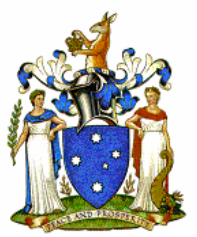

CHILDREN'S COURT OF VICTORIA

SUBMISSION

to the

PROTECTING VICTORIA'S

VULNERABLE CHILDREN INQUIRY

APRIL 2011

"Children are ends in themselves and not the means of others. They form part of the family, the fundamental group unit of society. Children bear rights personally, and are entitled to respect of their individual human dignity."[1]

[1] Bell J in *Secretary to the Department of Human Services v Sanding* [2011] VSC 42, paragraph 11

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ABBREVIATIONS

ADR	Alternative dispute resolution (aka Appropriate Dispute Resolution)
ALRC	Australian Law Reform Commission
BCG	Boston Consulting Group
CAU	Court Advocacy Unit
CC*	Conciliation conference
CP	Child Protection Division, Department of Human Services
Cth	Commonwealth
CTSO	Custody to Secretary order
CYFA	*Children, Youth and Families Act* 2005 (Vic)
DAO	Dispute assessment officer
DHS	Department of Human Services (also referred to as 'The Department')
DRC*	Dispute resolution conference
FCC*	Family care conference
FGC*	Family group conference
FLA	*Family Law Act* 1975 (Cth)
IAO	Interim accommodation order
IPO	Interim protection order
IRD	Irreconcilable difference application
JRC	Judicial resolution conference
NMAS	National Mediator Accreditation Scheme
NMC*	New model conference
UNCROC	United Nations Convention on the Rights of the Child
VCAT	Victorian Civil and Administrative Tribunal
VGSO	Victorian Government Solicitor's Office
VLA	Victoria Legal Aid
VLRC	Victorian Law Reform Commission

* The court adopts the following terms:

- Family care conference (FCC) for conferences that take place in the pre-court phase. The VLRC uses the term family group conference (FGC); and
- Dispute resolution conference (DRC) for conferences that take place after a court matter has commenced. This process is supported by legislation. A new model conference (NMC) is the preferred model for DRCs. The court would like to be able to implement the NMC process across Victoria. The VLRC uses the term 'conciliation conference' (CC) for these conferences.

INTRODUCTION

The views expressed in this submission are informed by the daily experience of the judicial officers of the Children's Court of Victoria. This submission is made on behalf of the President and magistrates of the court.

The Children's Court provides a service for the children of Victoria including those in need of protection and child offenders, categories that often overlap. It provides a responsive service in both the Melbourne metropolitan area and throughout rural and regional Victoria. The court is able to offer a preliminary hearing to any child alleged by the state to be in need of protection and to all other parties within 24 hours of the child's apprehension by the state child protection authorities.[2] In conjunction with the Magistrates' Court, it also provides the child protection authority (referred in this submission as CP) with the ability to seek safe custody warrants for children believed to be in need of protection throughout the state 24 hours a day, 365 days a year.

The court also delivers services to the broader Victorian community. This service includes a program of community education, delivered by judicial officers, and coordinated by its Children's Court Liaison Officer[3]. It also provides a comprehensive website.

The court acknowledges the work of the Children's Court Clinic, which provides expert reports to the court when requested, and is independent of all of the parties involved in a case.[4]

The court notes that it is a year since it provided a submission to the Victorian Law Reform Commission (VLRC) review of Children's Court Family Division processes. The court welcomes the opportunity to participate in this systemic review and hopes that it will result in a commitment to long-term planning for positive and sustainable change in the child protection system.[5]

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[2] This is the next court sitting day i.e. either the following day or the next working day following a weekend or public holiday: see sections 242(2) & 242(3) of the CYFA. The latter section provides that unless an apprehended child is brought before the court within 24 hours after the child was taken into safe custody, he or she must be brought before a bail justice as soon as possible within that period of 24 hours for the hearing of an application for an interim accommodation order.

[3] The functions of the Children's Court Liaison Office are described in section 545(3) of the CYFA.

4 The functions of the Children's Court Clinic are described in section 546 of the CYFA.

5 *The Victorian child protection jurisdiction has been reviewed many times….There have been nine major reviews of Victoria's child protection system in the past 33 years. When implementation audits and discrete reviews of particular aspects of the system are included, the number of reviews rises to 16…..Reviewing the child protection system is not a modern phenomenon. In the 50 years prior to 1976 there were eight major reviews of the Victorian child welfare system. Although one former child protection system reviewer, Justice John Fogarty, suggested in 1993 that '[w]e cannot continue to have reviews in Victoria every few years', the practice continues.* VLRC Final Report at page 40.

EXECUTIVE SUMMARY

Introduction

The Children's Court of Victoria made detailed submissions to the VLRC in April 2010. Copies of that submission have already been provided to the panel of inquiry and the submission appears on the court's website. There will be occasions in this submission where the court will refer to that earlier submission.

The court notes the conclusion arrived at by the VLRC that ultimate decision-making in child protection matters should remain with the court. There are compelling reasons why this is so. The court will not seek to make further submissions on this issue unless the panel members disagree with the VLRC conclusion. In such a case, the court would seek to make further submissions.

Some background remarks

Child protection is linked to social disadvantage. Most of the families who are brought to the court have one or more of the following characteristics – poverty, lack of education, inadequate housing, social isolation, intellectual disability or mental illness, family violence or drug and alcohol abuse.[6] There also appears to be a correlation between juvenile offending and time spent in care.[7]

Almost 55% of children dealt with in the Family Division are under seven years old.

Child protection is not just a problem for a government department or the court. It is an issue for the whole community to address and it requires a whole of government response.

As one writer has expressed it:

"This endeavour requires integrity of government, planning, and appropriately generous investment, to ensure required levels of personnel can meet needs not just for case assessment, investigation and service delivery, but just as importantly, to enhance primary and secondary prevention. The endeavour should be a principled exercise informed by good evidence, consistently adopted by all governments. It should not be reduced to a political task, motivated inappropriately by short sighted personal, economic or electoral interests."[8]

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[6] See VLRC Final Report, pages 34-38.

[7] See VLRC Final Report, page 38 which noted that *"Previous reports concerning child protection—and recently the Drugs and Crime Prevention Committee, Parliament of Victoria—identified and considered the correlation between juvenile offending and time spent in care. A number of witnesses to the Drugs and Crime Prevention Committee expressed concern about the current operation of the child protection system and the effects of revolving care placements…. The long-term consequences of involvement with the criminal jurisdiction as a juvenile can significantly influence a young person's life chances, and for many it leads to continuing involvement with the criminal justice system."* Footnotes omitted.

[8] Ben Matthews - "Protecting Children from Abuse and Neglect" in *Children and the Law in Australia* – edited by Geoff Monahan and Lisa Young, LexisNexis Butterworths 2008 at pages 236 to 237.

The court supports a focus on prevention and early intervention. The Victorian child protection system, like other systems in Australia (and like systems in some other countries) needs to build stronger primary and secondary interventions that help protect children and better support families in need. Obviously, this includes the provision of appropriate interventions to reduce the significant over representation of Aboriginal children and their families in the child protection system.

A system that treats child protection as a community concern or adopts a "public health" approach is likely to reduce the pressure on the tertiary system.

"Child protection services are tertiary services designed to respond to abuse and neglect in situations where children have been harmed, or are in immediate danger. As such, state and territory child protection departments can be seen as dealing with the symptoms of family dysfunction (for example, family violence, parental substance abuse, mental health problems, inadequate parenting skills, poverty and so on). As the end point in the child welfare continuum, tertiary services have a limited capacity to prevent child abuse and neglect. Despite this, tertiary services are often a family's first point of contact with child and family welfare services."[9]

Approach adopted in this submission

The court's submission principally addresses the questions contained in point 6 of the inquiry's terms of reference.

6. Possible changes to the processes of the courts referencing the recent work of and options put forward by the Victorian Law Reform Commission.

6.1 In light of recent child protection legislative changes, trends in other jurisdictions, and in particular the options put forward by the Victorian Law Reform Commission:

6.1.1 What changes should be considered to enhance the likelihood that legal processes work in the best interests of vulnerable children and in a timely way?

6.1.2 Are specific legislative changes necessary? For example, in relation to a protection application by safe custody (where children are brought into care and immediate orders from the Children's Court are sought in relation to a child's placement), should the current 24 hour rime limit be extended and if so, what should be the maximum time limit?

A large part of the court's submission is therefore devoted to responding to the proposals and options presented in the VLRC Final Report.

Overall, the court was impressed by the work of the commission, and in many areas supports its analysis and proposals.

[9] Leah Broomfield and Prue Holzer – 'A national approach for child protection – project report' (Australian Institute of Family Studies National Child Protection Clearing House) at page 41

The court notes however that whilst *all five options could be adopted, they are not presented as a single integrated scheme. They comprise a range of possible reforms. One, some, all, or only parts of the options may be chosen to bring about a new system for dealing with child protection matters.*[10]

There would need to be significant investment of resources to implement some of the VLRC options. Decision-making will need to balance philosophical positions against expenditure and practical considerations as well as prioritisation, careful long-term planning and a staged approach to implementation. It is also unlikely that reforms, which require legislative amendments, will occur until the latter half of 2012 - at the earliest.

The court also notes that some proposals are interrelated and, ideally, would be adopted together. For example, a new commencement process for protection applications should be coupled with the Victorian Government Solicitor's Office assuming the role of representing the Department of Human Services. This would support the shift in cultural change required to implement the new commencement process.

In view of the above, the court recommends the following important reforms in the child protection system:

- a strong focus on prevention and early intervention;
- an enhanced family care conference process;
- a new way of commencing protection applications;
- a new model for DHS representation;
- investment in court resources to strengthen the court's capacity to conduct conferences, docket cases, engage in problem solving approaches and adopt a less adversarial trial model;
- investment in court infrastructure to enable better decentralisation of cases throughout metropolitan Melbourne; and
- investment in court resources to enable stronger support to, and a consistent service in, country venues of the Children's Court.

Organisation of the court's submission

The court's submission is comprised of the following sections:

- Section 1 – Children's Court Trends
- Section 2 - The Children's Court Environment

In analysing the VLRC Final Report, the court noted that options 1 and 2 overlapped in a number of areas. The court has therefore organised its response to the VLRC proposals into the following sections:

- Section 3 - The Commencement of Protection Applications in the Children's Court

[10] VLRC Final Report, page 17

- Section 4 - Models for Conferencing in Child Protection Matters
- Section 5 - Enhanced Court Processes
- Section 6 - Discrete Legislative Amendments
- Section 7 - A New Model for DHS Representation

Where appropriate, the court has sought to group relevant VLRC proposals together.

The court does not make detailed submissions on VLRC options 3 and 5. The court's submission proposes that:

- the court is the appropriate body to conduct conferencing;
- legal representatives[11] funded by VLA should be responsible for representing children; and
- the VGSO should be responsible for representing DHS.

If these reforms were accepted, there would be no reason to establish an "Office of the Children and Youth Advocate."

The court supports the proposals contained in option 5 of the VLRC Final Report.

The court has summarised its response in relation to options 1, 2 and 4 proposed by the VLRC Final Report below.

In Section 3, the court outlines its support for the introduction of a new model for the commencement of child protection proceedings but maintains that the model must:

- be supported by improved primary and secondary support for families (the court remains the venue of last resort in the child protection system);
- recognise an appropriate hierarchy of processes which promotes the least intrusive and less adversarial approach as the most desirable;
- support the court as the appropriate body to convene pre-court family care conferences;
- be properly developed and resourced; and
- be supported by the introduction of independent representation for DHS as a necessary means to support a change in process.

Consistent with the VLRC proposal, the court is of the view that a protection application should not be commenced in the Children's Court before a family care conference has been conducted (unless the case comes within certain exceptions).[12]

In addition, the court is of the view that proceedings commenced by apprehension should be reduced (where possible). Apprehensions should primarily be authorised by a judicial officer and legislative clarification of the principles involved in emergency removal is required.

The court continues to hold the view that there should be no increase in the time a matter is required to be brought before the court following an emergency removal, even with judicial authority.

[11] The Law Institute of Victoria is developing an accreditation program for lawyers who practice in the Children's Court. It is envisaged that only lawyers accredited under the scheme would be able to represent children.
[12] See the discussion at pages 37-38 and footnote 56.

The court proposes in Section 4 that the court conferencing unit conduct family care conferences. FCCs would become the "front-end" decision-making forum and the court's NMC model should become the major "in court" form of conferencing.

In particular, the court notes that there has already been considerable investment by government in new model conferencing. The court notes the advantages of this proposal include:

- the independence of the court;
- a pathway to court processes, where necessary;
- utilising an experienced child protection conference unit;
- the way the NMC model developed in collaboration with VLA and DHS;
- the way learning from the NMC process is being used to refine the model in consultation with key stakeholders and ongoing evaluation;
- the NMC process is a *strength-based* model which, with appropriate modifications, is suitable for pre-court conferences;
- the current NMC model can quite readily be adapted for pre-court process;
- building on an existing infrastructure rather than creating a new body or existing body doing new work;
- the participants can benefit, where appropriate, from court *reality* testing; and
- it would provide consistency of conference services, both pre and post court.

The court maintains that children and families should be represented in all conference processes.

In Section 5, the court notes its commitment to incorporating "problem solving" approaches in both divisions of the court. It also supports contested hearings being conducted using inquisitorial and problem solving approaches.

In Section 6 the court details its responses in relation to discrete legislative amendments proposed by the VLRC, including: a different model for child representation, an expansion of the current grounds for protection applications, an increase in the age of children before the court and additional powers in relation to family law orders and family protection matters.

In Section 7, the court outlines its support for a new model for representation for DHS, with the VGSO carrying out this role.

Whilst not the subject of a specific proposal by the VLRC, the court proposes in Section 2 that resources to improve the physical environment of the Melbourne Children's Court as well as regional facilities, are a high priority for any reform process for the child protection system.

Data Collection and the Children's Court

"Victoria's data system has consistently been criticised by academics, program evaluators and the Victorian Auditor-General alike….The consequence of insufficient integration of statistics and program evaluation is that evidence-based policy making is severely restricted, and this reduces accountability of policy makers."[13]

These comments were made in relation to criminal case data but are equally relevant to child protection data. In fact, the complexity of child protection cases, which may involve many and varied court events (more so than most other jurisdictions), means that data collection and analysis is critical to help inform any proposed reforms.

The Department of Justice has engaged the Boston Consulting Group (BCG) on three occasions in the past four years to conduct analysis and present data, mostly about the activity and operations of the Family Division of the Children's Court. The work done by BCG has informed various bids for funding, and has assisted the court to plan and develop strategies for managing its workload.

The court's current Family Division case management system is not sophisticated and the kind of data it can produce is limited. The introduction of the Integrated Courts and Management System may offer some assistance in terms of evidence and reporting. However, the court understands that ICMS is more concerned with case management and the production of orders than it is with the production of data. In addition, there is no guarantee that ICMS will be available to operate in the Family Division in the near future.

It is important that the court have the capacity to collect and analyse its own data. For example, the case management system cannot generate reports about the grounds on which protection applications are proven. Information about indigenous parties is not currently captured and the court therefore relies on other sources to determine the numbers or profiles of child protection cases involving Aboriginal children. The lack of comprehensive historical data about DRCs means that a full comparative analysis with NMCs cannot occur.

It is also important for the court to be able to engage in a systematic exchange (or review) of information with organisations involved in child protection. Collaborative exchanges about forecasting, modelling and strategic planning would be very helpful in managing increasing workload. For example, if DHS had information indicating that the number of applications to be made to the court may increase in a given period, it should share this with the court.

The court would therefore urge the inquiry panel to consider the matter of data collection and data sharing in its review of the system.

[13] Jesuit Social Services, *Young People on Remand in Victoria: Guilt Yet to be Determined*, page 72.

Victorian Court's Governance and Administration

The Children's Court administration is currently part of the Magistrates' Court business unit within the Courts Portfolio. The Chief Executive Officer of the Magistrates' Court is responsible for operations.

The Children's Court receives a discrete appropriation annually, which is administered by the Magistrates' Court Finance & Administration Unit. This funding essentially only serves the operations of the Children's Court at Melbourne and the Children's Court Clinic. Operations at venues outside of Melbourne are not separately funded and costs are borne by the Magistrates' Court.

The administration of the Children's Court does not contain any role/function for research, project development, business analysis, or support for the judiciary and senior management. The court needs to build capacity in these areas, to progress initiatives and business improvement. There are no designated positions in venues outside of Melbourne that are funded by the Children's Court to deliver services in this jurisdiction.

The court notes the government's commitment to the establishment of the Courts Executive Service to provide administrative support to all courts and the Victorian Civil and Administrative Tribunal. This body will replace the Courts and Tribunals Unit within the Department of Justice. It notes that this new model is intended to strengthen the independence of the courts and the Victorian Civil and Administration Tribunal, increase capacity and provide improved support services. The creation of the CES presents an opportunity for the establishment of an independently administered Children's Court of Victoria. However, such a court would require a significant investment in registry staff and administrative staff. It may also require investment in additional judicial officers.[14]

[14] See the discussion at pages 22-23 on 'Regional Victoria and the Children's Court'

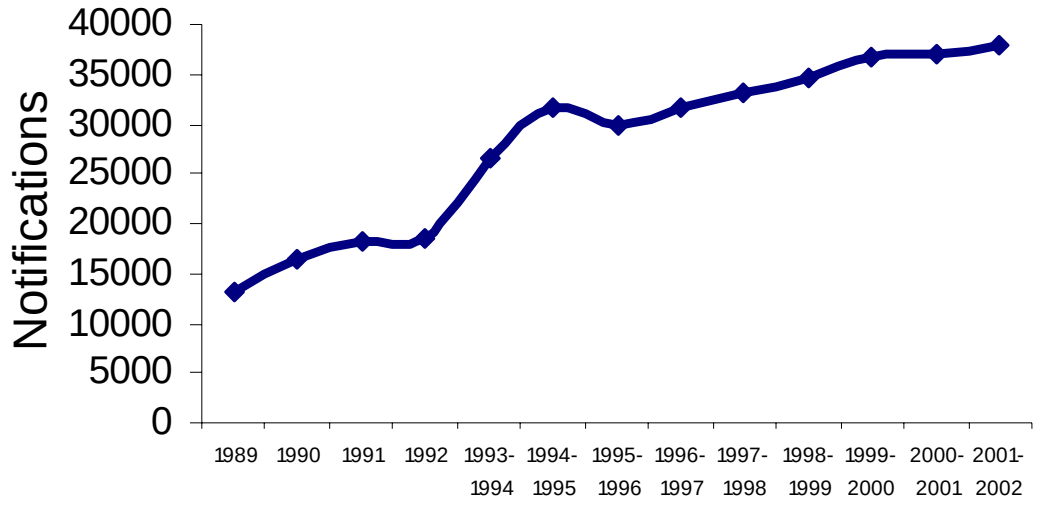
SECTION 1
CHILDREN'S COURT -TRENDS

This section focuses on the way the pressures within CP over the last decade have affected the work of the Children's Court.

Reports to Child Protection

In Victoria, Child Protection (CP) receives reports of alleged child abuse and determines how those reports are to be processed.

Any analysis of the Victorian system must acknowledge the significant increase in the number of reports to CP between 1992 and 1995 because of the phased introduction of mandatory reporting.



Since the mid 1990s, there has been a more gradual increase in the number of reports to CP. In the 10 years to 2008-09, the number of reports grew by just over 6,000.

YEAR	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	TOTAL
99-00	30,398	36,805	19,057	2,645	15,181	422	1,189	1,437	107,134
08-09	213,686	42,851	23,408	10,159	23,221	10,345	9,595	6,189	339,454

However, there were 48,753 reports for the 2009-10 year. This means the increase in one year matched the total increase in the previous 10 years. Clearly, the publicity about child protection in late 2009 and early 2010 had an impact.

It is a feature of the system that only a small percentage of reports are actually sent for investigation. For example, in 2007-08 there were 41,607 reports to CP with the Department formally investigating 11,217. [15]

In addition, not all investigated reports are substantiated by CP and not all substantiations result in applications to the Court. Again, in 2007-08, of the 11,217 reports investigated, 6,365 were substantiated. This resulted in 3,336 protection applications to the court. [16]

Clearly, some families who have a report substantiated work voluntarily with CP and are not subject to an application to the court.

The following table provides a comparison of reports, investigations, substantiations, and protection applications in 1997/98, 2002/03 and 2007/08.

	1997/98	**2002/03**	**2007/08**
Reports	33,163	37,635	41,607
Investigations	14,693	12,769	11,167
Substantiations	7,357	7,287	6,365
PAs	2,135	2,316	3,336

The figures show that CP has been remarkably consistent over many years in investigating and substantiating a relatively low proportion of total reports. In this regard, Victorian CP acts in a similar way to every other child protection agency in Australia. This approach has led various commentators to ask whether too many children are caught unnecessarily in the net of statutory child protection. For example, the authors of a recent AIFS publication have suggested that:

"With the casting of a very wide child protection 'net', governments are left with the fundamental question: What is the role of child protection services? Child protection was originally set up to provide a crisis response to cases of severe abuse in which the state needed to intervene to protect the child. However, the crisis response is not appropriate for the majority of families who are referred to child protection departments as they are typically in need rather than in crisis. There will always be a role for 'forensic' tertiary responses in cases where there are serious protective concerns. However, the challenge facing the sector is to devise service responses that are better suited to addressing family support needs."[17]

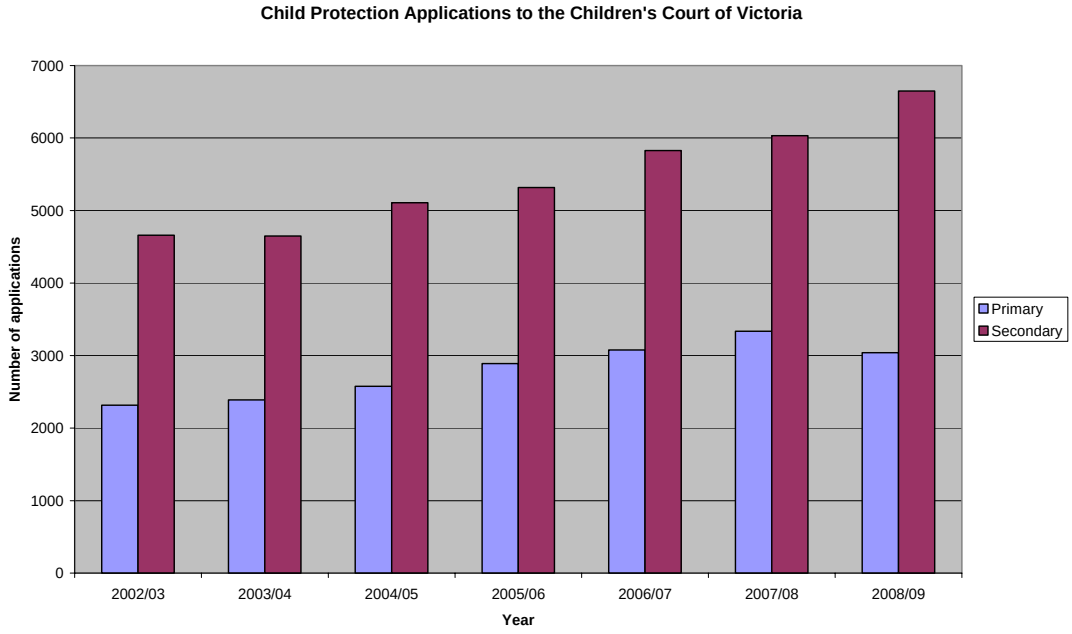
[15] When analyzing these figures it is important to note that the 41,607 reports relate to 32,375 children. Clearly, some reports are not investigated when there are multiple reports about the one child.

[16] It is also important to note that some reports result in breach proceedings. Breaches are classified as secondary applications and, therefore, not counted as primary applications (i.e. not counted in the 3,336 protection applications). In 2007-08, for example, there were 1,284 breach applications made to Court. In addition, Court applications are not only the result of a report. For example, court process can be initiated by an application to extend a particular order. These applications are not triggered by a report. Similarly, applications for permanent care orders are not generated by a report.

[17] Broomfield and Holzer, page 15. The full reference to the article is in footnote 9.

Falling substantiations but more applications to court and more applications by safe custody (apprehensions)

Even though CP substantiation rates have been falling over the last 10 years, the number of applications CP is bringing to court has risen steadily. Frequently, analyses of protection applications focus on "primary applications." In fact, the largest numbers of applications dealt with by the court are secondary applications. These applications – breaches, extensions, variations and revocations – constitute a significant part of the court's work.



Note: BCG Data analysis

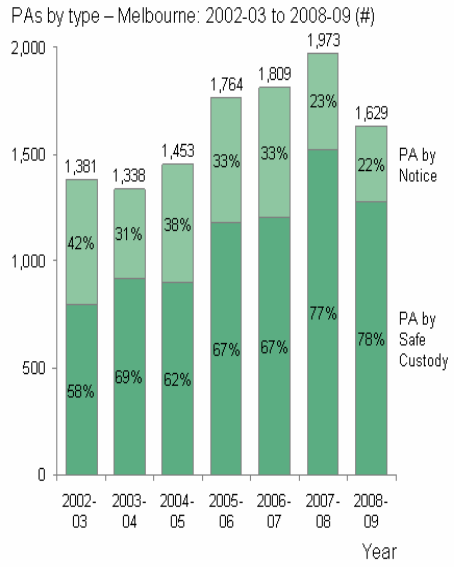
Since 2002-2003, the workload of the court has been growing at the rate of 9% per annum.[18] This is a significant increase in the workload of the court. In the last five years, three additional magistrates and two acting magistrates have been appointed to the court to help deal with the growing workload.

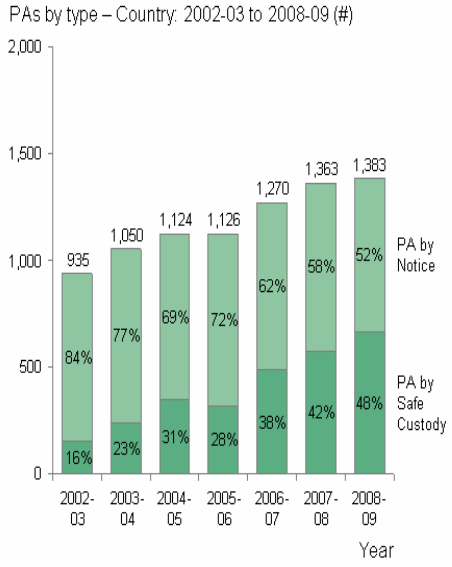
The workload pressure is compounded by the increasing use by CP of apprehensions as the preferred method for bringing applications before the court. Thus, not only are the numbers of applications increasing, the numbers of applications that may require an urgent court ruling on placement are also increasing.[19]

[18] In 2002/03, the court made 24,287 orders in the Family Division. In 2008/09, this had risen to 43,709 orders.

[19] Determining interim placement is a significant part of the court's workload. In 2002-03, the court made 3,867 interim accommodation orders. By 2008-09, the number had risen to 5,691.

PAs by Safe Custody are more predominant in Melbourne, but clear trend towards their use throughout the State





Source: Children's Court Registry data; BCG analysis

Childrens Court slide.ppt

BCG provides two possible reasons for the increasing proportion of applications by apprehension. First, there is increasing pressure on DHS resources relative to community need and second, there are different case management outcomes for the two types of applications[20]. On this latter point, the VLRC noted that

> "*Many child protection practitioners believe that an application by safe custody provides benefits that are not so readily available with an application by notice. Some child protection practitioners informed the Commission that they would initiate a protection application by safe custody, following a precipitating event, in order to protect a child by having conditions attached to an IAO.*"

Whatever the explanation for the significant increase in apprehensions, the trend adds to the workload burden.

A small number of contested hearings and the importance of ADR

The great majority of applications to the court resolve by negotiation between the parties, with the court reviewing the file to ensure the proposed orders are in the best interests of the child. The VLRC noted that less than three per cent of all primary and secondary applications filed in the Children's Court proceeded to a final hearing and

[20] See pages 70-71 of the BCG Taskforce Background Materials, 19 February 2010.

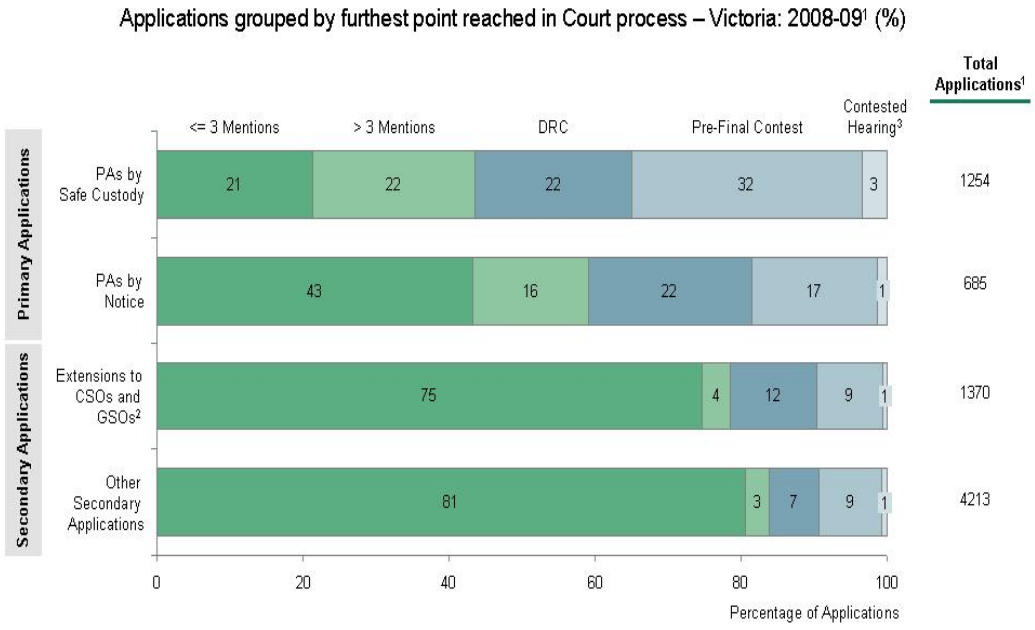
that this suggested that a "settlement culture already exists in Victoria's child protection jurisdiction."[21]

The Court has always understood the importance of ADR and refers potential contests to a dispute resolution conference (DRC) or, more recently, a new model conference (NMC).[22]

In recent times, the court has engaged with court users to develop and strengthen its ADR process. In late 2008, the President of the court established a multi-disciplinary working party to develop a model for "best practice" ADR in the court. The working party presented its report in late 2009 and the Child Protection Proceedingts Taskforce adopted its recommendations.[23] The court is now implementing the recommendations in its NMC process.

There is a full discussion of NMCs in Section 4 of this report. However, it is worth making one point at this stage. It relates to the following graph that shows the progress of cases through the court in 2008-09 and the point in the process where they resolved.

PAs by Safe Custody most likely to proceed past mention



1. All Applications for which final orders were made in 2008-09. This figure excludes Applications relating to siblings with identical hearings 2. Custody to Secretary Orders and Guardianship to Secretary Orders 3. Estimated from monthly listing reports
Source: Children's Court Registry data; BCG analysis

[21] See VLRC Final Report, page 214.
[22] For the moment, an NMC is only available for cases from the north west metropolitan DHS region.
[23] For a full discussion of this see the Children's Court submission to the VLRC (available on the court's website) at pages 33-39.

The graph confirms that less than three per cent of all applications proceed to a final contest. It also shows that the majority of secondary applications proceed relatively expeditiously through the court with 75% of extensions and 81% of all other secondary applications resolving within a very short timeframe.

However, protection applications by safe custody (apprehensions) have a significant percentage of cases (32%)[24] that move beyond three mentions, do not resolve until later in the process and are more likely to proceed to contest. It is these cases particularly, that the court believes will benefit from changes to ADR introduced by the new model conference guidelines. The new guidelines propose that judicial officers use the second mention hearing as the "trigger point" for referring cases to a conference. This was chosen as an appropriate balance between two competing principles. On the one hand, the court will not send a matter to conference if it is likely to settle expeditiously.[25] On the other hand, it is important to ensure that cases do not "drift". The second mention policy is an appropriate compromise.[26]

In practical terms, the application of this policy to cases from the north west DHS region of metropolitan Melbourne has created a problem for the court. In the past, a significant number of cases settled after the second mention. The policy of referring cases at this new stage has had the unintended consequence of adding to delay. There are now so many cases sent to conference at second mention that the court does not have the capacity to deal with them within the three week period prescribed by the guidelines. This is concerning.

Some comments about court orders

If the court is satisfied, on the balance of probabilities, that a child is in need of protection, it must then determine the order that should be made in the best interests of the child.[27]

The report of the Ombudsman from November 2009, commented on the fact that 30% of matters resolved at court in 2006-07 "*did not mandate any formal supervisory order for the Department*"; of these matters, 11.3% were withdrawn by the Department and 14.2% resolved by way of an undertaking. The report also noted that 41.3% of cases in the same period were resolved by way of a supervision order without the child being removed from the care of a parent (this allows the Department to monitor a child's safety with reference to specific conditions).[28]

[24] When viewing thes graph on page 18 it needs to be noted that BCG has counted a bail justice hearing as a first mention. This distorts all the statistics. A bail justice hearing is not a first mention in the court and yet it has been counted as such. Therefore, the figures presented in the graph on this page are not completely accurate as they may include an appearance before a bail justice as a first mention.

[25] The court is not resourced to send every case to conference.

[26] Particularly after the reforms that removed the 21 day rollovers for cases where a child was placed in out of home care on an IAO.

[27] A summary of the orders the court can make is set out in Appendix 2 of the court's submission to the VLRC.

[28] This was based on an analysis of primary applications. The percentages would be different if secondary applications were included in the analysis.

The court notes the point. The figures may indicate that there are problems with "pre court" support. Better support for at-risk families early in the process could obviate the need to initiate court proceedings in some of those cases that are struck out or result in undertakings or in supervision orders. On this view, appropriate early intervention programs, provision of appropriate family support services and strong pre-court conferencing would lessen the number of matters brought to court. It is the court's view that the growth of court workload over the last seven years indicates a system that is struggling to provide the appropriate resources to support prevention and early intervention.

Children on orders

As at 30 June 2009, 6,100 children were on care and protection orders in Victoria.[29] This translates to a rate of 5.0 per 1,000 children or an increase of 25% over the past five years. Increasing rates of children on orders is an Australia wide phenomenon, as indicated in the table below.[30]

Rates of children aged 0-17 years on care and protection orders, per 1,000 children, states and territories, 30 June 2005 compared to 30 June 2009[31]

Year	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	Total
2005	5.4	4.0	6.0	3.7	4.5	6.1	6.1	7.0	4.8
2009	8.3	5.0	7.4	6.3	6.7	8.4	7.8	9.2	7.0

Some final comments on some significant challenges

The court becomes involved in the child protection process when CP invokes its jurisdiction. In the overwhelming majority of cases, the court finds the child to be in need of protection or finds the secondary application proved. It is true that some of those cases might not need to come to court if there was stronger and better support for families and children in the community, but that is a different issue. That is about the broader provision of services and responses – early parenting services, infant welfare services, early child care services, family services, mental health services, intellectual disability services, drug and alcohol services, accommodation services, family violence responses – that have to be delivered to help families before they become families in crisis. The court strongly encourages and supports the concepts of prevention and early intervention, including a regime of referrals to appropriately resourced early parenting services, community agencies or "Child First".

[29] On 30 June 1995, the number was 4,668.
[30] The Australian Institute of Health and Welfare updated child protection data for Victoria in 2009 therefore accurate data has only been included from 2005 onwards.
[31] Australian Institute of Health and Welfare Child Protection Australia 2008 – 2009.

For the AIFS paper already referred to, all state and territory CP departments were asked to consider the challenges broadly for enhancing the protection of children.

"Not surprisingly some of the broader issues in enhancing the protection of children are mirrored at a more micro level in the specific areas of care and after care (e.g., managing demand for statutory services is identified as the biggest challenge for enhancing the protection of children, and the need for appropriate placements is the biggest challenge for out-of –home care services)." [32]

The extent of the problem with the demand for statutory services is exemplified by the recurring annual rise in applications to the court.

The court is not surprised that state and territory departments indicated that the biggest challenge for out of home care services was the need for appropriate placements. It matches the experience of the judicial officers in this Court.

As at 30 June 2009, Victoria had 5,283 children in out of home care. Most but not all were on court orders. The rate per 1,000 children has risen in Victoria from 3.8 in 2005 to 4.3 in 2009. Put simply, there are more children entering the system each year than are leaving it. The trend is also evident across Australia. Of the 5,283 children in out of home care, 478 were in residential care units.

The court comments on one particular challenge for the out of home care system.

The court understands that placement of children who have "behavioural problems" or complex needs can be extremely difficult. Often, foster placement or kinship placement is not possible and many of these children are placed in residential care. In 2010, 80 children aged 12 or under were placed in residential care. This is very concerning.

In addition, most young people in residential care have complex problems that come out of their life experiences – usually experiences of considerable abuse. They should be provided with accommodation that does not place them with a group of other troubled young people and they should be provided with appropriate therapeutic intervention. It is the court's experience that the intensive supports and services so badly needed by this group are not always available or, if available, unable to be accessed immediately because of demand pressures. If young people are unable to stay in a family environment, they should, at the very least, expect the state would be a good carer and provide adequate resources to assist them. That support should include the establishment of a new residential forensic mental health treatment centre or contained therapeutic facility for those young people in need of intensive intervention.[33]

Finally, the court refers to three other important issues-

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[32] See Broomfield and Holzer, page75. The full reference to the article is in footnote 9.

[33] A recommendation for such a facility for youth justice offenders was made in the July 2009 Report of the Drugs and Crime Prevention Committee of the Victorian Parliament entitled "Inquiry into Strategies to Prevent High Volume Offending by Young People." (See recommendation 30). The court submits that such a facility should also be available where necessary to support young people on child protection orders.

The over-representation of Aboriginal children.

Aboriginal and Torres Strait Islander children are over-represented in every step of the child protection process. Indeed, it is the court's understanding that the deeper an Aboriginal child moves into the system, the greater the level of over-representation. For example, an Aboriginal child is 10 times more likely to be subject to substantiation, but 13 times more likely to be in out-of-home care.

The court accepts that it has a role to play in tackling over-representation. The success of the approach of the Koori Court in the Criminal Division, has led to the establishment of a working party to investigate improved processes for Koori families and children in the Family Division of the court. The court is actively involved in this process.

Family Violence

The Family Division has jurisdiction to hear and determine applications to make, vary, revoke or extend an intervention order under the *Family Violence Protection Act* 2008 or the *Stalking Intervention Orders Act* 2008, when either the respondent or an affected family member/affected person is a child.[34] Since 2008, the Family Division has an additional power to deal with related applications and related orders involving adults.[35]

This is an expanding area of the court's workload. The number of applications for an intervention order has risen from 849 in 2002/03 to 2,074 in 2008/09.

Regional Victoria and the Children's Court

The Children's Court operates across Victoria. The Family Division sits at the following locations:

- Melbourne region: Melbourne (headquarters court), Moorabbin.
- Grampians region: Ballarat (headquarters court), Ararat, Edenhope, Hopetoun, Horsham, Maryborough, Nhill, St Arnaud, Stawell.
- Loddon Mallee region: Bendigo (headquarters court), Echuca, Kerang, Mildura, Ouyen, Robinvale, Swan Hill.
- Barwon South West region: Geelong (headquarters court), Colac, Hamilton, Portland, Warrnambool.
- Gippsland region: Latrobe Valley (headquarters court), Bairnsdale, Korumburra, Moe, Omeo, Orbost, Sale, Wonthaggi.
- Hume region: Shepparton (headquarters court), Benalla, Cobram, Corryong, Mansfield, Myrtleford, Seymour, Wangaratta, Wodonga.

Melbourne and Moorabbin are the only venues of the Children's Court that sit daily.

[34] As a result the Children's Court has Commonwealth jurisdiction to vary Family Court orders that conflict with intervention orders made under the *Family Violence Protection Act* 2008, provided that the jurisdiction is exercised by a magistrate (section 68R of the *Family Law Act* 1975)(Cth).
[35] Section 147 of the *Family Violence Protection Act* 2008.

Magistrates in country areas hear and determine child protection matters. One third of primary applications are listed in country Victoria. If a country court needs assistance with a child protection contest of four or more days duration, a magistrate from the Melbourne Children's Court will assist by conducting the directions hearing via video link and then travelling to the country to hear the contest. Melbourne is currently providing a magistrate to country Victoria every week in the year.

Inevitably, country courts operate differently to the Melbourne court. Some country headquarters courts – i.e. Geelong, Ballarat, Bendigo – are able to list Children's Court matters on a specific day of each week. Other courts are not able to do this. In addition, some country courts do not sit every day of the week. Generally, country magistrates are required to deal with the whole gamut of jurisdictions in a day – ranging from family violence, criminal, coronial and civil matters.

In order to meet current requirements under the apprehension provisions of the CYFA, parties in some country regions may need to travel to other country courts in their region to have the matter heard. It can sometimes prove difficult to "find" court time to deal with an urgent submissions contest. This problem was identified in the VLRC Final Report[36] and is not capable of easy resolution. Country magistrates do prioritise urgent child protection matters but sometimes there are also urgent family violence cases and criminal cases involving adult defendants in custody that also demand court time. In some country courts there may only be only one magistrate sitting and this further limits the court's capacity. The court is aware of the different workload pressures in the regions and is currently monitoring them.

One potential solution is to fund designated magistrates to perform Children's Court work in country regions. For example, there could be a magistrate based at Geelong whose role would be to deal with all Children's Court matters at Geelong and Ballarat. This magistrate would do the weekly mentions but also hear submissions contests, IAO contests, final contests and conduct judicial resolution conferences. Other country regions could be supported in a similar way.

Such an approach would also recognise the need for particular Children's Court registrars to support the court. The court is very keen to expand new model conferencing into country Victoria (provided it is funded to do so). This would ensure a uniform approach throughout Victoria. Experienced registrars could be engaged whose responsibility for Children's Court matters would include conducting new model conferences as well as assuming responsibility for a criminal diversion program. In this model, the Children's Court would need funding for five experienced registrars and five conference intake officers to cover each country region. [37]

The court would urge the inquiry panel to consider the needs of courts in regional Victoria in any recommendations concerning court process.

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[36] *"During that period, a child is generally placed out of the home following the initial removal by safe custody. In practical terms, for parents and children in regional areas, the first real opportunity to contest the initial out-of-home placement decision by a protective intervener may be several days or up to three weeks after the initial intervention."* VLRC Final Report at page 86

[37] An alternative model would involve expanding the current court Conference Unit to enable it to service regional Victoria.

SECTION 2
THE CHILDREN'S COURT ENVIRONMENT

Whilst the VLRC Final Report made no proposals in relation to the physical environment of the Children's Court, the report highlighted a number of deficiencies and areas for improvement.[38] These matters have been the subject of concern within the court for some considerable time and were discussed in the court's submission to the VLRC. The court is constantly endeavouring to address the problems associated with the Melbourne court (see, for example, pages 30-31 of the submission to the VLRC).

Background

In most recent times, despite the movement of some child protection cases from the Department's southern metropolitan region to the Moorabbin Justice Centre[39], the Child Protection Proceedings Taskforce noted that:

> *The Melbourne Children's Court facility remains a heavily congested physical space, especially on the Family Division side of the building. This makes the environment highly stressful for children, their families, protective workers, staff of the court and other court users. It is also detrimental to the efficient and effective conduct of matters before the court, increasing the time that parties must spend there…*
>
> *The Family Division area is now too small to contain the large numbers of families, lawyers and protective workers who attend the Court each day. Child protection is emotionally demanding and the overcrowding contributes to the distress, anxiety and agitation of those who are at the Court.* ***Put simply, there are too many people in too small a space. It is not a good place for a child****. ."*[40]

The taskforce endorsed the principle of decentralising the work of the Melbourne Children's Court, confirming that matters should be heard at locations that are more convenient for children and their families. The taskforce also recommended that this principle form the central part of court planning into the future.

The taskforce made two significant recommendations to reduce crowding at the Melbourne Court. First, the taskforce recommended the use of two courtrooms in the old County Court building (refurbished as the William Cooper Justice Centre) to enable the court to transfer DHS eastern region applications to that venue. This would have resulted in the transfer of an additional 20% of work out of the Melbourne court (the same amount as that previously transferred to the Moorabbin Justice Centre). Unfortunately, use of the William Cooper Justice Centre (WCJC) has been delayed

[38] The court notes that the VLRC consulted with a number of highly regarded experts in the field of architecture and design.
[39] In addition to other measures undertaken by the Children's Court outlined at pp 19-22 of the Taskforce Report.
[40] Ibid. p27.

due to circumstances beyond the control of the court and is not currently available for use as planned.

The taskforce also recommended that the conduct of all Melbourne dispute resolution conferences (subject to certain exceptions) be transferred to an off-site location. This planned relocation has also been affected by the unavailability of the WCJC. The Dispute Settlement Centre was to move into the WCJC from its premises at 456 Lonsdale Street in January 2011 and the court Conference Unit was to move into the vacated premises. The unavailability of WCJC has meant the court is unable to move its conferencing until the Dispute Settlement Centre is able to move from its building.

The court's current position

The court understands the principle that court matters should, as far as practicable, be heard at locations convenient to children and families. The difficulty is not with the principle but with the fact that no suburban Magistrates' Court has the capacity to deal with Family Division matters. Put simply, the suburban courts were not designed to deal with such cases and they do not have the space to accommodate this additional work.

In relation to the Moorabbin Justice Centre, the court notes the VLRC comments that: *Court users commented that the environment at MJC* [Moorabbin Justice Centre] *was more favourable than Little Lonsdale Street. This seemed due to both the reduced volume of cases through the court, allowing for less time at court by all parties, and the fact that some felt the space was better utilised, perhaps because it is less crowded.*

The court is committed to relocating all matters, processes and services that can be appropriately transferred from the Melbourne Children's Court to other locations, including:

- all new model conferences taking place off-site (subject to certain restrictions such as cases with security risk) once a suitable location is secured;
- all of the Department's eastern metropolitan region cases being transferred to the William Cooper Justice Centre or another suitable venue, once available; and
- the Children's Court Clinic relocating to a suitable location off-site that is accessible to relevant court users.

The court's efforts are also directed towards making the Melbourne location a better environment for children, families and court users.

In relation to regional Victoria, the Children's Court already operates as a generalist model and as the VLRC noted: *This difference in operation has a significant impact on the built environment of regional Children's Courts because they are essentially Magistrates' Courts with no designated or separate waiting areas for children and/or their families.*[41]

The VLRC went on to say that: *A number of people commented on the run-down nature of facilities in several regional areas and the fact these generalist courts have no private spaces for children and their carers. The Foster Care Association of*

[41] VLRC Final Report at paragraph 8.362

Victoria's consultation observed, however, that people were more positive about regional court facilities, noting that carers in general felt less overwhelmed or rushed in regional courts compared to Melbourne.[42]

Unsurprisingly, this last comment (and the views expressed about the Moorabbin Court) confirm that reducing overcrowding in a court, goes some way to improving the experience for children and families.

The court notes that there were a number of remedies outlined in the VLRC Final Report to improve the Melbourne court, including:

A welcoming and well-lit waiting area with information readily available and someone to answer questions or assist people arriving at court

In response, the court notes that it now has a roving registrar located at the entrance of the Melbourne court at its busiest times (usually between 9.00-10.00am every morning). This person provides basic assistance to parties to help them navigate the court environment. It should be noted that at the time the Melbourne Children's Court was built, the entrance did not have its current 'airport style' security.

Walls decorated by locally produced artwork that could include artwork from children who have been present at court

In response, the court notes that in 2002 the court entered into an agreement with the University of Melbourne's Early Learning Centre. The Early Learning Centre, as part of its activities, manages Boorai - the Children's Art Gallery. As a result of that agreement, the court maintains a permanent exhibition of artworks by pre-school age children. Initially, the exhibition comprised 55 artworks; all displayed in the Family Division areas of the court. Since 2002, the pictures in the exhibition have been changed three times (the framing system allows easy removal and replacement of pictures). In 2008, an extra 15 artworks were added to the exhibition and another 21 pictures were added in 2009. All the works presently hanging in the court are by local children. The most recent additions include a number of artworks by Aboriginal children and a series of large paintings on canvas produced by children attending the Early Learning Centre. The paintings on canvas were inspired by images of Aboriginal art, patterns in the Australian landscape and Australian native animals.

An area where visitors can obtain light refreshments and snacks

Refreshments are available at the Melbourne Court via a number of vending machines. The court has explored many options to improve this situation including a coffee cart (outsourced) in the foyer. This endeavour has however failed at other CBD court locations. In the circumstances, the court has concluded that it is not feasible or sustainable to provide anything other than vending machines for court users.

Appropriate, supervised facilities for children required at court, with games and other activities to occupy them while waiting

The court reiterates its submission to the VLRC:

[42] VLRC Final Report at paragraph 8.363

Given that on occasions it will be necessary for children to attend court, there is an urgent need for childcare facilities at the court. The court has long argued that a childcare facility is essential however has been advised that the cost thereof is prohibitive. On any given day in the Family Division of the court, there are many children and families in the waiting areas. [43]

Roving, rather than static, security presence where possible, based on the Neighbourhood Justice Centre Model.

The court currently uses a roving security model. Protective Services officers are a dynamic presence, and move throughout both the Family Division and Criminal Division areas of the Melbourne court building. This enables early response to situations that appear to be 'brewing', and visibility provides people waiting with a sense of security. Their presence also acts as a deterrent. The Protective Services Unit's practice in placing and rotating officers through the Melbourne Children's Court recognises the nature of the jurisdiction and issues that arise daily. Stable and experienced staff are best equipped to manage security.

Other issues

Another issue raised by the VLRC was the lack of space and facilities for children who have been 'apprehended' and the lack of quiet areas/zones where visitors can go to be with their family or support person. The court recognises the problem but is unable to 'create' space in an already overcrowded building. The solution is to move some of the work to other locations. It is finding the other locations that are fit for purpose that is proving difficult. In addition, the VLRC raised issues in relation to signage at the Melbourne court. The court understands that this mainly relates to 'hand-made' signs put up by different agencies, which is symptomatic of the frustration resulting from the current congestion.

The VLRC also raised issues in relation to the state of the bathrooms, with reference to graffiti and rubbish. The court is constantly monitoring these problems. In the past, the court has sought resources for an on-site cleaner. The efforts in that regard have not been successful. The court remains of the view that this is appropriate given the nature of the environment. Not only does the court host many more children than other court venues but also it has an obligation to maintain an environment that is child friendly.

As noted in the Executive Summary, the court is of the view that resources to improve the physical environment of the Melbourne court as well as regional facilities, is a high priority for any reform process for the child protection system.

[43] VLRC submission at page 57

SECTION 3
COMMENCEMENT OF PROTECTION APPLICATIONS

In this section, the court proposes changes to the current process for the commencement of protection applications and makes comments on the model proposed by the VLRC.

VLRC model for the commencement of protection applications in the Children's Court[44]

- All protection applications should commence by notice.

- A family group conference should be conducted prior to filing a protection application by notice, unless exceptional circumstances exist.

- If emergency removal of a child is required, a child protection practitioner should first obtain an emergency removal order (which may be obtained in the absence of parents and child), unless there is immediate risk, and insufficient time to apply for this order, and a safety notice or intervention order would not be sufficient to protect the child. On making an emergency removal order, a judicial officer should also order that the matter return to court at a time and date (at the judicial officer's discretion) up to 72 hours from the likely time of the child's involuntary removal.

- If a child is involuntarily removed without an emergency removal order, the protective intervener should apply to the court for a hearing of an interim care order application within one working day of the child's removal.

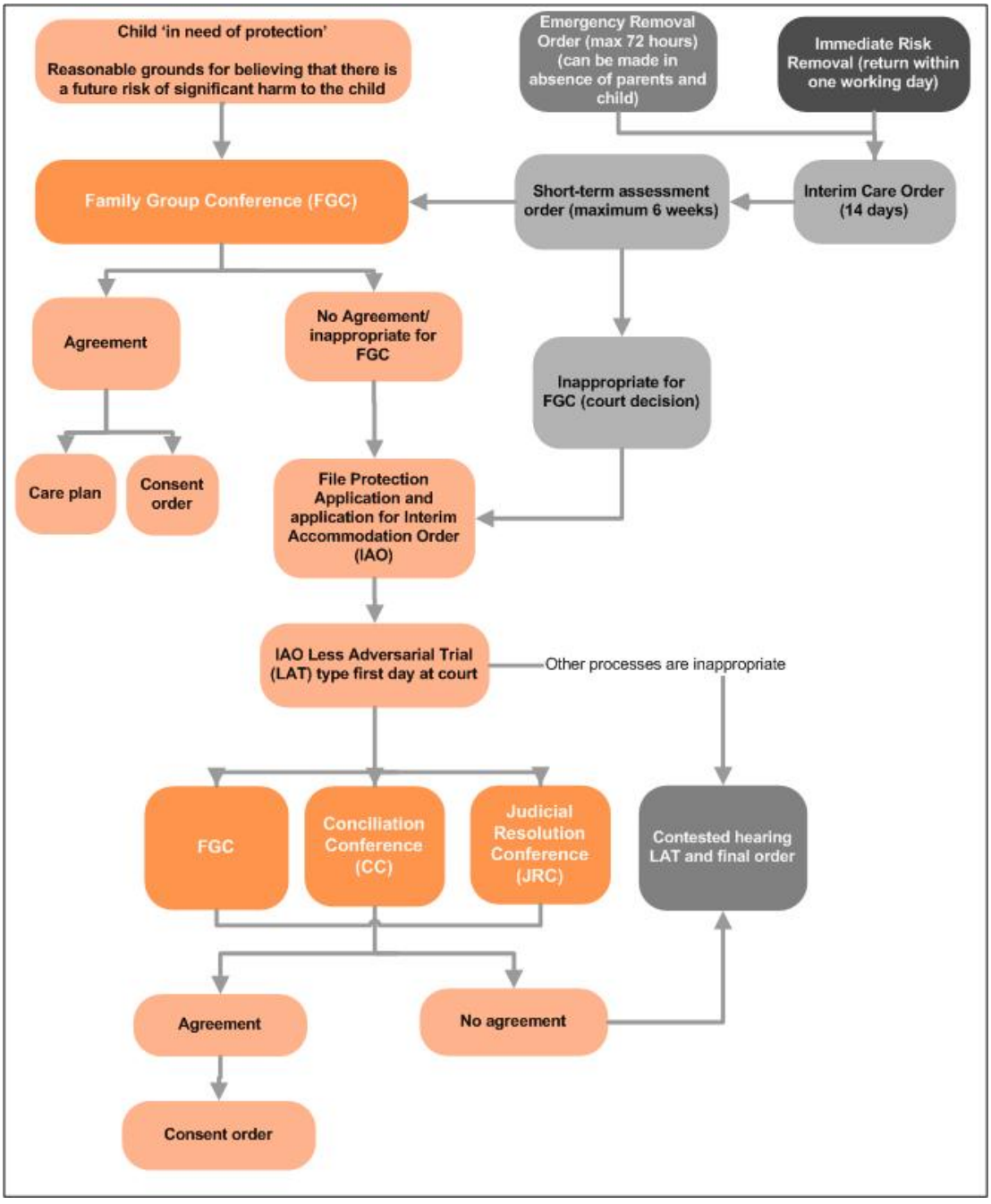
- Following a child's removal, the court should be permitted to make a 14-day interim care order if satisfied that a child is at unacceptable risk of harm. Prior to the conclusion of an interim care order, the court should be permitted to make a short-term assessment order for a maximum period of six weeks to enable the parties to attend a family group conference, or if exceptional circumstances exist, to enable a protection application to be filed.

- A protective intervener should file an application for an IAO with any protection application if a family group conference has failed to produce an agreement (or a family group conference was unsuitable) and an interim order is required to protect a child from risk of significant harm.

- Once a protection application is filed, the court should direct that a conciliation conference, a judicial resolution conference or another family group conference (whichever is most appropriate) takes place, unless exceptional circumstances exist.

[44] Relevant VLRC proposals are located in Appendix A.

Process map for VLRC commencement proposal [45]



[45] VLRC Final Report at page 299

The court's model for a new commencement procedure

The court supports the introduction of a new model for the commencement of child protection proceedings but maintains that the model must:

- be supported by improved primary and secondary support for families (the court remains the venue of last resort in the child protection system);
- recognise an appropriate hierarchy of processes which promotes the least intrusive and less adversarial approach as the most desirable;
- support the court as the appropriate body to convene pre-court family care conferences;
- be properly developed and resourced; and
- be supported by the introduction of independent representation for DHS (the VGSO proposal discussed in section 7) as a necessary means to support a change in process.

It is the view of the court that protective interveners should only take a child into safe custody without a warrant if a notification is received indicating a child is in immediate danger and it is not in the best interests of the child to delay the process by preparing an application for a warrant. Given the significance of the decision to take a child into safe custody the court considers that in all other cases there should be judicial oversight prior to the apprehension of a child.[46]

In the court's view, the objectives of any new process should be:

- a reduction in the number of commencements by apprehension. Data indicating the steady increase in apprehensions is outlined in Section 1 and was highlighted by the VLRC. This situation is indicative of a system under pressure and provides for a highly adversarial start to the court process with consequent negative ramifications for all the parties involved, particularly children and families;

- a reduction in the number of apprehensions that occur without judicial authorisation. As noted in the VLRC Final Report, of the 78% of cases that commenced by apprehension in Melbourne in 2008/09, 81% occurred without judicial oversight;[47] and

- legislative clarification of the principles involved in emergency removal cases. The CYFA is currently silent on the basis for choosing between taking a child into safe custody and applying for a warrant. In relation to either procedure, it requires a protective intervener to be satisfied on reasonable grounds that a child is in need of protection. The legislation should clearly indicate when judicial authorisation is required and when it is not required.

The court's model for commencement departs from the VLRC proposal in the following ways:

- *consent orders* arising from conferences (either pre-court or post-court) are inappropriate. For pre-court conference agreements, the court proposes that a new mechanism be established through legislative amendment that enables

[46] The court made the same submission to the VLRC. See page 52 of the court's submission to the VLRC.
[47] VLRC Final Report at paragraph 3.82.

agreements to be recorded with the Conference Unit of the Court. It is proposed that agreements recorded in this way will not have the affect of enabling breach proceedings to be issued. Agreements reached following a post-court process, will still be scrutinised by a judicial officer before a final order is made (discussed in section 4).

- the Conference Unit of the court should be the body that convenes pre-court conferences rather than VLA or a newly created body. This is similar to the approach adopted in South Australia (discussed in detail in section 4).
- the court disagrees with the view expressed in the VLRC Final Report that the decision to obtain an urgent order to protect a child from immediate risk should be separated from the decision to initiate a protection application. The court cannot see how such a separation provides any practical benefit procedurally or otherwise.
- in some respects, the VLRC model duplicates proceedings unnecessarily. For example, once an application has been filed and the matter is on foot it is unclear why a matter would be referred back to a pre-court conference process.
- the court disagrees with the VLRC proposal that an emergency removal order made with judicial authority may allow up to 72 hours before the matter is required to be brought before a court. The court maintains its submission to the VLRC on this matter. [48]
- the court makes no specific comment on the use of bail justices in child protection matters but notes the VLRC view*: that only the Children's Court, and not bail justices, should be permitted to hear applications for interim care orders.* [49] If the court's proposals are adopted, bail justices will no longer be required to perform child protection adjudication because an expanded 24-hour duty magistrate service will be established.

A summary of the court's proposal for a new model for commencement is noted below, along with a diagrammatic representation:

- **Pre-court process**

  If a child is assessed on reasonable grounds by CP as being "in need of protection", a protection application cannot be initiated without the conduct of a pre-court conference unless certain circumstances exist that would mean such an approach would be unsuitable.[50]

- **Non-emergency or urgent process for commencement**

  All protection applications should commence by notice, unless an urgent or immediate situation exists.

- **Emergency removal with judicial authority**

  A protective intervener may apply to a judicial officer at any time for an emergency removal order when the protective intervener believes on reasonable grounds that:

  a) a child is at risk of significant harm, and

[48] VLRC Submission at pages 51-56
[49] VLRC Final Report at page 306.
[50] This is similar to the approach in SA (for a full discussion – including where cases would be unsuitable for this process - see the discussion in Section 4 at pages 37-38 and footnote 56).

b) the risk is of such magnitude that an order is necessary to protect the child, and

c) a safety notice or intervention order (or variation of existing order) would not be sufficient to protect the child from that risk.

The court will need to have a judicial officer on duty 24 hours a day seven days a week to deal with applications for emergency removal. This service will need to be properly resourced as it will involve considerable expansion of the existing "after-hours" service.[51] The VGSO will also need to provide after-hours service to assist CP with this process (by providing the Department with representation).

A judicial officer may make an emergency removal order on the application of a protective intervener in the absence of interested parties. If a judicial officer makes an emergency removal order the judicial officer:

a) must authorise a nominated person(s) to remove the child from his or her parents and keep that child at a nominated place, and

b) must order that the matter be returnable for further determination at a time no later than one working day after the time at which the court believes that its order will be executed, and

c) may make any order the court thinks fit in order to protect the child from the risk of harm.

The application for an emergency removal order is an application to commence a protection application.

- **Emergency removal without judicial authority**

A protective intervener should be permitted to remove a child from his or her parents without parental consent or judicial authorisation only when the protective intervener believes on reasonable grounds that:

a) a child is at immediate risk of significant harm, and

b) there is insufficient time to apply to the court for an emergency removal order, and

c) a safety notice or intervention order (or variation of existing order) would not be sufficient to protect the child from that risk.

After involuntary removal of a child from his or her parents, a protective intervener must apply to the court within one working day for a protection application, unless the child has been returned to the care of a parent or guardian.

The protective intervener is required to inform the court why it was not feasible to apply for judicial authorisation prior to taking the child into safe custody.

[51] See the discussion at page 36.

- **Disclosure**

  All applications by a protective intervener should contain:

  - a precise summary of the ground(s) on which it is made;
  - a precise summary of the information on which the application is based; and
  - the order sought.

- **Direction for conference processes to encourage early resolution**

  The court should direct that a conference takes place (either DRC/NMC or JRC, whichever is most appropriate) at the earliest possible opportunity but it will not make this order where a case appears likely to resolve expeditiously. Currently, the tension between these two principles is resolved by the court using the second mention as the "trigger point" for referral to an NMC.[52]

- **Contested hearings**

  If a matter proceeds to contest, the court supports the LAT model and other less adversarial processes.[53]

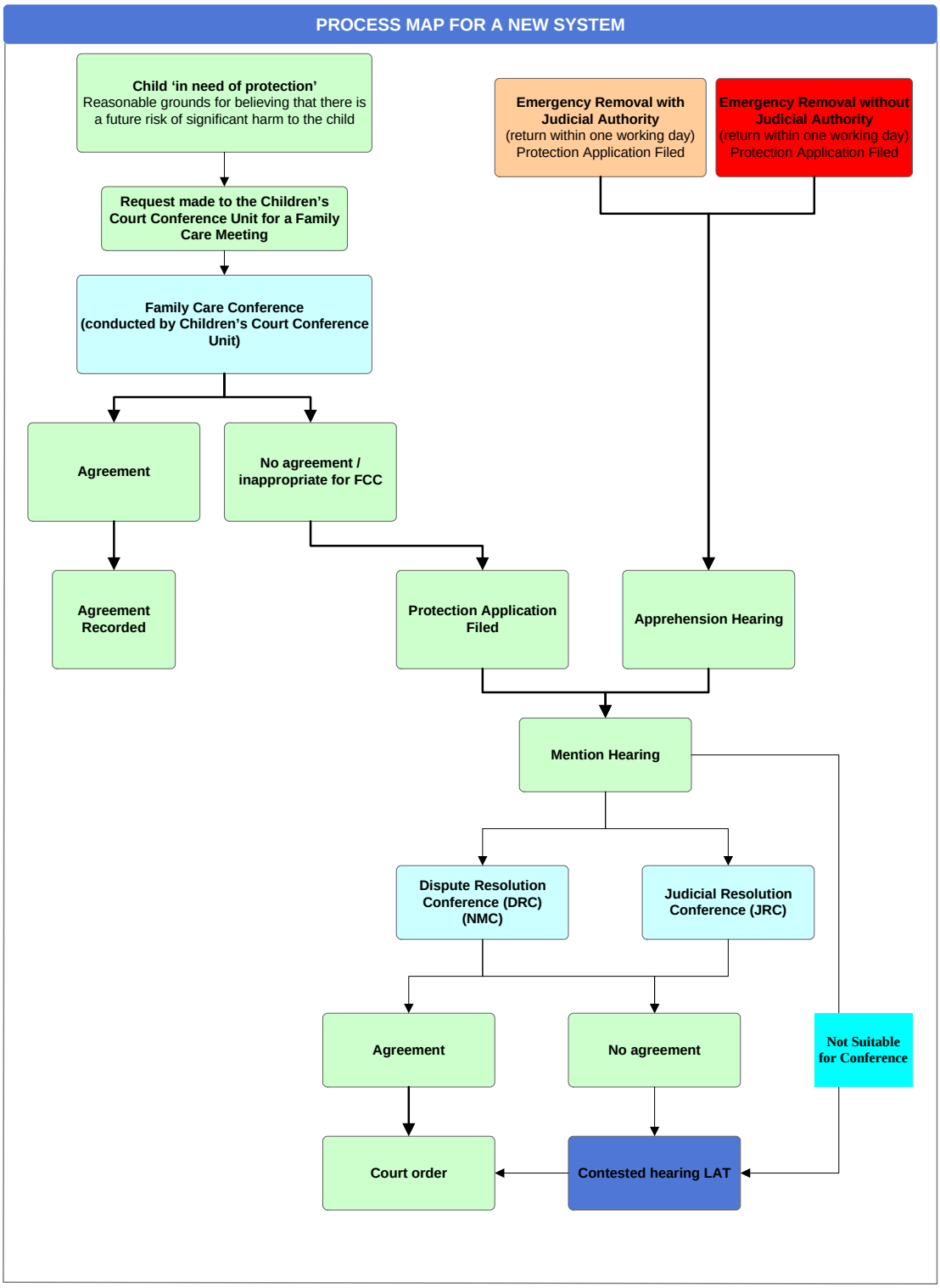
The court acknowledges that the proposal would require legislative amendments and as such, details and workability would need to be developed in consultation with the DHS and VLA.

The court's proposal is represented in the following diagram:

[52] See the discussion in section 4 at page 40.

[53] See discussion in section 5.

Process map for the court's commencement proposal



Prerequisites for the court's proposal

As noted earlier, the court's proposal for commencement requires the model to be -

- properly developed and resourced; and
- supported by the introduction of independent representation for DHS (VGSO proposal).

If a new model is adopted, the current duty magistrate service, which operates 24 hours a day seven days a week will need to be properly resourced to deal with the anticipated increase in applications for emergency removal. In addition, all Children's Courts will need to be supported to deal with applications made during court sitting hours. This will be a particular issue for country courts.

In addition, there will need to be education and training for CP practitioners to ensure the process is able to meet demand in a timely manner. Recently, the court conducted a review of the current after-hours service. The review involved a sample of 320 after-hours applications for safe custody warrants made between August 2009 and April 2010. The review found that, whilst the majority of applications were dealt with expeditiously (usually within 10 minutes), at least 15% of the applications required the supporting affidavit to be redrafted because it was deficient in some way. Considering the straightforward nature of these applications, this percentage is remarkably high. The review revealed that whilst some amendments were attended to in a relatively timely fashion, it was not unusual for the process to extend beyond two hours.

The court maintains that the appointment of the VGSO to act for DHS must extend to all after-hours applications. A new commencement model for protection applications, represents a significant shift in culture for DHS and should be supported by:

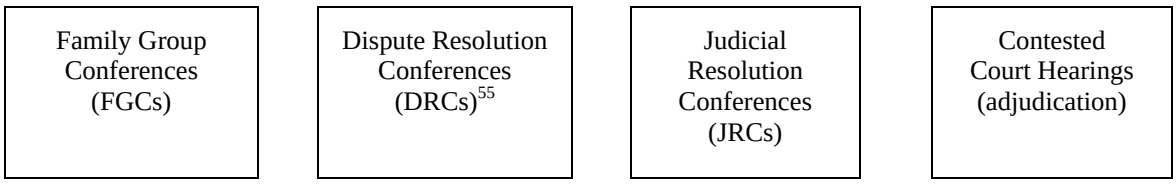
- comprehensive training of CP practitioners; and
- independent representation provided by the VGSO.

SECTION 4
MODELS FOR CONFERENCING IN CHILD PROTECTION MATTERS

In this section, the court outlines its views in relation to child protection conferencing processes.

The VLRC proposals[54]

The VLRC Final Report proposed that a graduated range of supported, structured and child-centred agreement-making processes should be the principal means of determining protection application outcomes. The decision-making continuum suggested by the Commission is as follows:



The court notes that the VLRC envisaged the following:

1. FGCs would become the primary-decision making forum in Victoria's child protection system;
2. The DRC model would be drawn largely from the court's current new model conference process, with some points of difference;
3. The JRC model would be similar to the developing court practice; and
4. Contested hearings would be conducted using inquisitorial and problem-solving approaches (discussed in Section 5).

The court agrees in broad terms with this proposal, but suggests the following approach is more appropriate:

1. Family Care Conferences (FCC) conducted by the court conferencing unit would become the "front-end" decision making forum;
2. The court's NMC process would become the major "in court" form of conferencing;
3. The court would be resourced to conduct JRCs; and
4. Contested hearings would be conducted using inquisitorial and problem solving approaches.

The court expands on the first three points as follows -

[54] Relevant VLRC proposals are contained in Appendix B

[55] The submission adopts the terms family care conference (FCC) rather than family group conference and dispute resolution conference (DRC) as permitted by the legislation rather than conciliation conference (CC). A new model conference (NMC) is a new process for DRCs.

Family care conferences (FCC)

The court is of the view that a family care conference (FCC) should be:

(a) convened by the court;
(b) conducted in an appropriate location (consistent with new model conferences, discussed below);
(c) conducted in accordance with practice standards;
(d) confidential except as provided in (e) or where any person engages in unlawful conduct during a conference; and
(e) capable of producing an agreement that is recorded by the court Conference Unit and can be taken into account in any subsequent conference or court proceeding.

Who should convene family care conferences?

As noted by the VLRC, DHS currently convenes family group conferences in a number of cases. The practice has no legislative backing and its use varies from region to region.

The court maintains that it is the appropriate body to conduct family care conferences. With appropriate resources, the court could expand its new Conference Unit to convene family care conferences prior to the commencement of a protection application in the court.

Reference is made to a similar model that has been operating at the Youth Court in South Australia for some time. In that state, the Care and Protection Unit convenes conferences that are referred to as 'family care meetings'**.** These conferences are conducted through the Youth Court, both before and after the commencement of applications.

In relation to pre-court matters, the SA legislation provides:

- that if the Minister is of the opinion that a child is at risk, the Minister cannot seek an order from the court before a family care meeting has been held (unless certain circumstances exist[56]);
- that a Care and Protection Co-ordinator nominated by the Senior Judge of the court is responsible for convening and conducting a family care meeting and that a Care and Protection Co-ordinator is a member of the staff of the State Courts Administration Council[57] assigned to the position of Care and Protection Co-ordinator[58];
- for the purpose and basic procedures for a family care meeting[59]; and

[56] Section 27 of the Child Protection Act 1993. Exceptions include that it has not been possible to hold a meeting despite reasonable endeavours to do so; or that an order should be made without delay; or that the guardians of the child consent to the making of the application; or that there is other good reason to do so.
[57] This body is similar to the Courts Executive Service proposed for Victoria. See pages 13 and 14.
[58] Section 29 of the Child Protection Act 1993.
[59] Sections 28 and 32 of the Child Protection Act 1993.

- that a family care meeting can result in a plan that must be reviewed by the Care and Protection Co-ordinators.[60]

If there is no agreement arising from the family care meeting, a court order can be sought.

In relation to post-court matters, family care meetings can take place following the commencement of an application. The SA legislation provides that the court *may adjourn the hearing of an application for the purpose of referring specified matters to a family care meeting for consideration and report to the court by the meeting.*[61]

As noted above, family care meetings are conducted by a branch of the SA Youth Court, both before and after applications have commenced.

The court supports a similar proposal for Victoria. However, if a pre-court/family care conference system is to become the primary-decision making forum in Victoria's child protection system**,** the proposal needs to be properly developed, resourced and supported.

It is important to note that there has already been considerable investment by government in the new model conference process in Melbourne cases. In addition, the NMC process developed from strong collaborative work between the court, DHS and VLA. This work is continuing and now includes representatives from the Victorian Bar and private solicitors. It has included developing the court guidelines, developing joint training packages and ongoing evaluation of the model.[62] The evaluation has and will continue to influence the conference model (discussed later). Given the expertise that has developed in the NMC area, it is the court's view that the court's conferencing unit should be expanded to enable it to conduct FCCs.

Advantages of this proposal include:

- the independence of the court;
- a pathway to court processes, where necessary;
- utilising an experienced child protection Conference Unit;
- the way the NMC model developed in collaboration with VLA and DHS;
- the way learning from the NMC process is being used to refine the model in consultation with key stakeholders and ongoing evaluation;
- the NMC process is a *strength-based* model which, with appropriate modifications is suitable to pre-court conferences;
- the current NMC model can quite readily be adapted for pre-court process;
- building on an existing infrastructure rather than creating a new body or existing body doing new work;
- the participants can benefit, where appropriate, from court *reality* testing; and

[60] Section 33 of the Child Protection Act 1993.
[61] Section 49 of the Child Protection Act 1993.
[62] The court has been conducting conferences in one form or another since the early 1990s. See the court's VLRC submission at pages 36-39.

- it would provide consistency of conference services, both pre and post court.

The court reiterates however, that this proposal would require proper resourcing to guarantee its success. It would also require legislative amendments to the CYFA (See the discussion in section 3 that deals with 'A New Commencement of Protection Applications').

Dispute resolution conferences

In its submission to the VLRC, the court provided detailed information about its commitment to non-adversarial processes for child protection matters[63].

The court also noted how it had been involved in the ongoing strengthening of court conferencing models over a number of years.[64]

As a result of implementing the recommendations of the Child Protection Proceedings Taskforce, the court introduced a new dispute resolution conference (DRC) model.[65] The new model aimed to resolve Family Division child protection matters in a non-adversarial way, improve outcomes, reduce time at court and reduce the length of the court process. The new model, referred to as a 'new model conference' (NMC), offers a strengthened and more structured form of DRC.

The guidelines for NMCs are attached as Appendix C. The guidelines detail significant changes to the current DRC process, whilst remaining consistent with the provisions of the CYFA. The changes aim to improve the quality of the parties' negotiations and improve outcomes for children. In summary, the new process -

- requires conferences to be conducted at the earliest practical point in the process;[66]
- requires conferences in Melbourne cases to be conducted at a suitable venue away from the Court;
- supports convenors to exercise appropriate authority;
- requires pre-conference preparation by convenors and parties (including requiring information exchange prior to the conference);
- requires mandatory training and accreditation of convenors;
- ensures participants are better prepared for conferences;
- addresses practitioner behaviour;
- ensures DHS is represented by a decision-maker; and
- reduces the time spent by families in adversarial court proceedings and child protection workers in servicing the court.

[63] Pre-hearing conferences have been available in the Children's Court of Victoria since 1992.
[64] VLRC submission at pages 36-39.
[65] DRCs are provided for under the CYFA 2005.
[66] The guidelines require the court to use the second mention as the trigger point for consideration of referral to NMC.

In addition, the model is a *strength-based* model allowing family strengths to be identified early in the conference and, because of that, creating a less adversarial dynamic.

There has been a phased introduction of NMCs for cases from the DHS north-west region (Footscray and Preston offices). At an appropriate time, NMCs will be expanded into the DHS eastern and southern metropolitan regions. Cases from DHS regions where NMC's have not yet been implemented, are still being conducted as DRCs. The court maintains that it should be resourced to expand the NMC process to all country courts.

As noted above, the development and introduction of the new model was a collaborative effort involving the court, DHS and VLA. Cross-agency training involving private solicitors and barristers, DHS child protection practitioners and lawyers, and VLA solicitors has been conducted. Further sessions will be held prior to each remaining stage of the implementation schedule.

NMCs will be evaluated over an 18 month period. To date feedback from participants has been positive. This approach is consistent with the VLRC proposal that all conference processes should be independently evaluated and regularly reviewed. The VLRC Final Report noted that: *The Commission proposes that all new decision-making processes, including FGCs, CCs and JRCs, should be independently evaluated and regularly reviewed. The Commission believes that both formal, independent program evaluation and informal, regular stakeholder review of family decision-making processes are very important…. In May 2010, the Children's Court convened a session at the Moorabbin Justice Centre in which the Court sought feedback on the new JRC process from Southern region DHS staff. This is an example of self-reflective practice that encourages inter-professional collaboration around family decision-making processes and improves service delivery.*[67]

The first NMC was conducted on 24 August 2010 and 71 NMCs have been conducted up until 31 March 2011. Of these conferences:

- 48% of NMC's conducted have resulted in full settlement (final orders made);
- a further 4% have resulted in interim settlements (IPO's made);
- 31% of NMC's conducted have not been able to be finalised at initial NMC and have been adjourned for further NMC or mention; and
- 17% of NMC's conducted have resulted in contest dates being booked.[68]

The court has received ongoing funding to implement NMCs in the metropolitan area and a new Conference Unit has been created within the Melbourne Children's Court. The Conference Unit currently consists of four conference registrars (one of whom is the manager of the unit) and a conference intake officer. All conference registrars (convenors) have completed appropriate training and are nationally accredited mediators. Two more conference registrars will be appointed in 2011/12.

[67] VLRC Final Report at page 285
[68] A full summary of NMCs conducted up until 31 March 2011 is contained in Appendix C.

The funding provisions for the project at this stage do not currently extend to the new model being implemented throughout regional Victoria.[69] Funding has however been provided for staff training and professional development.

The VLRC made a number of suggestions that differ from the NMC Model.[70] It should be noted however the VLRC made these comments at a time when an earlier version of the NMC guidelines were available. The court makes the following comments (some issues are covered elsewhere in this section):

- The work of BCG confirms that a significant number of cases resolve at a very early stage of the process and may not need to be referred to a conference. The court's guidelines provide that:

  The court will not order an NMC in a case that appears likely to resolve expeditiously. However, the court recognises that, as a general principle, an NMC should be held as early as possible in the proceedings in order to facilitate the early resolution of applications. The tension between these two principles is resolved by the court using the second mention as the "trigger point" for referral to an NMC. If the judicial officer who conducts the second mention believes the case is unlikely to resolve expeditiously, the judicial officer will refer the case to the conference intake officer for listing as an NMC. [71]

- It is not correct to suggest that the conference model adopted for use in NMCs is *unspecified.* The model was adapted from one developed by the Law School of Harvard. The process is outlined in detail in the NMC guidelines.
- It is not correct to suggest that participation of children and young people in a conference is by court order only or that there is no legislative requirement to take a child's view into account.
- The legislation also has confidentiality requirements in relation to dispute resolution conferences. This requires that the outcome and not the process is conveyed to the court.[72]
- The risk assessment process is adequately dealt with in the NMC guidelines.[73]
- It is inappropriate for a consent order process be incorporated into this process. It is critical that the court provide oversight to orders and the process. The court has endeavoured to ensure that outcomes of NMCs are dealt with in court as quickly as possible. For the parties, court endorsement represents a sense of achievement and closure.
- In relation to conferences involving Koori families, the court is seeking to develop a model that will include Koori co-convenors.

[69] In 2009-10, 38% of DRCs were conducted at court venues outside of Melbourne.
[70] See VLRC Report, page 278
[71] NMC guidelines at section 2.1
[72] Section 226 CYFA 2005
[73] NMC guidelines at section 2.3

Judicial resolution conferences (JRCs)

As previously noted by the court, the legislation[74] has expressly provided for judicial resolution conferences since 2009. The legislation provides that a JRC is a meeting presided over by a judicial officer involving mediation, early neutral evaluation, settlement conference or conciliation in order to reach settlement. These ADR terms are not defined in the Act.

The court summarises its position on JRCs as follows:

- Without the provision of further resources, the court has limited capacity to conduct JRCs.
- JRCs are most effective in particularly complex and entrenched disputes where it is felt that the authority of a judicial officer may assist a resolution.
- The court notes that the legislation provides that no evidence is admissible at the hearing of any proceeding in the Family Division of anything said or done by any person in the course of the conduct of a JRC unless the court otherwise orders, having regard to the interests of justice and fairness. The legislation does not provide any bar to the admissibility in any other court process of anything said or done by a person in the course of a JRC. The court disagrees with the VLRC proposal that confidentiality should be further strengthened.
- A JRC should take place at a suitable location consistent with the view expressed by the VLRC.
- The court's position in relation to the participation of children in conferences (FCC, DRC/NMC and JRCs) is discussed more fully at page 45 of this submission.
- Judicial officers who conduct JRCs use a conciliation model rather than a mediation model (consistent with the view expressed by the VLRC).
- JRCs are convened by a judicial officer who will not determine the application if the matter is not resolved at the conference. The court does not agree with the VLRC proposal that recusal is so integral to the integrity of the JRC process that it should be required by legislation. Rather it is a fundamental tenet of natural justice. [75]
- The court supports formal training for judicial officers who conduct JRCs. (consistent with the view expressed by the VLRC).
- The court does not support separate caucusing with parties involved in JRCs (consistent with the view expressed by the VLRC).

[74] *Courts Legislation Amendment (Judicial Resolution Conference) Act* 2009

[75] The court notes that the *Courts Legislation Amendment (Judicial Resolution Conference) Act 2009*, which provided for judicial resolution conferences in all Victorian courts does not contain any provisions in relation to recusal.

General conferencing features

The court now discusses some of the more general matters raised by the VLRC in relation to conferencing.

Qualifications and training for conference convenors

The court agrees with the VLRC view that convenors of family decision-making processes should have appropriate qualifications and training.

The court notes the VLRC's suggestion that convenor accreditation in the field of child protection family decision-making should be *partly* conducted under the National Mediator Accreditation Scheme (NMAS).

In February 2010, the Report of the Child Protection Proceedings Taskforce recommended that all convenors in the court's new model conference (NMC) be trained and accredited in mediation in accordance with the NMAS. The court adopted that recommendation and the guidelines confirm it. An NMC is presided over by a convenor who is trained and accredited in mediation in accordance with the NMAS.

The court notes the further proposal that in addition to general accreditation under NMAS, child protection convenors will need knowledge and perhaps qualifications beyond NMAS accreditation.

The core competencies suggested by the VLRC include:

- suitable qualifications and experience in ADR and family decision-making processes;
- significant knowledge of the child protection system and legislative framework;
- demonstrated understanding of family dynamics, child development (including attachment trauma) and child protection issues;
- cultural competency in relation to Aboriginal and culturally and linguistically diverse communities;
- demonstrated understanding of risk assessment;
- communication skills and the ability to encourage open discussion; and
- family violence, the sexual abuse of children and risk.

The court agrees with these key competencies and notes that they are all part of the ongoing professional development and training requirements for NMC convenors at the metropolitan court. The court submits that the NMC model should be implemented across regional Victoria and would urge the inquiry panel to adopt a recommendation in those terms.

Formalised complaints process for non-judicial convenors

The VLRC suggested that non-judicial convenors of family decision-making processes should be subject to a formalised complaints process as part of their accreditation.

The new NMC convenors are currently court officers and as such are public servants who are subject to a formal complaints process. Information on the court's complaints policy is available on the Children's Court website.

The parties involved in child protection conferences and legal representation

The court's submission to the VLRC noted that *legal representation of parties is critical to the conduct of good practice ADR at all stages of the intervention process. The court is of the strong view that lawyers play a vital role in bridging the significant power imbalance between the state and the individual citizen.*[76]

In this context, the court referred to a pre-court pilot program currently operating in Western Australia at the King Edward Memorial Hospital for Women which was very impressive. In this program, pregnant women at risk of child protection intervention participate in "*Signs of Safety*" conferences assisted by lawyers. A senior social worker from the hospital advised Judge Grant during a visit to Western Australia in February 2010, that she believed the program was improved by the attendance of lawyers.

The court proposes the following model for the legal representation of parties involved in child protection conferencing processes (FCCs, DRCs and JRCs). It is the court's view that parents should always be represented in conferences whatever their form. This ensures better lasting agreements and corrects any power imbalance between parties. The court is of the view that:

- DHS must always have an authorised decision-maker in all child protection conference processes (FCC, DRC or JRC). It should be noted that, at the final stage of a new model conference, where an agreement has been reached, a DHS legal representative is required to attend the conference to enable a settlement to be drafted. This requirement is incorporated in the NMC guidelines:

  DHS at an NMC must:
  • be legally represented; or
  • have legal representation during the final phase of the conference to assist with negotiation and drafting of minutes.
  In all circumstances DHS must have a person present at an NMC with the necessary authority:
  • to negotiate a range of possible outcomes; and
  • make decisions that may lead to settlement.[77]

  It has been the experience of NMC convenors, and recognised in the interim evaluation of the NMC model, that the presence of representatives of CAU

[76] VLRC submission at page 47.
[77] NMC guidelines at page 8

throughout NMC conferences has enhanced the overall conference process. Their professionalism has had a particularly positive effect on the dynamic of the conference.

- A representative for the child or young person should attend all conferences (FCC, DRC or JRC).
- A representative of the parent(s) should attend all conferences (FCC, DRC or JRC).

Children and young people's participation in child protection conferences

The VLRC proposed that all child protection conference processes be:

> *conducted in a manner that allows a child or young person to participate if he or she wishes to do so and/or to have his or her views taken into account, having regard to his or her level of maturity and understanding.*

The court believes this proposal should be subject to further investigation. For that purpose, the court has convened a sub-committee with a range of specialists to examine the issue. The court is of the view that, whilst a child should always be represented, there may be circumstances where it is not in the best interests of the child to participate, or where the child's participation should be limited to specific parts of the conference.

Inter-professional collaboration and training

The court has a strong commitment to inter-professional collaboration. As noted in the VLRC Final Report: *The Children's Court, VLA and the Department have recognised the benefits of inter-professional collaboration in developing the NMCs in the Children's Court.*

In addition, the court is involved in joint (and continuing) training for child protection workers, lawyers and the convenors of child protection conferencing processes as well as a collaborative approach regarding the evaluation of the NMC process.

The foundation for this collaboration lay in the work of the ADR Working Party established by the President of the Children's Court in late 2008. The working group, comprising representatives of the Court, DHS and VLA, prepared a report on "best practice" ADR in the Children's Court that was substantially adopted by the members of the Child Protection Proceedings Taskforce in its report in early 2010. The work of the ADR Working Party is continuing.

The value of this type of collaboration is immeasurable. It helps to promote common understandings and break down misconceptions. It is also consistent with the VLRC view that: [b]*eyond sharing a commitment to children's best interests, there appears to be only limited debate among the major participants in the child protection system about the specific values behind the best interests principles and those that are most important in particular cases. There would be great value in establishing processes that encouraged ongoing discussion about this central issue.* [78]

[78] VLRC Final Report at paragraph 6.20

SECTION 5
ENHANCED COURT PROCESSES

In this section, the court outlines its views in relation to enhanced court processes.

The relevant VLRC proposals are:

2.13 The Court should be given a range of powers that encourage and permit it to control the conduct of proceedings by taking an inquisitorial and problem oriented approach.

2.14 The Court should have powers that are similar to those given to the Family Court and the Federal Magistrates Court in Division 12A of Part VII of the Family Law Act 1975 (Cth).

Problem solving approaches in the Children's Court

In its submission to the VLRC, the court detailed its commitment to innovative "problem solving" approaches in both divisions of the court. For example, in the Criminal Division, the court has Koori courts at Melbourne and Mildura; sex offence lists at country courts and at Melbourne, and intensive bail support for young Koori offenders in some regions of Victoria. Since its submission to the VLRC, the court has supported Youth Justice to introduce a pilot intensive bail support program to courts in the metropolitan area.

The VLRC submission noted that these approaches require dedicated resources. For example, the Koori Courts received specific funding for their development and ongoing operations.[79]

The court further noted that there were four types of cases within the Family Division where intensive case management would be appropriate.[80] These areas are:

- cases involving Koori families;
- infant cases;
- drug and family treatment models; and
- sexual abuse cases.

The court continues to be committed to developing appropriate models in these areas.

The court has already been active in developing the proposal around the Koori Family Division program. As previously noted, the court would like to mange Koori cases in an intensive way from the first listing. The court would refer such cases to the Koori list. One magistrate would manage the cases as they progressed through the court process. Aboriginal agencies, support services and community members would participate in a process that would focus on the best interests of the Koori child and

[79] VLRC submission at page 72.
[80] VLRC submission at page 73.

recognise the strengths of cultural support. An Aboriginal Liaison Officer would support the court[81].

In relation to sexual abuse cases, the court recently formed a working group to examine the development of an intensive case management approach to sexual abuse cases in the Family Division. The working group held its inaugural meeting on 21 April 2011. The working group is drawn from a wide range of specialists and researchers in this area. Ultimately, however, this proposal will require dedicated resources to become operational.

It remains the Court's strong view that problem-solving approaches in the Family Division will provide a better process for children and families and produce more sustainable outcomes.

Docketing cases

As part of the problem solving approaches noted above, a case will generally be "docketed" to the judicial officer in charge of the list or a group of judicial officers with specific expertise.

A proposal to docket every case in the Family Division has broader implications. The court noted in its submission to the VLRC that some courts are well resourced to docket cases but they were not high volume state courts. The court further noted that it was not resourced to docket cases. However, the court understands the arguments in favour of docketing. The court believes there needs to be detailed investigation of how a docketing system would operate in practice to ensure it was an efficient use of resources, matters were determined expeditiously and how it would operate in country courts[82].

Less adversarial trials

The court's submission to the VLRC expressed support for the adoption of a less adversarial trial model and that most of the provisions of Division 12A of Part VII of the *Family Law Act 1975* (Cth) (FLA) should be incorporated into the CYFA in lieu of sections 215(1)(a), 215(1)(b) and 215(1)(d).[83] The court also detailed its suggestions for legislative amendments.[84]

[81] Court efforts to obtain funding for this position have not, so far, been successful.

[82] The VLRC recognized that the court would need assistance to investigate the resource impact of docketing.

[83] Section215(1) of the CYFA provides that the Family Division of the Court:

(a) must conduct proceedings before it in an informal manner;
(b) must proceed without regard to legal forms;
(c) must consider evidence on the balance of probabilities; and
(d) may inform itself on a matter in such manner as it thinks fit, despite any rules of evidence to the contrary.

[84] VLRC submission at pages 75-83.

SECTION 6
DISCRETE LEGISLATIVE PROPOSALS

The court outlines the following responses to legislative proposals outlined in the VLRC Final Report.

2.15 Every child who is the subject of a protection application should be a party to the proceedings.

The court agrees with the VLRC proposal.[85]

2.16 Every child who is a party to a protection application should be legally represented in a manner that takes account of the level of maturity and understanding of that particular child. Two distinct models of representation—'best interests' and 'instructions'—should be available. The two roles and the circumstances of appointment for one or the other (or in rare cases both) should be clearly defined by guidelines. Children represented on an instructions model should:

a) have capacity to instruct a legal practitioner, and

b) indicate a desire to participate in proceedings by instructing a legal practitioner, and

c) indicate an unwillingness to be represented on a 'best interests' basis.

The court notes the following:

- that only children considered mature enough to give instructions to a lawyer (generally children aged seven or older are considered to have the capacity to give instructions) are currently legally represented in child protection proceedings unless there are exceptional circumstances;
- a legal practitioner representing those children or young persons *must act in accordance with any instructions given or wishes expressed by the child so far as it is practicable to do so having regard to the maturity of the child* (referred to as the instructions model);
- for those children who are not considered to have the maturity to give instructions (more than 50% of children subject to protection applications are under the age of seven) the CYFA allows for separate legal representation for children in exceptional circumstances;
- that the court has only exercised this power in a small number of cases; and
- if appointed, a child's representative must 'act in accordance with what he or she believes to be in the best interests of the child' and is to be guided by the Act's best interests principles when determining what is in the child's best interests.

[85] Section 522(1) of the CYFA needs amendment to remove ambiguity on the issue.

The court is of the view that children should always have legal representation in matters before the court. This proposal however would have considerable resource implications for Victoria Legal Aid.

The court endorses the VLRC proposal that every child or young person who is the subject of a protection application should be separately represented on either a best interests model or instructions model.

The court endorses the VLRC proposal that children and young people should be represented on a best interests model by a lawyer[86] unless the lawyer considers that:

- *a mature child or young person has a desire to participate in proceedings and has the understanding and capacity to direct his or her representation*
- *the child or young person, who has had explained to him or her the duty of a lawyer to directly relay the child or young person's views to the court, nevertheless is unwilling to accept representation on a best interests basis*
- *where both of these conditions are satisfied, a separate practitioner should be appointed to represent the child or young person on the child or young person's instructions.*[87]

The court notes that this model should continue to permit legal representatives to request a Children's Court Clinic assessment where the legal representative requires assistance on this issue.

2.17 Section 522(1)(c) of the Children, Youth and Families Act 2005 (Vic) should be amended to ensure that a child is given the opportunity to participate directly in proceedings if the child expresses a wish to do so, having regard to his or her maturity and understanding.

The court notes that section 522(1)(c) of the CYF Act 2005 already requires the Court, as far as practicable, to allow the child 'to participate fully in the proceeding'.[88]

The court notes the VLRC view that this should be *strengthened* and that the words 'participate fully' do not necessarily denote the child putting his or her views to the court personally and the section's wording should reflect this distinction by replacing 'fully' with 'personally' or 'directly'.

The court disagrees with the VLRC proposal and is of the view that the existing provision coupled with the requirement to determine procedural matters in the child's best interests adequately addresses the concerns expressed by the VLRC.

[86] The court is of the view that lawyers should be accredited child protection specialists by the Law Institute of Victoria. (See earlier discussion in footnote 11 at page 11).

[87] VLRC Final Report at paragraph 8.196

[88] As noted by the VLRC, this is consistent with article 12 of UNCROC, which provides that where a child is capable of forming his or her own views, states parties shall allow the child to express those views freely in all matters affecting him or her. Article 12 requires that a child be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly or through a representative.

2.18 There should be additional new 'no fault' grounds for finding that a child is in need of protection:

a) It should be possible for the Court to find that a child is in need of protection if it is satisfied that the child is behaving in a manner that is likely to cause significant harm to the physical or emotional wellbeing of the child and the child's parents are unable to prevent the harmful behaviour.

b) Section 162(1)(c), (d), (e) and (f) of the Children, Youth and Families Act 2005 (Vic) should be amended by including reference to the fact that the child's parents are 'unable' to protect the child from the relevant harm or provide the relevant care.

2.19 If there is no agreement about the particular ground for determining that a child is in need of protection, but there is agreement between the child's parents and the Secretary that it is in the best interests of the child to be placed on a protection order to address concerns about significant harm to the child as contemplated by section 162(1)(c), (d), (e) or (f) of the Children, Youth and Families Act 2005 (Vic), the Court may make a finding that a child is in need of protection and may make any of the orders open to it under Part 4.9 of the Children, Youth and Families Act 2005 (Vic) as agreed by the child's parents and the Secretary if:

a) any views and wishes of the child have been taken into account, and

b) a child who is represented on instructions does not oppose a finding that he or she is in need of protection or any of the orders sought, and

c) the Court is satisfied that it is in the best interests of the child to make the orders sought.

The Court agrees with the VLRC comments that the current grounds increase disputation between the parties because they do not allow for

- a finding that a child is in need of protection through no fault of his or her parents, or
- an agreement between the parents and the DHS that the child is in need of protection without identifying one of the statutory grounds that involve some form of parenting failure.

The Court agrees with the legislative proposal suggested by the VLRC for the reasons set out in its Report.

2.20 Section 215(1)(c) of the Children, Youth and Families Act 2005 (Vic) should be amended to make it clear that whenever the Court is required to be satisfied as to the existence of a fact or any other matter in Family Division proceedings, that the level of satisfaction is the civil standard of the balance of probabilities and not any higher standard.

The court is of the view that the correct standard of proof is clear. Any legislative proposal which relates to evidence in the Victorian court system should be considered in the context of Victoria's *Uniform Evidence Act*, and not as a singular proposal.

2.21 Section 333 of the Children, Youth and Families Act 2005 (Vic) should be amended to permit a child or a child's parent to apply to the Court for review of a decision in a case plan or any other decision made by the Secretary concerning the child.

The court endorses the proposal for the reasons detailed in the VLRC report.

2.22 The definition of 'child' in section 3 of the Children, Youth and Families Act 2005 (Vic) should be amended so that it is possible to make a protection application for any child under the age of 18 years.

The court endorses the proposal which will essentially rectify an existing anomaly. However, it must be acknowledged that such an amendment will inevitably lead to more applications to the court.

2.23 If the Court finds that a child is in need of protection it should be permitted to make an order granting guardianship and/or custody of the child to one parent of the child to the exclusion of another parent when satisfied that this order is necessary to meet the needs of the child.

The court endorses the VLRC proposal but is of the view that it should expanded to include third parties in addition to parents.

2.24 Section 146 of the Family Violence Protection Act 2008 (Vic) should be amended to permit the Court to exercise jurisdiction under that Act when a child who is the subject of a child protection application is a child of 'the affected family member' or 'the protected person'.

The court supports the VLRC proposal for the reasons outlined in the report.

2.4 The Court should be permitted to make interim accommodation orders on the application of a party at any time after a protection application has been filed and before it has been finalised. 21-day time limit on IAO should be removed except for secure welfare placement.

The duration of an interim accommodation order should not be limited to 21 days, except where a child is placed in secure welfare, but should be for a limited period necessary to enable the next court-ordered process to occur.

This proposal has been substantially implemented. The 21-day limit on interim accommodation orders has been removed for all placements except secure welfare, a declared hospital or a declared parent and baby unit.

SECTION 7
A NEW MODEL FOR DHS REPRESENTATION

In this section, the court outlines its support for a new model of representation of DHS. The VLRC proposals relevant to this matter are as follows:

4.1 The VGSO should be primarily responsible for conducting proceedings on behalf of protective interveners in Victoria.
4.2 The VGSO should prepare model litigant guidelines.
4.3 The model litigant guidelines should be evaluated and reviewed.

The court supports the VLRC proposal that the Victorian Government Solicitor's Office (VGSO) should have the primary responsibility for the conduct of proceedings on behalf of protective interveners in Victoria.

In its submission to the VLRC, the court supported the proposal for an independent statutory commissioner to have carriage of matters on behalf of DHS. The arguments presented by the court in support of an independent commissioner are equally applicable to the proposal for the VGSO to take on this role, and are repeated below.[89]

There are three primary reasons for this proposal. The first relates to the inherent conflict in the current role being carried out by DHS. The second relates to improving the quality of representation before the court. The third relates to its ability to support the introduction of new commencement proceedings for protection applications (see discussion in section 3).

The court believes that the Secretary has too many functions under the CYFA.

At present, the Department performs a number of functions, including the inherently contradictory roles of assisting children and families, and initiating and conducting court proceedings involving those same families.

Given the incompatability of those two roles, it is not surprising that tensions often exist between the Department and the family members, particularly when at court. The removal from DHS of the responsibility to conduct litigation in which it is effectively pitted against family members and sometimes against its own child clients is likely to contribute to a reduction in the Department's perception of tension between it and the Children's Court.

Further, it is the court's experience – in this instance consistent with the Ombudsman's observations in the *Own Motion Investigation into the Department of Human Services Child Protection Program* – that child protection workers sometimes struggle with their obligations to the court. The Ombudsman noted:

- *"One regional manager explained that over half of their staffing group had less than two years experience and so they not only struggled with the*

[89] VLRC Submission at pages 84-92.

role of a child protection worker but also how to write court reports and give competent evidence in the Children's Court."[90]

- *"The Medical Director of the Victorian Forensic Paediatric Medical Service commented on the inexperience of the workforce and expectations placed on them: 'I worry that fairly junior people have a lot of responsibility to take cases to the Children's Court … I really worry about the training and the expertise of some of the child protection workers in handing matters up … I think it's most unfair on the workers to expect them to take on this role.'"*[91]

Difficulties faced by child protection workers in their dealings with the legal process are not merely a Victorian phenomenon. They are universal.[92] It is worthwhile quoting The Honourable Judge Leonard P. Edwards' opinion about the very similar American experience:

> *"The court system presents problems for child protection agencies that they continue to struggle with today. First, in order to participate in court proceedings, they have had to create and maintain staff familiar with the law. This has meant hiring lawyers to present the agency position in court as well as developing legal expertise among the social worker staff to interpret court orders. Second, to obtain approval for their actions, child protection agencies have been required to learn how legal decisions are made, how evidence must be gathered, and how court procedures dictate the presentation of evidence. Third, they have had to learn about the formality of court proceedings, the power of the judge, and the power that attorneys have to shape court proceedings.*
>
> *For the line social worker, the formality of court proceedings and the adversarial process have presented the most difficult problems. Nothing in their training prepares social workers for evidence collection, report writing, and direct and cross-examination under the rules of evidence. Many social workers find the court process to be an overly formal setting, demeaning and inhospitable, where the truth is sacrificed for procedural rules and the free exchange of information and ideas is difficult, if not impossible."*[93]

The court notes that there has long been a perception of tension between DHS and the court. Justice Fogarty's 1993 observations still resonate today:

> *"A significant reason for the existence of the Children's Court is that it stands independent of the Department, the children and the parents and represents the community in the determination of these extremely difficult and delicate issues which are likely to have a profound, perhaps permanent, effect on the lives of the young children involved. Consequently, it is necessary for the Court to be independent and to be seen to be independent, especially from the Department which is a party in every proceeding before it. It must have the confidence of the parents*

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[90] Ombudsman's Report at para 296. p57.
[91] Ombudsman's Report at para 297. p57.
[92] Refer to discussion at p28.
[93] Judge Leonard P. Edwards, "Mediation in Child Protection Cases". Judge Edwards' background is detailed at footnote 43.

who come before it and the confidence of the community that it will act in an independent way in accordance with the legislation.

At times I was left with the impression in discussion with some officers of the Department, that they would really like to regard the Court as a natural extension of the Department and that they are uncomfortable with its independence. Whilst that view was not articulated in a direct way, it is important that even at a subconscious level that attitude be recognized and rejected. I felt at times, both at a high level within the Department and from speaking with some workers, that there was a view that because a notification of abuse had been investigated by the Department and because it had reached a conclusion as to what order should be made, there was something obstructive about a process by which those opinions and views were independently assessed and at times rejected." [94]

Given the multiplicity of the Department's functions, these perceptions of tension are not entirely surprising. Currently the Department is:

- the investigating body for reports made to the Department;
- the agency that initiates and conducts the proceedings;
- the authority charged with the responsibility of delivering assistance to children and families.

Having responsibility for this range functions sometimes makes it difficult for the Department to perform properly the role of a model litigant.[95]

CP staff retention issues are a problem on both a national and international basis. In the court's experience, protective workers are overworked and significantly under-resourced. In addition, young workers are not trained and prepared sufficiently rigorously for the requirements of the court process. The unhappiness of their court experience results from the considerable pressures in their own work environment.[96]

It is the court's view that VGSO should represent CP in:

1. all child protection proceedings in the Family Division of the court; and
2. all intervention order proceedings in the Family Division of the court or in the Magistrates' Court in which a delegate of the Secretary is the applicant on behalf of a child client; and

[94] "Protective Services for Children in Victoria" (1993), pp.142-143. We also note that in a review of the child protection system conducted in 2004 Kirby, Freiberg & Ward made similar findings (at p.40 of their report dated April 2004) about the Department's attitude to the Court: "In his 1993 report, Justice Fogarty noted (p.74) that senior people within the Department of Human Services adopted inappropriately critical attitudes of the court and legal structures generally and that this ethos permeated down to the workers. He noted the criticisms that the court is regarded as too legalistic and that there were too many delays that adversely affected the interests of children and others (p.142). These criticisms continue."

[95] Refer to Chapter 4.1.6 in Research Materials on the website of the Children's Court of Victoria: www.childrenscourt.vic.gov.au.

[96] Refer to VLRC Submission at pages 28-29.

3. all appeals to a higher court[97] resulting from proceedings of types 1 or 2 whether the Secretary is the appellant or the respondent;
4. all proceedings in the Family Court of Australia or the Federal Magistrates Service in which the Secretary seeks to intervene and all appeals to a higher court resulting from such proceedings;
5. all proceedings in the Victorian Civil and Administrative Tribunal in which the Secretary is a party and all appeals to a higher court resulting from such proceedings; and
6. all proceedings in the Coroners Court in which the Secretary is involved and all appeals to a higher court from findings or orders made in such proceedings.

It is the court's view that this proposal:

- would assist in reducing the current level of tension that exists between families and DHS and their respective legal representatives;
- would prevent the disruption of court proceedings caused by the Department's decision-makers often not being present at court and sometimes not being easily contacted by telephone;
- would ensure that a forensic legal analysis is conducted of the evidence likely to be required to achieve the optimum outcome, bearing in mind that the optimum outcome must also be the achievable outcome which is considered to be in the best interests of the subject child;[98] and
- would ensure that the DHS does not litigate cases which an independent legal representative considers to be:
  - without merit factually or legally or both;
  - unsupported by sufficient evidence; or
  - generally not in the best interests of the subject child to litigate.

The DHS Court Advocacy Unit (CAU) and, in country regions lawyers engaged by DHS, currently perform the functions that the court considers should be carried out by the VGSO. From comments that often reach the court, the court believes that the CAU is not able to perform the role as independently as it would like (or as it should) because its clients often do not accept its forensic legal advice.

CAU lawyers are often placed in the invidious position of having to ask for cases to be stood down, sometimes for hours, until the senior DHS staff member responsible for giving instructions becomes available to do so. These instructors usually do not actually attend court so, when located, contact is by telephone. Hence, they will not have heard everything that has transpired in court. This is not a good way of conducting cases. The appointment of the VGSO to conduct child protection and related cases could be expected to stop this practice.

[97] The term "appeal" is used loosely as a generic term to include appeals in the strict sense, appeals by way of re-hearing, Order 56 or other reviews, cases stated – in short all higher court proceedings that derive from proceedings in a lower court.

[98] The requirement that the Secretary must have regard to the best interests principles set out in Part 1.2 of the CYFA in making any decision or taking any action under the CYFA is contained in section 8(2).

The appointment of specialised independent lawyers, skilled in court advocacy, would assist a more efficient disposition of matters in the Family Division of the Court.[99] It would also support the cultural shift required to support any change in the commencement process before the Children's Court.

[99] It should be remembered that prior to May 1993, the task of representing DHS in the Family Division was performed by the Victorian Government Solicitor. Observations from that time by magistrates who still sit in the Children's Court are that the process was efficient and served the Court well. At that time, the workload of the Court was confined to five courts (including Family and Criminal Division matters). Since then the caseload in the Children's Court has "exploded" and now 11 courts (including Moorabbin JC) are required to deal with cases in both divisions, cases that appear to be becoming ever more complex and difficult. Now, more than ever before, an independent, specialised group of lawyers is required to conduct the Department's cases in the Family Division.

APPENDIX A

Relevant VLRC proposals:

1.5 Family group conferences should become the primary decision-making forum in Victoria's child protection system.

1.6 A family group conference should be conducted prior to filing a protection application unless there are exceptional circumstances that warrant a departure from this general rule.

1.7 When an interim care order is made following emergency intervention, the court should order a family group conference at the earliest possible opportunity unless there are exceptional circumstances that warrant a departure from this general rule.

1.8 A family group conference should be conducted before certain secondary applications are filed in the court unless there are exceptional circumstances that warrant a departure from this general rule.

1.10 The court should direct that a conciliation conference, a judicial resolution conference or a family group conferences take place at the earliest possible opportunity after an application is filed unless there are exceptional circumstances that warrant a departure from this general rule.

2.1 All protection applications should commence by notice.

2.2 A family group conference should be conducted prior to filing a protection application unless there are exceptional circumstances that warrant a departure from this general rule.

2.3 An application by a protective intervener (including an application for any interim orders should contain:

- *a precise summary of the ground(s) on which it is made*
- *a precise summary of the information on which the application is based*
- *the orders sought*

2.5 The court should direct that a conciliation conference, a judicial resolution conference, or another family group conference (whichever is most appropriate) take place at the earliest possible opportunity after an application is filed unless there are exceptional circumstances that warrant a departure from this general rule.

2.6 If an application is not resolved by agreement, it should be set down for hearing. Any parties who oppose the application and/or the orders sought by the protective intervener should be required to file a document in which they identify that opposition and their grounds for doing so.

2.7 A protective intervener may apply to a judicial officer at any time for an emergency removal order when the protective intervener believes on reasonable grounds that:

a) a child is at risk of significant harm, and

b) the risk is of such magnitude that an order is necessary to protect the child, and

c) a safety notice or intervention order (or variation of existing order) would not be sufficient to protect the child from that risk.

2.8 A judicial officer may make an emergency removal order on the application of a protective intervener in the absence of interested parties. If a judicial officer makes an emergency removal order the judicial officer:

a) must authorise a nominated person(s) to remove the child from his or her parents and keep that child at a nominated place, and

b) must order that the matter be returnable for further determination at a time no later than 72 hours after the time at which the court believes that its order will be executed, and

c) may make any order the court thinks fit in order to protect the child from the risk of harm.

2.9 The court may make an interim care order for a period not exceeding 14 days on the return of an emergency removal order or on application for an interim care order following an 'immediate risk removal', if satisfied that there is unacceptable risk of harm to the child. An interim care order may include:

a) an order about where and with whom a child must live

b) an order requiring a parent, guardian or carer to accept supervision by the Secretary

c) any other order the court thinks fit in order to protect the child from the risk of harm.

2.10 A protective intervener should be permitted to remove a child from his or her parents without parental consent or judicial authorisation only when the protective intervener believes on reasonable grounds that:

a) a child is at immediate risk of significant harm, and

b) there is insufficient time to apply to the court for an emergency removal order, and

c) a safety notice or intervention order (or variation of existing order) would not be sufficient to protect the child from that risk.

2.11 After involuntary removal of a child from his or her parents, a protective intervener must apply to the court within one working day for an interim care order unless the child has been returned to the care of a parent or guardian and the court must seek to determine the application on the day it is made unless there are exceptional circumstances.

2.12 Prior to the conclusion of an interim care order, the court may make a short-term assessment order if satisfied that the child remains at unacceptable risk of harm. A short-term assessment order, which may not exceed six weeks, may include:

a) an order about where and with whom a child must live

b) an order requiring a parent, guardian or carer to accept supervision by the Secretary

c) any other order the court thinks fit in order to protect the child from the risk of harm.

APPENDIX B

Relevant VLRC proposals:

1.1 A graduated range of supported, structured and child-centred agreement-making processes should be the principal means of determining the outcome of child protection matters.

1.2 The convenors of family decision-making processes should have appropriate qualifications and training.

1.3 The parties involved in family decision-making processes should have access to appropriate legal assistance.

1.4 The professionals who participate in family decision-making processes should have appropriate qualifications and training that fosters inter-professional collaboration.

1.9 A family group conference should be:

a) convened by an independent person

b) conducted in an appropriate location

c) conducted in accordance with practice standards

d) conducted in a manner that allows a child or young person to participate if he or she wishes to do so and/or to have his or her views taken into account, having regard to his or her level of maturity and understanding

e) confidential except as provided in (f) or where any person engages in unlawful conduct during a conference

f) capable of producing an agreement that may become:

(i) a consent order in the court, or

(ii) an agreement or 'care plan' that can be taken into account in any subsequent court proceedings, family group conference or other decision-making process.

1.11 Conciliation conference should be:

a) convened by an independent person

b) conducted in an appropriate location

c) conducted in accordance with practice standards

d) conducted in a manner that allows a child or young person to participate if he or she wishes to do so and/or to have his or her views taken into account, having regard to his or her level of maturity and understanding

e) confidential except as provided in (f) or where any person engages in unlawful conduct during a conference

f) capable of producing an agreement that may become a consent order.

1.12 A judicial resolution conference should be:

a) convened by a judicial officer who will not determine the application if the matter is not resolved at the conference

b) conducted in an appropriate location

c) conducted in accordance with practice standards

d) conducted in a manner that allows a child or young person to participate if he or she wishes to do so and/or to have his or her views taken into account, having regard to his or her level of maturity and understanding

e) confidential except as provided in (f) or where any person engages in unlawful conduct during a conference

f) capable of producing an agreement that may become a consent order.

1.13 All new family decision-making processes should be independently evaluated and regularly reviewed).

APPENDIX C

CHILDREN'S COURT OF VICTORIA

DISPUTE RESOLUTION CONFERENCES

GUIDELINES FOR NEW MODEL CONFERENCES

Effective from 31 January 2011

1. INTRODUCTION

Sections 217 – 227 of the *Children, Youth and Families Act 2005* (the Act) govern the operation of dispute resolution conferences (DRC) in the Children's Court of Victoria.

Section 217(1) of the Act provides that the Family Division of the Children's Court *may* order *any application* made to the Family Division to a DRC.

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

These guidelines apply to applications listed at the ***Melbourne Children's Court*** (the Court) as follows -

- From 31 January 2011, all cases considered suitable for a DRC from the North West DHS region will be listed as a New Model Conference (NMC); and
- From a date to be advised (by published notice), all cases considered suitable for a DRC from the Eastern DHS region will be listed as an NMC.

From a date to be advised (by published notice), all cases considered suitable for a DRC from the Southern DHS region will be listed as an NMC. Therefore, these guidelines will also apply to applications listed at the Moorabbin Children's Court from that date.

The *Guidelines for Dispute Resolution Conferences*, dated 18 September 2007, will continue to apply to applications otherwise referred by the Court to a DRC.

NMC's are a strengthened form of DRC. Like a DRC, they are intended to facilitate the early resolution of applications through a non-adversarial process. NMCs were endorsed by the Child Protection Taskforce Report dated 26 February 2010. In the case of matters from the North West and Eastern DHS regions, an NMC will be conducted at a venue away from the Court unless one of the parties is in custody or there are security concerns identified, in which case they will be held at the Court.

The NMC process provides for -

- better preparation by participants;
- more time for discussion in an appropriate environment;
- decision makers being present at the conference;
- appropriate behaviour by all participants; and
- an appropriate process for those children who wish to participate.

2. NMC – PROCEDURAL MATTERS

2.1 When a case will be listed for an NMC

The Court will not order an NMC in a case that appears likely to resolve expeditiously.

However, the court recognises that, as a general principle, an NMC should be held as early as possible in the proceedings in order to facilitate the early resolution of applications.

The tension between these two principles is resolved by the Court using the second mention as the "trigger point" for referral to an NMC. If the judicial officer who conducts the second mention believes the case is unlikely to resolve expeditiously, the judicial officer will refer the case to the Conference Intake Officer for listing as an NMC.

2.2 Preliminary process and the role of the Conference Intake Officer (CIO)

If the parties agree a case is suitable for an NMC or the Court determines a case is suitable for an NMC[100], all representatives of parties or, in the case of an unrepresented party, that party, must attend the registry counter and provide information as requested by the CIO including –

- the parties' address and phone numbers;
- any special requirements (for example, interpreters, or specific dates or times when a party may, for good reason, be unavailable to attend an NMC);
- providing a copy of any existing orders under the *Family Violence Prevention Act* 2008;
- any safety issues that may be relevant to the conduct of an NMC or format of an NMC;
- whether there are any persons mentioned in s.222(2) of the Act that will seek the permission of the convenor to attend an NMC; and
- in the case involving a represented child, whether the child will participate in an NMC.

The CIO will list the case for an NMC to be held within three weeks and refer the case to a judicial officer to make the order formally adjourning the matter to the NMC date. If there is a compelling reason for the CIO to list outside the three-week period, the CIO may do so. In the event that a party disputes the decision of the CIO on this matter, the judicial officer will determine the matter.

2.3 Risk Assessment

The CIO will conduct a risk assessment with each of the parties[101] to the case. In conducting a risk assessment, the CIO will consider various matters that will help determine the most appropriate format for the conference. These matters include whether there is any history of family violence; the emotional, psychological and physical health of the parties; the capacity of parties to participate in the process; any risk to or from the child; and the parties' level of apprehension about participating in the conference. These matters acknowledge the importance of conducting conferences in a way that addresses any power imbalance between the parties, addresses any safety issues and best promotes appropriate participation. The risk assessment is confidential.

If the CIO determines that there are risk issues in a particular case, the CIO will determine if those issues can be resolved by conducting an NMC in a way that adequately addresses the risk issue. For example, the CIO may recommend an NMC be conducted as a shuttle conference[102] or alternatively be conducted, in the case of a Melbourne matter, at the Court.

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[100] If parties do not agree about the appropriateness of an NMC in the particular case, a judicial officer will determine the issue. If the judicial officer is concerned about a risk issue, the case may be adjourned for seven days to enable the CIO to conduct a detailed risk assessment. The results of the risk assessment will be confidential and used by the judicial officer to help determine the suitability of the case for NMC and, if suitable, the format of the NMC.

[101] This does not apply to child "parties". They will not be contacted for the purpose of risk assessment.

[102] In a shuttle format, parties together with their lawyers and/or support persons are located in separate rooms and the convenor moves between these rooms. Alternatively, the convenor may request the parties and lawyers to move in and out of a main central conference room. In a shuttle conference, the parties do not come into direct contact with each other. Shuttle formats are usually recommended when one of the parties is in fear of, or feels intimidated by, one of the other parties, and would, therefore be unable to participate effectively in a "face to face" format. A shuttle format addresses power imbalances, fear and capacity to participate.

In cases where there is no issue of risk or the CIO determines the risk can be resolved by conducting the conference in a way that adequately addresses the risk, the NMC will proceed on the arranged date. The CIO will confirm with all parties in writing, the venue and format of the NMC.

If the CIO determines there is a particular reason why the case may be unsuitable for an NMC, the CIO must advise the parties that the matter will be listed for mention before a judicial officer who will determine the matter. If the judicial officer determines the matter is unsuitable for an NMC, the NMC date will be vacated and the judicial officer will make an order about the future management of the case.

2.4 Information Exchange

Once a case is listed for an NMC, all parties must -

- file the "information exchange document" with the Court at least 7 days prior to the date fixed for an NMC. (The relevant form of the document is at Attachment A). It is also available on the Children's Court website. The document may be lodged electronically at NMC@childrenscourt.vic.gov.au;
- exchange the "information exchange document" with all other parties at least 7 days prior to the date fixed for an NMC unless a party is unrepresented in which case, the CIO will, upon being provided with the document; distribute it to all other parties; and
- where possible, advise the Court and other parties, prior to an NMC, of any change in circumstances or important new developments that have occurred after the original filing and exchange of information.

The judicial officer who adjourns the case for an NMC will endorse these requirements as an order on the file. If the order is not complied with, the convenor may adjourn the NMC and the matter will be listed before a judicial officer for further orders.

The Information Exchange document prepared by DHS will be regarded as an addendum report and will form part of the court file (Attachment B). It is not confidential.

Information Exchange documents prepared by any other party will remain confidential and will not be placed on the court file.

2.5 Some general matters

A convenor conducting an NMC has broad discretionary power in determining the process for the conference.

All parties and/or their legal representatives must attend an NMC.

In some cases, a second or further NMC may be recommended by the Convenor. These cases will be referred to a judicial officer for determination.

3. PURPOSE OF AN NMC

Section 217(2) currently provides that the purpose of a DRC 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. This purpose also applies to an NMC. An NMC is therefore an exercise in negotiation and joint problem solving. It establishes a process that enables parties to an

application (and other approved persons) to meet together in an environment controlled by an independent convenor.

In an NMC, parties to an application, with the assistance of the conference convenor(s):

- maintain a child focus;
- identify the risks and safety concerns that have led to the intervention by DHS;
- identify and clarify the strengths within the family including any progress made by family members in addressing protective concerns;
- hear the voice of the child(ren) either directly (where the child attends by order of the Court) or indirectly (where the child's lawyer attends and/or there is a professional report concerning the child's views);
- identify and clarify disputed issues;
- identify and clarify areas of agreement;
- develop options and consider alternatives;
- enhance communication; and
- reach agreement on issues of dispute between parties to avoid, or limit the scope, of any hearing.

An NMC aims to optimise participation of significant persons from a child's family (and personal/community networks) in the process, as a means for promoting the best interests of the child.

4. RESPONSIBILITIES OF ALL PARTICIPANTS IN AN NMC

All those participating in an NMC:

- respect the authority of the convenor;
- respect the roles and responsibilities of all other participants in an NMC;
- clearly state their point of view;
- listen to and discuss the views of others;
- highlight the strengths within the family;
- consider the options for resolving the protective concerns which gave rise to the application; and
- consider the arrangements that are in the best interests of the child.

An effective and positive NMC is promoted by the following factors:

- the participants being fully prepared;
- equality of participation;
- participants conducting themselves in a courteous and considerate manner;
- knowledge of the process;
- the parties having a sufficient level of advice and support;
- the parties having sufficient time to participate in the process;
- confidentiality;
- effective control of the process by the convenor;
- respect for the role and authority of the convenor; and
- a non-adversarial environment.

If people do not attend an NMC with an open mind or a flexible attitude, the NMC will not be an effective process.

The following factors are barriers to an effective and positive NMC:

- inequality in participation;
- participants acting in an adversarial/aggressive manner towards another participant or the convenor;
- inflexibility in considering proposals put forward by other participants;
- participants lack of knowledge of process;
- concern about breaches of confidentiality provisions;
- lack of preparation by the participants; and
- participants allowing insufficient time for the conference.

5. ROLE OF CONVENORS IN AN NMC

The convenor is an independent chairperson *acting with the authority of the Court*. In that capacity, the convenor shall be responsible for controlling the proceedings and ensuring that each participant has the opportunity to participate fully.

When conducting an NMC, convenors must adopt an independent and objective approach, free of bias. They should accept the participation of the parties in shaping decisions that are fair, practical and achievable and that are made in the child's best interests.

Prior to the commencement of an NMC, the convenor will have considered any issues that may affect the manner in which the conference is conducted, including information and risk assessment provided by the CIO (for example, the need for a shuttle conference using separate rooms). The convenor will also have read the file and the "information exchange documents".

If a dispute arises on the day of an NMC as to who should attend the conference, in addition to those people required to attend under the Act and ordered to attend by the Court, the convenor(s) has the final authority to determine any additional attendees.

In conducting an NMC, the convenor:

- creates an environment where everyone feels able to discuss and negotiate the issues in dispute AND encourage parties, particularly families, to directly participate and contribute to the process;
- clearly explains how the conference will be conducted;
- deals with any power imbalances that arise in the conference;
- takes control if a participant becomes antagonistic or aggressive;
- confirms that legal representatives have the most up-to-date instructions from their clients;
- clarifies the risks and safety concerns that led to intervention by DHS;
- leads a discussion with the participants regarding the strengths within the family;
- assists the parties to identify/clarify the facts, views, interests and opinions of parties to the conference and to identify and clarify areas of agreement;
- gives a 'court perspective' (whilst not providing legal advice) to help parties 'reality test' their positions and provide information to assist parties to identify those matters which may be central to a court, if it were considering the case;

- develops options and consider alternatives for negotiation and settlement;
- structures the process to ensure that each party understands the problems and options for settlement;
- outlines how each party's views/options for settlement promotes the best interests of the child;
- introduces options that could be considered by parties;
- endeavours to establish agreements or settlement in appropriate cases; and
- ensures that the written agreement is accurate and understood by the parties.

If the CIO or the Court has recommended an NMC be conducted as a shuttle conference, the convenor must respect that decision and only change the format if satisfied it is safe and appropriate to do so.

There may be times during a shuttle conference where the Convenor may decide to meet with all the practitioners together without their clients.

In a shuttle conference –

- the convenor must not speak to a represented party without their lawyer being present.

- the convenor explains to parties and their lawyers how he or she will carry information and proposals between the parties. If a party in private session requests critical information not be disclosed to another party and the convenor believes non-disclosure will unacceptably compromise the integrity of the process and outcome, the convenor must work with the party to find a way to disclose the critical information in an acceptable manner or, if that is not possible, conclude the conference.

Upon completion of an NMC, the convenor will provide a written report to the Court in the form of Attachment C, together with draft minutes (including conditions if applicable). The Court may consider the report and draft minutes in determining what finding or order to make in respect of the application.

Where a convenor has a conflict of interest or is unable to be independent and objective, they must disqualify themselves from the proceeding.

6. ROLE OF LAWYERS IN AN NMC

In an NMC, lawyers adopt a non-adversarial role. The role of the lawyer in the process is to represent a client in facilitated negotiations that take place in a problem-solving environment. A lawyer must have an understanding of the NMC process and should have participated in appropriate training.

In participating in an NMC, a lawyer:

- respects the authority of the convenor;
- is respectful of all other participants;
- has regard to the guidelines issued by the Court for conducting NMC's;
- alerts the Court, as appropriate, of any security issues that may arise;

- is available for the conference at the time arranged and for the whole of the conference;[103]
- prepares their clients in advance by making sure the client understands the process;
- ensures they have up-to-date instructions from their client;
- clarifies the issues in advance with the client;
- communicates with other parties to exchange information;
- advises their client that the convenor will discuss the strengths within the family;
- advises their client that the convenor will discuss what needs to happen to minimise the risk of harm to the child;
- is open to new solutions that may present themselves in the synergy of discussion;
- encourages the client to directly participate and contribute to the process;
- is sensitive to any imbalance of power;
- endeavours to manage the behaviour of the client;
- reality tests any proposals and provides realistic advice on settlement options;
- is involved in the written agreement, making sure it is accurate and that the client understands it; and
- meets again with the client after the conference, confirms the agreement, and explain the consequences of not abiding by any agreement reached.

7. ROLE OF CHILD PROTECTION PRACTITIONERS IN AN NMC

In an NMC, child protection practitioners adopt a non-adversarial role. The role of the child protection practitioner in the process is to promote the child(rens) safety and best interests in facilitated negotiations that take place in a problem-solving environment. A child protection practitioner must have an understanding of the NMC process and should have participated in appropriate training.

The strength of the process is in the way that it allows a meaningful exchange between the child protection practitioner and the family about the best interests of the child.

In participating in an NMC, the child protection practitioner:

- respects the authority of the convenor;
- is respectful of all other participants;
- has regard to the guidelines issued by the Court for conducting NMCs;
- alerts the Court, as appropriate, of any security issues that may arise;
- communicates with other parties to exchange information;
- is available for the conference at the time arranged and for the whole of the conference;
- in cases where they are not legally represented, seeks legal advice from the CAU before an NMC, to ensure they have sufficient knowledge to allow them to negotiate and make agreements effectively;
- attends the conference well prepared and clear about the matters that need to be discussed at an NMC;
- has considered options and alternatives that may lead to a resolution of the protective concerns, including any plans for specific referrals and available supports for children and family members;
- clearly explains the views of DHS regarding the best interests of the child and its proposals for minimising the risk of harm to the child;

[103] This does not apply to lawyers from the Court Advocacy Unit (CAU).

- participates in a discussion regarding the strengths within the family;
- explores how the family unit may be preserved where possible;
- maintains flexibility in decision making in response to proposals put by or on behalf of family members;
- seeks legal advice during the course of the NMC if required;
- is sensitive to power imbalances; and
- follows up agreements made at an NMC, including the provision of any services and assistance that may have been agreed with the child or the family during the conference.

DHS at an NMC must:

- be legally represented; or
- have legal representation during the final phase of the conference to assist with negotiation and drafting of minutes.

In all circumstances DHS must have a person present at an NMC with the necessary authority:

- to negotiate a range of possible outcomes; and
- make decisions that may lead to settlement.

8. ROLE OF FAMILY AND COMMUNITY MEMBERS IN AN NMC

An NMC aims to encourage families and relevant community members to be involved and empowered in the decisions made about children.

Family or community members may contribute to the resolution of protective concerns or act as a support to the child or family. They are not to act as an advocate for one party against another.

An NMC is assisted where family or community members:

- hear what the strengths are within the family;
- hear about the protective concerns of DHS;
- make their own views plain;
- search for acceptable solutions in the best interests of the child;
- suggest appropriate services to strengthen the child's care and deal with safety issues;
- are able to "have their say"; and
- alert the Court, as appropriate, of any potential security issues.

9. PROCESS FOR CONDUCTING AN NMC

9.1 Commencing an NMC

On the day of an NMC, the convenor will establish who is in attendance, and of those, who is seeking to participate in the conference. The convenor will resolve any questions that may arise regarding the appropriateness of a person's participation in an NMC.

At the commencement of an NMC, the convenor:

- explains his/her role and how the conference will be conducted;
- emphasises that the central consideration will always be the best interests and safety of the child;
- outlines to the parties that one purpose of an NMC is to attempt to reach agreement about the resolution of the application through the parties discussing and negotiating their point of view. If no agreement can be reached, it remains the purpose of an NMC to identify what has been agreed and what are the points of disagreement;
- explains the potential for a second or further NMC in appropriate circumstances if approved by the Court;
- explains the confidentiality requirements of section 226;
- explains how the conference fits within the Court hearing process and the differences between a conference and a full Court hearing. (In a conference, the parties are direct participants able to express their point of view, consider their options and seek clarification. In a Court hearing they participate directly or indirectly through their legal representation, provide information on an evidential basis and are subject to cross-examination); and
- explains the process including the availability for private time with legal representatives if required.

The convenor will explain the following -

- that the convenor is independent and has been authorised by the Court to conduct an NMC;
- evidence of what is said or done or any admissions made during an NMC is confidential except where all parties agree to disclosure or where the Court gives permission after finding it necessary to do so to ensure the safety and well-being of the child;
- that participants will not be permitted to “cross-examine” each other or “test” the evidence, although it is expected that issues in dispute will be identified in an NMC;
- when a person is talking they must be allowed to complete what they are saying;
- if a person is talking ‘too much’ and preventing or affecting the opportunity for others to have their say, the convenor may interrupt; and
- complaints or concerns about the progress of the conference must be directed to the convenor.

The convenor will also explain that the conference will be concluded if in his/her opinion:

- one or more of the participants is behaving inappropriately;
- there are particular problems affecting the operation of the conference;
- there are concerns for the safety and well-being of participants;

The convenor will also explain that the conference may be adjourned if it is taking much longer than anticipated and the parties agree that an NMC should continue but on a subsequent date.

9.2 Statement of interests

The convenor will establish and confirm with participants:

- the current application(s) before the Court;
- the current situation regarding placement of the child(ren);
- any Court orders currently in place;
- the disposition and conditions sought by DHS;
- the position of each party in relation to the application(s).

9.3 Identifying and discussing key issues

The convenor will assist participants to develop a list of key issues for discussion at an NMC. The list will consist of issues of concern to all parties, including the protective concerns. The convenor will ensure the list of key issues has a child focus and a future focus.

Before commencing discussion of the key issues, the convenor will lead a discussion identifying the strengths within the family.

Parties will then be encouraged to discuss the agreed list of key issues. Individual family members may speak for themselves or may at times prefer to have their legal representatives address the conference. Family members will be encouraged by the convenor to engage and express their views during the conference process wherever possible.

The convenor will encourage the parties to talk directly and listen to each other as a means of clarifying their respective views. The convenor can assist parties to identify and clarify the underlying interests that have caused the parties to feel as they do. Identifying motivating interests allows the parties to see there may be more than one way to satisfy their interests.

9.4 Identifying and generating options

At this point, DHS will be given the opportunity to obtain legal representation if not already present at an NMC.

The convenor will assist the parties to explore options for settlement. This may involve the convenor giving a ‘court perspective’ to help parties ‘reality test’ their positions and provide information to assist parties to identify those matters which may be central to a court, if it were considering the case.

Legal practitioners may choose to give the parties advice privately as to whether the options address the legal concerns and whether they are within the parameters of what the Court would consider an appropriate outcome having regard to the child’s best interests.

The convenor will discuss the options with the parties and what needs to be done to make the option(s) work. The parties will be asked to identify how the option(s) is/are in the best interests of the child. The convenor will seek advice from participants about how realistic and achievable the option(s) is/are.

The convenor may provide further options for the parties to consider and will ensure that options considered appropriately safeguard the best interests of the child.

The convenor may meet separately with the participants to ensure that they understand the proposed options, especially the particular option/s the party is wishing to adopt.

9.5 Establish agreement(s)

The convenor will work with the participants to reach an outcome that is in the best interests of the child.

The convenor will seek to clarify the agreement(s) reached and strive to ensure that all parties feel and/or appreciate that the agreement is accurate, fair, realistic and appropriate to ensure the best interests of the child.

Where an agreement is for a particular disposition, the convenor, in consultation with legal practitioners who are present, will ensure that the disposition proposed is a disposition that the court is empowered to order.

The convenor will confirm with participants to an NMC that the Court is the final arbiter and that the Court will decide if it is appropriate to make the proposed order that has been agreed between the parties.

If the agreement is to recommend a second or further NMC, the convenor must identify with the participants the issues for a second or further conference.

If the agreement is to proceed to a contested hearing, the convenor identifies with the parties areas or case issues, which are not in dispute.

The convenor will ensure that minutes of proposed orders are prepared that accurately reflect the agreement reached at an NMC. The convenor should be satisfied that all parties understand the nature of the proposed Court order and understand and agree with any proposed conditions.

9.6 NMC report

The convenor will provide to the Court a written report of the conclusions reached at the conference. The form for the conference report is at Attachment C. The minutes of proposed orders agreed to by the parties should accompany the report.

CHILDREN, YOUTH & FAMILIES ACT 2005

New Model Conferences: Information Exchange Document to be completed by lawyers representing children, parents & other joined parties

Name(s) of subject child(ren) (include dates/s of birth):

Date of New Model Conference:

Filed on behalf of: who is the*:*

Prepared by:

Date of Document:

Legal Representative:

THE APPLICATION & DISPOSITION

Application type:

Order sought by DHS (incl length):

Order sought by client (incl length):

If Order sought by client is an IAO, IPO, SO, SCO, Long-term GTSO or PCO, to whom:

Has DHS assessed this person? ☐ Yes ☐ No ☐ N/A

For lawyers representing a parent: is there an alternative proposal to that proposed by DHS, which your client says, will ensure their child(ren)'s ongoing safety? ☐ Yes ☐ No

Please specify: *e.g. child to live with Mother and MGM to provide fortnightly respite care*

PROOF OF THE APPLICATION

Grounds of Application: ☐ (a) ☐ (b) ☐ (c) ☐(d) ☐ (e) ☐ (f) ☐ N/A

Grounds disputed: ☐ (a) ☐ (b) ☐ (c) ☐ (d) ☐ (e) ☐ (f) ☐ N/A

If an Application to Breach, is the breach conceded: ☐ ***Yes*** ☐ ***No***

Is there a substantive factual dispute relating to proof of the Application?

☐ ***Yes*** ☐ ***No***

Please specify: *e.g., client denies hitting child*

Are there matters your client wishes to raise in response to the concerns detailed by DHS?

Please specify: *e.g., protective concerns of DHS do not relate to my client, the mother*

CONDITIONS OF ANY PROPOSED ORDER

Is there agreement to <u>all</u> conditions proposed by DHS? ☐ **Yes** ☐ **No**

Identify the issue(s):

☐ Access condition

☐ frequency ☐ supervision

☐ Residence condition

☐ Screens condition

☐ necessity ☐ frequency/duration

☐ Psychiatric assessment condition

☐ Cognitive/neuropsychological assessment condition

☐ Risk assessment

☐ Drug and/or alcohol assessment

☐ Parenting assessment

☐ Any prohibitive condition e.g. *X must not live with Y*

☐ Other

Please Specify: *e.g., client seeking three times weekly minimum access regime*

If client proposing access supervisor, has DHS assessed this person. ☐ Yes ☐ No

Are there additional conditions sought by your client? ☐ Yes ☐ No

Please specify: *e.g. access condition in respect of an extended family member*

ADDITIONAL MATTERS

Are there any additional matters your client wishes to raise? ☐ Yes ☐ No

Please specify: *e.g. clothing allowance for young person*

Children, Youth & Families Act 2005

New Model Conferences: Information Exchange Document
to be completed by self-represented parties

Date of New Model Conference:

Name(s) of subject child(ren) (include date/s of birth):

Your name:

Your relationship to the child(ren):

Name(s) of person(s) who completed this form:

Date of document:

THE DHS REPORT

Have you read the DHS report? ☐ Yes ☐ No

Are there things in the report you say are incorrect? ☐ Yes ☐ No

What are they?

Are there things the report does not say that are important to you? e.g. positive things about your family ☐ Yes ☐ No

What are they?

If some of the things DHS say are correct, what needs to happen to make sure your children are safe?

THE ORDER AND CONDITIONS

Do you understand the order that DHS are asking for? ☐ Yes ☐ No

Do you agree with the order/length of the order? ☐ Yes ☐ No

Are there conditions on the order that DHS are asking for? ☐ Yes ☐ No

If yes, do you think all conditions need to be there? ☐ Yes ☐ No

What conditions do you think don't need to be there?

Are there any conditions you would change? e.g. would you like more access than the report says or for a person other than DHS to supervise your access?

Are there people you would like DHS to assess to care for your child(ren) or supervise assess? ☐ Yes ☐ No

If yes, please note down their names.

NMC ADDENDUM REPORT

Name(s) of the child(ren) who are the subject(s) of this Application:
Application Type:
Name of the person completing this Addendum Report:
Name of the protective worker attending NMC:
Name of the CAU lawyer managing this Application:

Why are DHS concerned about the child(ren) in this application?

What is already happening to keep the child(ren) safe and well looked after?

What else needs to happen to keep the child(ren) safe and well looked after?

Signature of Report Writer:	**Date:**
Signature of Team Leader:	**Date:**

List the reason/s for changed disposition and conditions

What is the new disposition and conditions?

CHILDREN'S COURT OF VICTORIA

NEW MODEL CONFERENCE

CONVENOR'S REPORT

Convenor:_____ **Date:**_____

Location of conference: _____

Case name:_____

Type of proceeding:_____

Number of siblings listed for this conference:_____
(Please complete a separate report for each and attach unless the issues for each sibling were identical.)

Name of solicitor and counsel (if briefed):

For DHS_____

For mother _____

For father _____

For child(ren) _____

For child(ren) _____

For child(ren) _____

For child(ren) _____

For other (specify) _____

For other (specify) _____

Persons that attended the conference:

Name	Connection to case

Length of conference:_____

Results of conference: *(please tick)*

- ☐ Matter settled
- ☐ Proposal for interim settlement (IPO)
- ☐ Matter not settled (contest confirmed)
- ☐ Recommendation for adjournment of NMC

Reasons for adjournment:

_____
_____
_____
_____
_____

If matter did not settle, were any issues resolved or agreed upon? Please describe:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Signed:

_____

Convenor(s)

APPENDIX D

NMC MONTHLY STATISTICS (SINCE IMPLEMENTATION IN AUGUST 2010)

	LISTINGS			CANCELLATIONS		OUTCOMES				
MONTH	**NUMBER OF BOOKINGS TAKEN FOR NMC'S**	**NUMBER OF NMC'S LISTED TO BE CONDUCTED**	**NUMBER OF NMC'S ACTUALLY CONDUCTED**	**NUMBER OF NMC'S CANCELLED (PRIOR TO NMC DATE)**	**NUMBER OF NMC'S CANCELLED (AT NMC)**	**SETTLED (FINAL ORDER)**	**SETTLED ON INTERIM BASIS (IPO)**	**ADJOURNED FOR FURTHER NMC**	**ADJOURNED FOR FURTHER MENTION**	**NOT SETTLED (CONTEST BOOKED)**
August 2010	15	2	1	1	-	-	-	-	1	-
September 2010	11	13	7	2	4	4	1	-	1	1
October 2010	11	8	7	-	1	3	1	2	1	-
November 2010	11	10	9	1	0	5	-	-	1	3
December 2010	16	11	7	3	1	5	-	-	2	-
January 2011	20	12	2	10	-	2	-	-	-	-
February 2011	39	20	12	1	7	5	1	-	3	3
March 2011	60	43	26	6	11	10	-	4	7	5
TOTAL	**183**	**119**	**71**	**24**	**24**	**34**	**3**	**6**	**16**	**12**