally little time had passed for any changes to be identified and confirmed. Within that context, this chapter provides feedback on observations to date.

4.1 IMPACTS OF THE CHILD, YOUTH AND FAMILY AMENDMENT ACT

The Amendments received Royal ascent in September 2014 for implementation in March 2016, however, it was not until around July 2015 that more open discussion was being held by court users according to the CCU. On this basis it might be expected that should parties be 'responding' to the new amendments in the legislation this would begin to be realised from July 2015 and perhaps more obviously closer to March 2016.

The CCU had already undertaken a comprehensive analysis of conference statistics comparing three years of data up to July 2015¹¹, in order to inform the potential impact of the amendments on conference processes and outcomes. The key findings from this analysis were:

1. The proportion of cases settled at conference was falling, however, this did not result in an equivalent increase in the proportion proceeding to contest by way of first directions. Conferences not settled were proceeding to further conferencing or further mention.
2. The Unit identified five impacts with statutory timeframes being most predominant (77%). Others included; limitations on contact (13%), Inability to nominate a carer (7%), Contact conditions being opposed as part of a Permanent Care Order (2%), and Loss of guardianship rights (1%).

4.1.1 CONFERENCE DATA

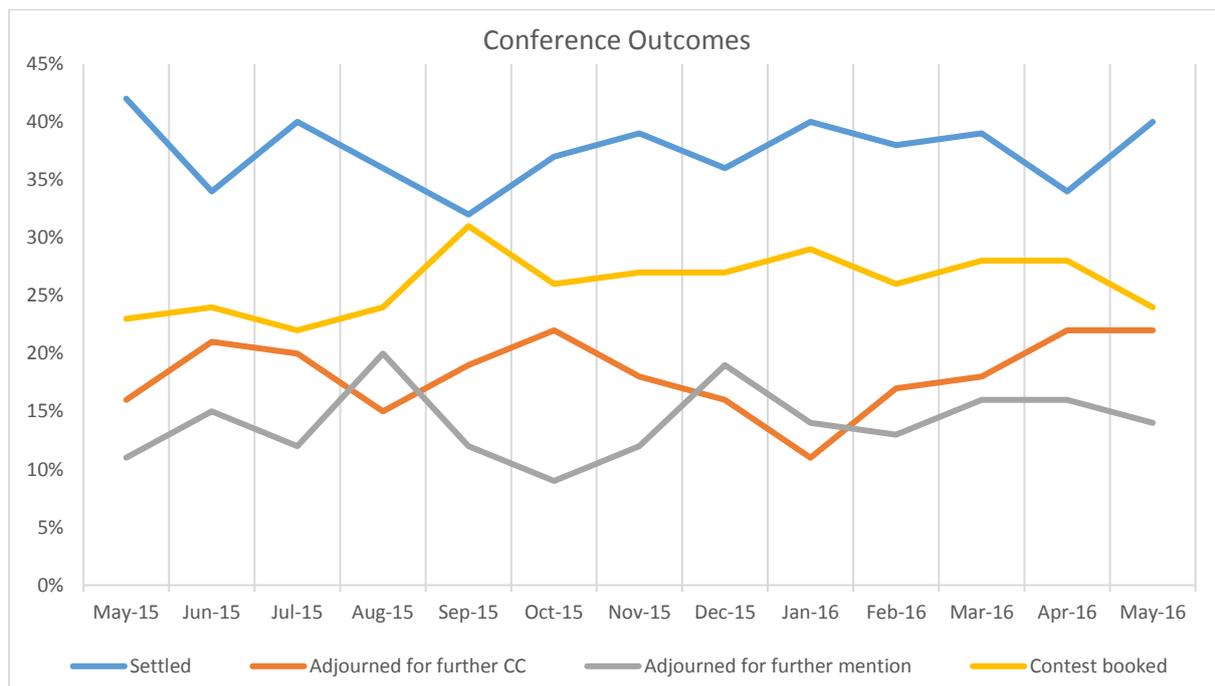
We have reviewed the conference process and outcomes data over the last 13 months (May 2015 – May 2016) which represents the period leading up to the open discussion in July 2015 and to the enactment of the amendments in March 2016 and three months beyond. The key findings from this analysis was:

1. There was a slight upwards movement in the number of conference bookings from July 2015 (329 cases) to September 2015 (362 cases), however, this was not sustained. From February 2016 (360 cases) to May 2016 (397) there has again been an upward trend in conferences booked which may be in response to the new amendments being enacted.

¹¹ P.4, 2015, Conference Outcomes Impacted by Amendments to the Children Youth and Families Act 2005.

2. The proportion of cases that settled at conference in the 13-month period don’t appear to be trending in any direction and fluctuate in the range of 30%-40% (Figure 4.1). There does not appear to be any impact on settlement rates as a result of the new amendments.
3. Conferences adjourned for a further conference appear to be consistently higher in 2016 than in 2015 and would be indicative of parties wanting to reach settlement without a contest. It is unclear whether this would be associated with the amendments.
4. Conferences adjourned for further mention don’t appear to have an established trend over the whole 13-month period. However, we note that from July 2015 – November 2015 they fell and again from January 2016 appear to be trending downwards. This may be associated with increased discussion of the amendments and then the subsequent enactment.

Figure 4.1: % of conferences settled or adjourned for further CC (May 2015 – May 2016)



Summarising the change in conference bookings and outcomes from the last 13-months, it appears that firstly the increased discussion of the amendments in July 2015 and then the subsequent enactment in March 2016 does not appear to have had a significant impact on the numbers booked or outcome of the conferences held. However, this would need to be monitored over time to determine whether any of the changes initially observed are sustained. Additionally, this would likely need to be confirmed through qualitative feedback that supported the change was related to the amendments.

4.1.2 STAKEHOLDER FEEDBACK

The timing of the stakeholder survey and telephone interviews has led to a large number of comments that emphasised the need to ‘wait and see’, as it was believed to be too early for the Amendments to have had an effect. With respect to how the conferences might be impacted, the issue of the ‘time restraint’ brought about by the new amendments was most commonly raised. Questions raised by the different stakeholders consulted include:

- Would parties opt for a contested hearing rather than a conference due to concerns with running out of time? or

- Would conferences be in greater demand due to parties wanting to build evidence over time demonstrating capacity to adhere to DHHS requirements and to use this as evidence in future contested hearings if required? or
- Would DHHS use orders to achieve their aims over time?

Further, we found a significant concern with the two-year timeframe and the phrase 'the clock's ticking' was often used to convey people's concern that there was limited time to help families address issues in order to be reunited with their child(ren). In this context there was some interest in using conferences to assist in case planning and offer opportunities to connect parents with services in order that they could work towards the reunification goal prior to the two years ending. Despite this time constraint, conferences were still regarded as having an important role with the added benefit of generating evidence that could be put before a magistrate to support reunification if a parent was able to adhere to the goals set.

A critical factor related to the narrow two-year timeframe of opportunity, was the capacity of the conference model to respond speedily to listing requests. As highlighted elsewhere in this report, the wait of 4-6 weeks for a conference was a significant delay for those people wanting to engage more speedily. We have reported on the increased flexibility of conferences to ensure they are able to proceed as planned and also of the priority process that can ensure conferences can run at short-notice. In the new, time-limited context, it will be important the CCU is as flexible as possible, without reducing the integrity of the conference process and in this regard, it will be important to closely monitor demands for new approaches as the Amendments bed down.

4.2 SUMMARY

At this early stage it does not appear that there has been any impact on conferences booked and conducted or conference outcomes related to the introduction of legislative amendments in March 2016. The fact that through the consultations stakeholders were still uncertain of what might happen and were not discussing any specific change in process they had adopted would suggest that there has not been any significant change as yet from the introduction of the amendments. This is supported by the conference data analysis discussed above

The evaluation was to determine whether the CCM as it currently is structured and operates would need to be adapted in response to any changes arising from the Amendments. Other than the current commitment to be flexible in the conduct of conferences and ensuring that the time period to the conference does not extend beyond 4-6 weeks, at this stage we do not foresee the need to make any change to the CCM that are related to the Amendments. However, it will be important to monitor issues related to timing in particular and report and discuss this with the ADR Working Group over the next 12 months.

EFFICIENCY OF THE MODEL

This chapter reports on the relative efficiency of the conciliation conferencing model. The focus is on the comparative cost of the CCM against the alternative approach of a contested hearing.

Discussion was held with the Children's Court with respect to the types of data available, including outcomes data, that could be utilised to demonstrate the cost effectiveness and efficiency of the CCM. Given the CCU does not collect client outcomes per se and rather maintains data as to conference outcomes, it was determined that these would be used to conduct the economic analysis. Additionally, this was in keeping with the evaluation resources available for this analysis. The approach utilised was to estimate the costs avoided by the various parties through settling a child protection 'contest' through a conference rather than through the court.

5.1 COSTS AVOIDED FOR THE CHILDREN'S COURT

The following section discusses the potential net saving to the CCU from settling and hence fully avoiding a contested hearing or minimising the areas of dispute between parties and therefore shortening the duration of a contested hearing.

The analysis is based on the following assumptions:

- 2,400 conciliation conferences being held annually (the 12 months to May 2016 amounted to 2664)
- The annual operating budget for the CCU is approximately \$5m for the 2015/16 financial year
- The CCU had previously calculated the average court costs for the Children's Court (personnel only) for a contested hearing is \$18,500. This was based on a 6-day hearing which was determined as the average duration. Accordingly, the cost of a single day contested hearing (personnel only) is \$3,083.

Based on the assumptions above, we have conducted a sensitivity analysis of potential net savings from avoiding contested hearings at different rates (%) of conferences held. If 276 of the 2,400 conferences are settled (11.5%) rather than undergo a 6-day contested hearing, the annual operating costs of the CCU (\$5m) will be avoided. If 15% are settled, the potential net savings to the CCU are more than \$1.5m (Table 5.1). Of the conferences held, the proportion of conciliation conferences actually settled (final order) for the 12 months to May 2016 was 37%. Accordingly, the potential net savings detailed below would be considered achievable and conservative.

Table 5.1: Potential net savings from contested hearings fully avoided

	Proportion of contested hearings fully avoided				
	10%	15%	20%	25%	30%
# of contested hearings fully avoided	240	360	480	600	720
Savings from contested hearings fully avoided	\$4,440,000	\$6,660,000	\$8,800,000	\$11,100,000	\$13,320,000
Annual cost to CSV of operating CCM	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000
Net savings from contested hearings fully avoided	-\$560,000	\$1,660,000	\$3,880,000	\$6,100,000	\$8,320,000

Using the same assumptions described above, analysis was undertaken of potential net savings that could be achieved if a conciliation conference was not settled but facilitated a shortened contested hearing. This was analysed for a 3-day hearing (saving of 3 days over the average) and a 4-day hearing (saving of 2 days). As illustrated in Table 5.2 below, if 25% of annual conferences reduced the resultant contested hearing by 3 days, the annual cost of the CCU (\$5m) would be avoided.

Table 5.2: Potential net savings from shorter contested hearings

	Proportion of contested hearings with shortened timeframe				
	10%	15%	20%	25%	30%
# of contested hearings with shortened timeframe	240	360	480	600	720
Savings from 3-day contested hearing	\$2,220,000	\$3,330,000	\$4,440,000	\$5,550,000	\$6,660,000
Savings from 4-day contested hearing	\$1,480,000	\$2,220,000	\$2,960,000	\$3,700,000	\$4,440,000

Table 5.3 below demonstrates the potential net savings from a combination of fully avoiding a proportion of contested hearings and minimising the duration of a proportion of contested hearing. To illustrate the potential net savings that are generated by conciliation conferences, if 15% of conferences avoid a contested hearing and a further 15% minimise the duration of any contested hearing, the \$5m cost of operating the CCU annually is avoided.

Table 5.3: Potential net savings from combination of contested hearings fully avoided and shorter contested hearings

Proportion of contested hearings with shortened timeframe	Reduced court days	Proportion of contested hearings fully avoided				
		10%	15%	20%	25%	30%
10%	3	\$1,660,000	\$3,880,000	\$6,100,000	\$8,320,000	\$10,540,000
	2	\$920,000	\$3,140,000	\$5,360,000	\$7,580,000	\$9,800,000
15%	3	\$2,770,000	\$4,990,000	\$7,210,000	\$9,430,000	\$11,650,000
	2	\$1,660,000	\$3,880,000	\$6,100,000	\$8,320,000	\$10,540,000
20%	3	\$3,880,000	\$6,100,000	\$8,320,000	\$10,540,000	\$12,760,000
	2	\$2,400,000	\$4,620,000	\$6,840,000	\$9,060,000	\$11,280,000
25%	3	\$4,990,000	\$7,210,000	\$9,430,000	\$11,650,000	\$13,870,000
	2	\$3,140,000	\$5,360,000	\$7,580,000	\$9,800,000	\$12,020,000
30%	3	\$6,100,000	\$8,320,000	\$10,540,000	\$12,760,000	\$14,980,000
	2	\$3,880,000	\$6,100,000	\$8,320,000	\$10,540,000	\$12,760,000

In summary, the potential cost avoided by the court system through referring cases to conciliation for resolution or narrowing of the dispute is easily sufficient to counter the annual costs of operating the CCU.

5.2 COSTS AVOIDED FOR THE DHHS

The following section discusses the potential net saving to the DHHS and more specifically Child Protection Legal Officers from settling and hence fully avoiding a contested hearing or minimising the areas of dispute between parties and therefore shortening the duration of a contested hearing.

The analysis is based on the following assumptions:

- The DHHS has calculated that the average court costs for preparing for and attending a six-day contested hearing in the Children's Court (personnel only) is \$6,280. The first day is a cost of \$1,330 and subsequent days \$990.
- The cost associated with a conference is \$680 per conference.
- The savings of a single conference over a 6-day hearing is \$5,600.
- 2,400 conciliation conferences being held annually (the 12 months to May 2016 amounted to 2664)
- The cost of the child protection practitioner or CPLO lawyer may be understated.

Based on the assumptions above, we have conducted a sensitivity analysis of potential net savings from avoiding contested hearings at different rates (%) of conferences held. If 15% are settled, the potential net savings to the DHHS more than \$2.0m (Table 5.4). The proportion of conciliation conferences actually settled (final order) for the 12 months to May 2016 was 37%. Accordingly, the potential net savings detailed below would be considered achievable and conservative.

Table 5.4: Potential net savings from contested hearings fully avoided

	Proportion of contested hearings fully avoided				
	10%	15%	20%	25%	30%
# of contested hearings fully avoided	240	360	480	600	720
Savings from contested hearings fully avoided	\$1,344,000	\$2,016,000	\$2,688,000	\$3,360,000	\$4,032,000

Using the same assumptions described above, analysis was undertaken of potential net savings that could be achieved if a conciliation conference was not settled but facilitated a shorted contested hearing. This was analysed for a 3-day hearing (saving of 3 days over the average) and a 4-day hearing (saving of 2 days). As illustrated in Table 5.5 below, \$1m in costs could be avoided through 15% of cases being shortened by 3 days.

Table 5.5: Potential net savings from shorter contested hearings

	Proportion of contested hearings with shortened timeframe				
	10%	15%	20%	25%	30%
# of contested hearings with shortened timeframe	240	360	480	600	720
Savings from 3-day contested hearing	\$712,800	\$1,069,200	\$1,425,600	\$1,782,000	\$2,138,400
Savings from 4-day contested hearing	\$475,200	\$712,800	\$950,400	\$1,188,000	\$1,425,600

Table 5.6 demonstrates the potential net savings from a combination of fully avoiding contested a proportion of contested hearings and minimising the duration of a proportion of contested hearing. To illustrate the potential net savings that are generated by conciliation conferences, if 15% of conferences avoid a contested hearing and a further 15% minimise the duration of any contested hearing, costs of approximately \$2.7m-\$3.0m can be avoided.

Table 5.6: Potential net savings from combination of contested hearings fully avoided and shorter contested hearings

Proportion of contested hearings with shortened timeframe	Reduced court days	Proportion of contested hearings fully avoided				
		10%	15%	20%	25%	30%
10%	3	\$2,056,800	\$2,728,800	\$3,400,800	\$4,072,800	\$4,744,800
	2	\$1,819,200	\$2,491,200	\$3,163,200	\$3,835,200	\$4,507,200
15%	3	\$1,344,000	\$3,085,200	\$3,757,200	\$4,429,200	\$5,101,200
	2	\$2,056,800	\$2,728,800	\$3,400,800	\$4,072,800	\$4,744,800
20%	3	\$2,769,600	\$3,441,600	\$4,113,600	\$4,785,600	\$5,457,600
	2	\$2,294,400	\$2,966,400	\$3,638,400	\$4,310,400	\$4,982,400

Proportion of contested hearings with shortened timeframe	Reduced court days	Proportion of contested hearings fully avoided				
		10%	15%	20%	25%	30%
25%	3	\$3,126,000	\$3,798,000	\$4,470,000	\$5,142,000	\$5,814,000
	2	\$2,532,000	\$3,204,000	\$3,876,000	\$4,548,000	\$5,220,000
30%	3	\$3,482,400	\$4,154,400	\$4,826,400	\$5,498,400	\$6,170,400
	2	\$2,769,600	\$3,441,600	\$4,113,600	\$4,785,600	\$5,457,600

In summary, the potential cost avoided by DHHS through referring cases to conciliation for resolution or narrowing of the dispute is easily sufficient to counter the annual costs of operating the CCU.

5.3 SUMMARY

Contested hearings are an extremely costly means of resolving disputes between parties in child protection cases. In contrast, a conciliation conference is a significantly more efficient mechanism for dispute resolution.

Based on a conservative number of conferences held annually and subsequently conservative estimates of contested cases that can be fully avoided or the duration minimised, significant costs can be avoided by the Children’s Court and DHHS. However, it should be noted that VLA financial data was not made available to the evaluation. As a consequence, the costs avoided could be understated. For the Children’s Court, the \$5m of annual operating costs can be avoided at settlement rates lower than that currently being achieved.

SUMMARY OF ACHIEVEMENTS AND AREAS FOR CONSIDERATION

This chapter presents a summary of key findings and opportunities for improvement to the CCM. It presents the aspects of the CCM that work well and where the model could be improved. It is suggested that the CCU identifies areas that are within its own scope to address and utilise the ADR Working Group as a point of reference on multi-agency issues.

6.1 STRENGTHS

Overall we have found that the CCM works well and appropriately offers an opportunity for parties to have a voice in a non-adversarial setting in which there is an independent convenor who assists in helping parties to focus on the future and consider the best interests of the child. Our assessment of the statistics is that 40% of cases are settled and that the process is more cost effective than hearing cases in Court. We can also report that parents appear to prefer a conferencing process compared with going to Court and that overall, they feel as though there has been an opportunity to 'have their say.'

With regard to the Amendments, our assessment of the costs, statistics and the feedback we received through the survey and phone consultations, is that whilst there is a concern about the timeframe within which families now have to work, there does not appear to be any significant impact from the introduction of the legislative changes.

Feedback from the stakeholder interviews and survey was consistently highly complementary of the skills and capabilities and professionalism of the CCU team. It was thought that convenors particularly set the tone for the discussion at each conference and their independence was critical to progressing discussions between the parties. It was also our observation that convenors were treated respectfully by parties within the conferences despite the challenges.

6.2 AREAS FOR CONSIDERATION

As a result of our findings we suggest the key areas to be addressed are as follows:

- Exploring opportunities to enhance the focus on the child throughout the conference process to ensure that best possible practice is being implemented
- Identifying approaches that enable all parties to participate in conferences in non-adversarial ways and that enables self-represented parties to participate in the process without impacting the perception of the independence of the convenor
- Reducing the waiting time for conferences, particularly where timeframes are critical and offering speedy resolution opportunities to appropriate cases
- Exploring non-attendance in order to address the number of parties not turning up on the day and developing strategies on the basis of any findings

- Exploring opportunities for improving information exchange so that parties can be better prepared for the conferences they attend
- Devising and implementing minimal data collection strategies in order to capture information relating to the benefits of conferences for stakeholders and monitor feedback on this data.

Our assessment is that attention to the above areas is critical to ensuring effectiveness of the CCM, alignment with Guidelines and best practice as well as contributing to improved satisfaction and enabling an increased focus on the best interests of the children of Victoria living in out of home care.



APPENDIX A – STAKEHOLDER CONSULTATION

Interviews/Written Responses

	# Phone interviews	# Written responses	Total # responses	Declined	No response	# Nominees
CSV	7	2	9	0	1	10
DHHS	15	1	16	6	17	39
Private Solicitors	6	0	6	0	2	8
Victorian Legal Aid	4	0 ¹²	4	0	3	7
Magistrates	3	0	3	1	5	9
Total	35	3	38	7	28	73

Online Survey Completed Responses

	Barwon SW	Grampians	Hume	LaTrobe Valley	Loddon Mallee	Melbourne/Moorabbin	Other	Total
CSV	2	1	1	0	0	6	0	10
DHHS	1	8	1	5	1	19	4	39
Legal	4	4	2	0	1	33	2	46
Total	7	13	4	5	2	58	6	95

¹² 1 anonymous written submission was made and so has not been included in this table as the response could have been from an interviewed person.

Conference Observations

Region	# Conferences Attended/ Observed
Melbourne	12
Ballarat	Available for 2 but these did not proceed
Shepparton	2
Morwell	2
Geelong	2
Total	18



APPENDIX B – RECOMMENDATIONS OF 2012 EVALUATION OF CCM

The recommendations from the 2012 evaluation are as follows:

- 1 Document exchange forms and processes need to be reviewed to ensure that the information exchanged is relevant and that the documents are exchanged on time.
- 2 Diverse initiatives are required to reduce the level of cancellations as there is no one reason why this is taking place – this includes focusing on the preparation processes (by legal practitioners and the Conference Unit), the timing of the case being referred to an NMC; and initiatives that can be undertaken on the day (e.g. reminder calls, transport, childcare assistance etc.).
- 3 The second mention 'trigger point' should be reviewed to ensure that a balance is achieved between the readiness of the case and DHS workers to go to an NMC and the potential for reaching either a full or partial agreement. It may be that the third mention is a better option at this stage or a greater period of time is needed between referring and holding the NMC.
- 4 A holistic approach is needed to review and improve the NMC program given the inter-connectedness of the challenges raised and the number of stakeholders involved.
- 5 Continuing to evolve the NMC process will contribute to more efficient and effective use of time - the experience of the Conference Unit has built up a body of important learnings to improve the NMCs and facilitate a smoother roll out of the NMCs across the metropolitan region.
- 6 CPLO staff present during NMCs should be a best practice goal as their contribution for the duration of NMCs has been highly valued by other stakeholders and they have adapted to their enhanced role with great insight and enthusiasm.
- 7 Enhancing NMCs for Aboriginal and Torres Strait Islander parties should be considered especially given the high percentage of clients coming from the Preston region.
- 8 The Conference Unit will require further support for data collection processes and intake in order to balance relevant data collection and processes with available resources.
- 9 Family feedback remains a challenge and further options will need to be explored if these views are to be captured in the future.



APPENDIX C – BEST PRACTICE CONCILIATION CONFERENCING PRINCIPLES

1. **Stakeholder buy-in.** Constructive participation and engagement of all key parties including children and families from the beginning of the conferencing process through to court order.
2. **Appropriate timing of referrals to conferencing.** Referrals should be made as early as possible in proceedings and prior to any court decisions handed down.
3. **Flexibility of eligibility criteria.** All relevant matters should be considered when deciding whether a matter should be referred to conference and matters should not be excluded based on individual risk factors.
4. **Appropriately trained and skilled conference facilitators.** Training should be ongoing and facilitate independence and impartiality of facilitators and facilitators should also come from culturally and linguistically diverse backgrounds.
5. **Attendance by family.** A broad definition of family should underpin conferencing models to include friends, community representatives, elders and other sources of support.
6. **Participation by the children in question.** Where appropriate (having regard to age, risk and other factors) children should attend and participate in conferencing; where this is not possible, their views should be considered in the development of a Family Plan or in agreements made.
7. **Cultural appropriateness.** Processes and approaches should be carried out in a culturally appropriate and respectful manner and where possible the facilitator should speak the same language and be of the same cultural background.
8. **Provision of 'family time'.** Families should be provided with adequate time to develop their Family Plan to address protection concerns and professionals involved should not pressure or coerce families in reaching conclusions.
9. **Behaviour and approach of professional parties involved.** Professionals (child protection representatives, legal representatives and facilitator) should communicate simply and clearly with families and be open to negotiation, ensuring that families are aware of the roles of each professional at the conference and understand the process.
10. **Confidentiality and the provision of information.** Parties should adopt a 'no new news' policy at conferences to ensure that information is provided prior to the conference and that any conditional matters are discussed separately with the relevant family member.
11. **Clear processes of review.** Mechanisms to review the Family Plan to ensure that services are being delivered accordingly and that parties are meeting their obligations should be in place.



APPENDIX D – TELEPHONE INTERVIEW QUESTIONS

1. Do you perceive the conference model to be working effectively? (e.g. listing times, appropriate matters referred to conference, enough communication between the conference unit and the court, confidentiality.)
2. What do you perceive as the benefits of conferencing? (e.g. decreasing court delays, providing a less adversarial environment for resolution.)
3. What do you perceive as the challenges of conferencing? (e.g. barriers to family participation, cancellation rates, inappropriate matters referred to conference.)
4. What improvements do you think could be made to conferencing to address the challenges?
5. What if any impact do you believe the new legislation will have on conferences and how should this be responded to?
6. Any other comments.



APPENDIX E – ON-LINE SURVEY

1) Please identify which of the following locations you are based in.*

- Barwon SW
- Grampians
- Hume
- La Trobe Valley
- Loddon Mallee
- Melbourne/Moorabbin
- Other, please specify: _____*

2) Please identify the sector you work in?

- Court Services Victoria
- DHHS
- Legal
- Other: _____*

The Conferencing Model

3) In your view what are the overall strengths and weaknesses of the current conferencing model?

4) To what extent do you believe the model has delivered on its core objectives? (Select one option per line.)

	Has completely delivered in all areas	Has delivered well in all areas but could be improved	Has delivered well across the board	Has not delivered at all in any area	Don't know	N/A
Delivered earlier and more collaborative agreements	()	()	()	()	()	()
Encouraged less adversarial approaches	()	()	()	()	()	()
Met the needs of children and other parties	()	()	()	()	()	()
Delivered positive client outcomes	()	()	()	()	()	()

If you did not answer 'has completely delivered in all areas' for each above row, please say what elements of the model need to be strengthened and how. _____

5) How have recent amendments to the Act already impacted the model? (Please say what changes you have observed.) _____

Model Implementation

6) Are the processes associated with the planning and implementation of the model efficient?

Yes No To some degree Don't know N/A

If you answered 'no' or 'to some degree' then please say what should be addressed to improve efficiency.

7) Within the conferencing model, how effective are the following processes?

	Highly effective	Predominantly effective	Effective to some degree	Not at all effective	Don't know	N/A
Listing	<input type="checkbox"/>					
Scheduling	<input type="checkbox"/>					
Risk assessment	<input type="checkbox"/>					
Information exchange	<input type="checkbox"/>					
Conference mode (shuttle/joint)	<input type="checkbox"/>					
Conduct of conference	<input type="checkbox"/>					
Court reporting	<input type="checkbox"/>					
Time allocated to the conference	<input type="checkbox"/>					

With regard to effectiveness of conference processes, what are your areas of greatest concern and why?

8) In your view, what inputs and/or resources are critical to the success of the conferencing model?

The Conduct of Conferences, Meeting Demand, Participation and Addressing Barriers

9) Is the demand for conciliation conferencing being met?

Yes No Don't know N/A

If 'no' please say who is missing out and why and what the organisational barriers are to meeting the demand. _____

10) To what extent would you agree with the statement that 'all cases referred for conciliation conferencing are appropriate?'

Wholly agree Partially agree Do not agree Don't know N/A

If you answered 'partially agree' or 'do not agree', then what types of cases are consistently referred but are inappropriate and why? _____

11) Do all parties engage appropriately with the conferencing model?

() Yes () No () Don't know () N/A

If no, please explain. _____

12) Please comment on the adequacy of conferencing locations and venues. _____

13) What would minimise the risk of conference cancellations? (Please specify what actions, if any, could be taken to minimise cancellations.) _____

14) To what extent would you say that conferences are able to achieve their stated aims?

	Completely	The majority of the time	Sometimes	Depends on the case	Never	Don't know	N/A
Retaining a focus on the child throughout the conference	()	()	()	()	()	()	()
Identifying risks/safety issues that have led to DHHS intervention	()	()	()	()	()	()	()
Identifying family strengths	()	()	()	()	()	()	()
Hearing the voice of the child directly or indirectly	()	()	()	()	()	()	()
Identifying/clarifying disputed issues	()	()	()	()	()	()	()
Identifying/clarifying areas of agreement	()	()	()	()	()	()	()
Developing options/consider alternatives	()	()	()	()	()	()	()
Enhancing communication	()	()	()	()	()	()	()
Reaching agreement to avoid/limit the scope of, any hearing	()	()	()	()	()	()	()

If you didn't answer 'completely', please add any comments here. _____

15) What are the most significant factors that contribute to progress being made on child protection matters in conference settings? _____

Satisfaction, Data Collection and Outcomes

16) To what extent are children and families satisfied with conference processes?

- () Depends on the outcomes of the conference
- () Generally satisfied
- () Always Satisfied
- () Never Satisfied
- () Don't know

() N/A

Please add any comments here about how you know whether or not children, families and carers are satisfied/dissatisfied. _____

17) To what extent are Child Protection Workers and DHHS representatives satisfied with conference processes?

() Depends on the outcomes of the conference

() Generally satisfied

() Always satisfied

() Never satisfied

() Don't know

() N/A

If you didn't answer 'Always Satisfied' then please make any comments here.

18) What have been the unintended outcomes for court users, including parties to the proceedings?

19) Beyond current conference statistics, what processes are you aware of that collect data on the benefits that result from the conference process; including, but not limited to, court outcomes?

20) Please use this space to write any final comments about the appropriateness, effectiveness and efficiency of the conference conciliation model, its implementation and opportunities for improvement.

Thank you.