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16 July 2015

Legal Policy
Department of the Attorney-General and Justice
GPO Box 1722
DARWIN NT 0801

Attention: Jenni Daniel-Yee

JDY
17/7/15

Dear Ms Daniel-Yee,

ISSUES PAPER – REVIEW OF THE DOMESTIC AND FAMILY VIOLENCE ACT

Thank you for the invitation to comment on this paper.

We note that the paper does not seek comment in relation to any specific issues but is informed by Family Violence - A National Legal Response (ALRC Report 114).

Analysis of Recommendations

It would be of value to have information showing which recommendations:

- already forms part of NT law
- are not inconsistent with NT law
- are inconsistent with NT law

In Principle Support

We offer in principle support to the adoption of these recommendations, except those outlined below. We also particularly support the consideration of the following additional concerns as part of this review:

COAG

We support the inter-jurisdictional recognition of DVOs in accordance with the COAG Communique on 15 April 2015 stating:

COAG agreed to take urgent collective action in 2015 to address this unacceptable level of violence against women. By the end of 2015:

- a national domestic violence order (DVO) scheme will be agreed, where DVOs will be automatically recognised and enforceable in any state or territory of Australia;



- progress will be reported on a national information system that will enable courts and police in different states and territories to share information on active DVOs – New South Wales, Queensland and Tasmania will trial the system;
- COAG will consider national standards to ensure perpetrators of violence against women are held to account at the same standard across Australia, for implementation in 2016; and
- COAG will consider strategies to tackle the increased use of technology to facilitate abuse against women, and to ensure women have adequate legal protections against this form of abuse.

ADR

The introduction of an ADR Model for the resolution of child protection matters where possible. We welcome the recommendation (23-11) for a ‘comprehensive and strategic approach to support culturally responsive ADR in child protection matters’. We believe that past governments have shied away from such a model as it is resource intensive at the front end. We believe that the long term benefits will outweigh these costs. We **attach** a copy of a submission NTLAC made to the NT Attorney-General in relation to this.

Child Protection

We note that recommendations 19 and 23-13 calls for ‘FLC and child protection in one integrated process’ we are supportive of this principle, however, acknowledge that existing systems have been entrenched over a long period and would need significant structural change to reform.

In the NT the administration of the panel for legal representation of children in child protection proceedings is unique to other jurisdictions and performed separately from the administration of the panel for legal representation of children in family law proceedings. Consideration should be given to integrating these panels.

There are national moves for CINOP matters to facilitate representation of and information sharing about children by the legal representative for the child between the jurisdictions. This is especially important in recommendation 23-13.

Mandatory Reporting

We note that Chapter 8 of the ALRC Report raises concerns about mandatory reporting laws and we share these concerns. In particular, we are concerned that scarce resources in the NT are diverted to supporting the mandatory reporting process for no discernible benefit and some potential for harm.

Intersection of Jurisdictions

Synthesis between the *Family Law Act* ('FLA') and state & territory legislation is required to enable Judges in the Federal Family Law Courts to make domestic and family violence orders during family law proceedings, as the Commonwealth law purports to convey jurisdiction on the state/territory courts where there is an intersection of issues between the jurisdictions.

While there is an attempt to empower Magistrates dealing with domestic and family violence matters with interwoven family law issues, Federal Family Law Courts should have the same powers with respect to domestic and family violence orders.

For example, there is a provision for personal protection injunctions under ss.68B and 114(1)(a) of the FLA and powers of arrest under s.68C if a police officer reasonably believes a person has breached an injunction. This provision provides for the respondent to be arrested (without warrant) and brought before the court that issued the injunction or another court exercising such power to deal with the breach. While the legislation appears similar in principle, the issue of enforcement for breaches may be dealt with differently. The person protected by the injunction may have to bring an application for enforcement rather than the police. Police are required to bring the respondent before either the same court (Family Law Courts) or a court exercising jurisdiction (in the NT, the Supreme Court) under the FLA by close of the next business day (weekends and public holidays excluded) otherwise they are required to release the Respondent.

The issue of enforcement is problematic if reliant on the police to arrest and bring the respondent before the relevant court. We are not aware if such applications have been made in the NT but given the characteristics of such an application, would anticipate only extremely serious breaches prompting police action. It is more likely that there would be a reliance on the person protected by such injunction to bring their own application and this could pose challenges for areas, such as Alice Springs or Katherine, where there is no Court registry.

Cross Recognition

It is questionable whether the NT Local Court, empowered to make domestic violence orders, can revive, vary, discharge or suspend any orders or injunctions made under the FLA. On one reading of section 68R of FLA it confers jurisdiction to a state or territory court that has power in relation to Part VII of the FLA (dealing with children's matters), which, in the NT's case is the Supreme Court (see s.69H(3) – "Subject to section 69K, jurisdiction is conferred on the Supreme Court of the Northern Territory in relation to matters arising under this Part.") This would need to be amended if Recommendation 16 could be adopted by the NT.

Even if the power did exist, we hold concerns about any change to final parenting orders made by a Territory Court on a final basis. The objects and principles underpinning the two Acts are different although aligned in parts, where it concerns the safety of children and their families.



Under the FLA, there is an extensive list of considerations in determining what is in a child's best interest being the paramount consideration. Being protected from harm (which includes exposure to family violence) is but one consideration, albeit probably the most important. The *Domestic and Family Violence Act* is much narrower and limits the judicial officer in determining how to change family law parenting orders on a final basis. If the power did exist, it would be preferable for only interim orders to be made to ensure the safety of the child/ren and victim with referral powers to the family law courts for orders to be changed by way of an own motion.

The issue could be complicated further where a respondent is not served or fails to partake in the proceedings and orders are made in absentia. It could have long-term and possibly unintended consequences on the child/ren particularly where there has been an intractable conflict between the parties and parental estrangement from a child.

Recommendation 16

We provide the following comments:

- 16-1, 16-6: This is already provided for in s 68R(5)(c).
- 16-11: Whilst an important inquiry to make, the considerations for exclusive/sole occupancy under both the D & FV Act and the injunction provision (s.114) under the FLA may not always be aligned. Payment of mortgage while one party resides in the former matrimonial home to the exclusion of the other, has child support implications (being 'non agency payments') and there are domestic violence exemptions to claim child support.

Exceptions

1. **Recommendation 16-7:** This is a dangerous option and one which either may not be entirely understood by the applicant or used by an applicant to sever the child's relationship with the respondent in a jurisdiction which has limited resources to properly inquire as to whether this is justified, at least on a final basis. This is particularly so when such orders are subsequently made ex parte or in absentia.

2. **Recommendation 18-5**

We support the recommendations but believe they should go further and allow for mutual consent orders without admissions to liability once the Court has determined that grounds exists for making the order. If defendants don't have the ability to consent without admission of liability more matters will be contested which will impact on Court resources and more importantly, victims.

The ALRC discussion about this recommendation is under the heading "Cross applications and mutual protection orders". Typical of the submissions about

this issue which the ALRC favourably considered was this one from Legal Aid NSW:

Too often mutual protection orders are offered as a resolution to the matter at court to appease the defendant without considering the merit of their application. Our experience is that defendants often rely on cross-applications to further harass and threaten the victim and pressure them into withdrawing the initial application.

The New South Wales experience is mirrored in the Northern Territory. In the NT, however, we have a further complication of reciprocal Police domestic violence orders (s.41 *Domestic and Family Violence Act*).

3. Recommendation 23 - ADR

Recommendation 23-1

We do not agree that legal issues involving domestic and family violence cannot be negotiated or mediated. Such a blanket recommendation would exclude valuable dispute resolution for many. ADR can be very useful if appropriate screening and assessment processes are established to determine the appropriateness of matters for ADR, and training is provided to mediators on the nature and dynamics of family violence and on methods to manage mediation in the context of family violence.

Recommendation 23-3 and 23-40

We agree with recommendations 23-3 and 23-10 that there needs to be proper training for people doing ADR in this area. We are not confident that this fits with the NTs current use of the CJC to mediate Personal Violence Orders. We do not believe that those mediators always have the training/awareness referred to.

- 4. Recommendation 25–6** Federal, state and territory sexual assault provisions should provide that it is a defence to the charge of ‘rape’ that the accused held an honest and reasonable belief that the complainant was consenting to the sexual penetration.

This particular issue is already being addressed by the NT through its reform of the sexual offence provisions of the *Criminal Code*, a process to which the Commission has already made a submission.

Inconsistencies

There are some important recommendations we would like to support but which are inconsistent with current NT law, including:

Bail Act

Recommendation 10–1 State and territory legislation should not contain presumptions against bail on the grounds only that an alleged crime occurred in a family violence context.

This is inconsistent with s7A(1)(dh) of the *Bail Act (NT)*, which establishes a presumption against bail where a person is charged with:

an offence against section 120 of the *Domestic and Family Violence Act (offence C)*, if the person accused of offence C has, within the period of 2 years immediately preceding the date of the alleged commission of offence C, been found guilty of a DVO contravention offence (**the previous offence**)

Mandatory sentencing

Recommendation 12–10 State and territory family violence legislation should not impose mandatory minimum penalties or mandatory imprisonment for the offence of breaching a protection order.

That is inconsistent with s121 of the *D&FVA (NT)*, which relevantly provides that in sentencing for a breach of a DVO

(2) The court must record a conviction and sentence the person to imprisonment for at least 7 days if the person has previously been found guilty of a DVO contravention offence.

(3) Subsection (2) does not apply if:

(a) the offence does not result in harm being caused to a protected person; and

(b) the court is satisfied it is not appropriate to record a conviction and sentence the person under the subsection in the particular circumstances of the offence.

Finally, we strongly believe that a duty solicitor service advising and appearing for defendants in this area would greatly assist the speedy disposition of matters, reduce potential breaches, free up Court and legal assistance services and importantly, increase the overall safety of victims. A duty solicitor service would ensure appropriate orders are made, explain obligations to defendants and refer them to other services to address their behaviour and substance abuse.

Yours faithfully,



SUZAN COX QC
Director

Enc.



14 October 2014

The Honourable (John) Johan Wessel Elferink
Attorney-General & Minister for Justice
Parliament House
DARWIN NT 0800

Dear Attorney-General,

Re: Opportunities for Mediation in Child Protection Proceedings

Thank you for making the time to attend our offices on 22 September 2014. I am writing to follow up on the matters raised by Jaquie Palavra, who manages the NT Legal Aid Commission ('NTLAC') Family Law Section.

In summary, we request:

1. Mechanisms through which, when appropriate, parties can discuss and agree on a mediated approach without the need to proceed to Court.
2. That the NT commit to implementing and resourcing mediation in accordance with *The Care and Protection of Children Act* wherever appropriate and practicable.
3. That the NT consider additional legislative measures to ensure parties have the ability to attend legally assisted mediation and reach agreement through consent orders even once proceedings have commenced as occurs in other States. Of course this could only occur where certain safeguards are in place, such as all parties and the child being represented and the Court being satisfied that the outcome reached will be the best means of safeguarding the wellbeing of the child.

As you will recall, Ms Palavra advised that NTLAC has advocated to the Department of Children and Families ('DCF') for mechanisms through which, when appropriate, parties can discuss and agree on an approach without the need to proceed to Court. This is provided for in sections 49 and 127 of *The Care and Protection of Children Act* ('the Act') which allows parties to reach a mediated outcome without resorting to the time consuming and resource intensive avenue of a contested hearing in court.

Mediation provides parents, families and DCF caseworkers with a structured forum to discuss and address the issues underpinning child protection proceedings in a constructive and problem solving orientated manner. In our experience, mediation is especially important for Aboriginal people and communities. In many circumstances it is a more appropriate forum than court for very sensitive, deeply personal issues to be discussed and is more aligned to their cultural practices for problem solving rather than adversarial court proceedings of which, at times, they have limited knowledge about and a profound distrust.

Mediation empowers families to take responsibility for issues underpinning child protection matters enabling them to form part of the solution and be part of the decision making process. It increases the likelihood of better outcomes for children and can have significant flow-on effects, including earlier intervention when problems in families occur; a reduction in the number of children who require removal from their families and the length of removal; a reduction in foster placements and a reduction in the need for and length of litigation. All of these benefits will also reduce the cost of litigation for DCF and government funded legal representatives appointed for the children the subject of the proceedings.

We note that CEO initiated mediation conferences¹ have had regulations proclaimed, however we are unsure as to the status of these mediations and whether they are being frequently convened by the CEO.

As mentioned by Ms Palavra, there is significant value added through mediation, *particularly* after commencement of proceedings. This is provided for in s.127 of the Act, however to date, regulations have not yet been passed to enable it.

Other jurisdictions have litigation phase mediation models and are very successful. Queensland for example, has Court Ordered Conferences which are a pre-requisite to a matter being set down for a contested hearing. This mediation is convened through the Department of Justice which employs mediators specifically for this purpose with the mediations being held at the Court's conference rooms. Such mediations have had tremendous success rates. We *enclose* a copy of the Court Ordered Child Protection Conference Guidelines regarding this model. There are also other similar very successful mediation models in other jurisdictions. The Victorian model is funded and managed by that State's Children's Court and is highly effective in reducing drawn out, lengthy and costly court proceedings with better outcomes for families as a whole

Mediation in the family law jurisdiction is highly successful and a prominent feature of the pre and post litigation phase. You may be aware that the Commission has a Family Dispute Resolution Conferencing program which enables Family Law Matters to be resolved by agreement. This model has an independent chairperson appointed to hear parties' perspectives and allows parties to be legally assisted before, during and following the conference. We have a success rate of over 80% in resolving disputes both on an interim and final basis. Judge Harland of the Federal Circuit Court regularly adjourns matters and orders parties to attend our conferencing program which results in significant savings to the court and parties in both financial and emotional terms by avoiding a contested hearing.

¹ S.49 – Care and Protection of Children Act.

We thank you for considering these matters and look forward to discussing them with you and representatives of the NT Department of Children and Families.

Yours faithfully,

A handwritten signature in cursive script that reads "Suzan Cox".

SUZAN COX QC

Director

Child Protection Conferencing Unit,
Dispute Resolution Branch

Court Ordered Child Protection Conference Guidelines

Introduction

Child protection court ordered conferences (conferences) are held in those circumstances where: the Department of Communities, Child Safety and Disabilities (Child Safety) is making an application seeking a child protection order from the court; and the parents and/or the child contest the order sought; and the court orders that a conference between the parties be held to decide the matters in dispute or try to resolve the matters: see ss. 59(1)(c) and 68(1)(e) *Child Protection Act 1999*.

If contested by the parents, an order cannot be made without a conference being held (or reasonable attempts have been made to do so). Conferences provide an alternative dispute resolution process to allow the matter to be settled before proceeding to a hearing of the matter.

NADRAC¹ defines Alternative Dispute Resolution (ADR) as a process, '...other than judicial determination, in which an impartial person assists those in a dispute to resolve the issues between them ...'² In line with this definition, conferences are chaired by an impartial person (the convenor) who provides a fair process and facilitates informal discussions to identify issues in dispute, consider alternatives and provide opportunity to reach agreement about the best interests of the child without the need for a contested hearing.

The expertise of the participating professionals is acknowledged and it is recognised that this adds significant value to the conference process. These guidelines are designed to assist all participants to develop further understanding of the ethos and collaborative approach of court ordered conferences and to identify the sorts of approaches and behaviours that are most likely to foster best practice in this specific area.

Central concerns

The central concerns of conferences are to:

- comply with the *Child Protection Act 1999* and the court's order that a conference between the parties be held before the proceeding continues
- maintain a clear and consistent focus on the safety, wellbeing and best interests of the child
- create a collaborative, inclusive, confidential and constructive environment for parents, Child Safety departmental officers and other participants to discuss and negotiate issues around the future care of the child
- promote a productive on-going relationship between Child Safety departmental officers and the parents
- recognise the roles of the parents and providing them with the opportunity to contribute to discussion around the child's well being and remain engaged in the child's protection process
- clarify for parents the type of child protection order Child Safety departmental officers are seeking; why such an order is being sought and what the parents can do to work towards re-unification with their child
- increase parents' understanding of the issues of concern to Child Safety departmental officers thereby enabling the parent/s to make an informed decision regarding the protection order application

¹ NADRAC (National Alternative Dispute Resolution Advisory Council) is the advisory council requested by the Attorney General to assist in developing a dispute resolution culture in Australia.

² http://www.nadrac.gov.au/what_is_adr/GlossaryOfADRTerms/Pages/default.aspx Accessed April 2013.

- as soon as practicable after the conference is finished provide a report to the court stating whether the parties have reached agreement in relation to the protection order application: s. 72 *Child Protection Act 1999*.

Use of terms

For the purpose of this document:-

Child refers to the child (or children) who is the subject of the child protection application and is a party to the application.

Convenor refers to the independent and impartial chairperson of the conference.

Parents refers to one or both parents of the child or someone else (other than the chief executive) having or exercising permanent or long term parental responsibility for the child.

Professionals refers to anybody who is present in a professional role as opposed to a familial role.

Participants refers to the child, the parents and the professionals or anyone else identified by the convenor as having a participatory role in the conference.

Conference refers to the intake, the actual conference and any associated debrief process.

Referral process

1. A conference will be held when it is ordered by the Magistrate when a child protection application is contested. These following processes may have already occurred.
 - The Department of Child Safety has filed Affidavits in support of its application for a protection order.
 - A family group meeting to develop or revise a case plan has been held and the plan has been filed in the court.
 - A family group meeting to consider, make recommendations about, or otherwise deal with, another matter relating to the child's wellbeing and protection and care needs has been held.
 - A separate representative for the child has been appointed.
 - A written social assessment report about the child and the child's family has been prepared and filed in the court.

However the ordering of a conference is a matter for the court and may be ordered to occur at any time from the first mention of the application until the court decides the matter.

2. When a conference is ordered the court will, while all parties are still present:
 - Schedule a date for the conference from available conference dates as negotiated with the Child Protection Conference Unit (CPCU).
 - Ensure all participants fill in 'Conference contact details' recording up-to-date contact details and other requested information.
3. The Registrar emails completed 'Conference contact details' the CPCU within 3 working days to alert them that a conference has been ordered and providing the contact details of the expected attendees.
Email: CPCUMailbox@justice.qld.gov.au

4. The Registrar places completed 'Conference contact details' on file providing up-to-date contact details for Form 19 Notice of Court ordered conference. The Registrar sends out Form 19 to all participants. Correspondence to the parents will also include:
 - 'Child protection conferences - information for parents' factsheet
 - 'Getting ready for a conference' sheet.
5. The CPCU advises the Registrar of the name of the convenor.
6. If a parent is incarcerated, the CPCU will contact the correctional facility and negotiate a time to conduct intake and to facilitate participation in the conference meeting.
7. The CPCU is to be notified immediately by the Registrar or Child Safety departmental officers if:
 - a conference cannot proceed as planned
 - they become aware of any new safety risk to convenor or participants, not previously communicated to the CPCU.

This contact is done by:

- email if it occurs before the day of the conference.
(CPCUMailbox@justice.qld.gov.au)
 - phone if it occurs on the day of the conference. (Mob: 0477 371 071)
8. If an unacceptable level of risk to participants or convenor is identified at any stage of the referral, the CPCU shall:
 - organise separate, telephone or shuttle conferences or
 - undertake a conference with only one parent present and notify the court of the circumstances of this decision or
 - notify the court that reasonable efforts have been made to hold a conference and the reasons why this has been unsuccessful.

Intake

Intake is an essential part of the conference process and refers to preparatory discussions that take place between the CPCU and the conference participants before the all the participants and convenor meet together. Intake aims to maximise the effectiveness of the conference by ensuring participants understand what the conference is about and assisting them to prepare for it.³ As part of the conference process, discussions are confidential.

Intake with parents

The CPCU will make every effort to speak directly by phone with all parents.

Discussion will include:

- the parents' understanding of the application before the court
- the purpose and process of conference

³ More detailed possible elements of Intake are Identified by the NMAS

http://www.nadrac.gov.au/what_is_adr/NationalMediatorAccreditationSystem/Documents/PracticeStandards.pdf Accessed April 2013.

- who will be present at the conference meeting and their roles
- the responsibilities of participants
- whether parents have or need legal representation
- confidentiality parameters and what is reported to court
- commitment to participate in process
- how the parents can prepare including the 'Getting ready for a conference Information prepared by parents' document
- how they might be able to settle without a court hearing
- identification of any safety concerns
- the circumstances or behaviours under which a conference meeting might end early
- whether people other than participants should be present (e.g. support person, interpreter) noting s70(5) of the CPA which states, no-one else (other than the parties, chairperson, recognised entity or legal rep) can attend without the chairperson's approval.
- how the parents can get more information (website, brochure).

Where a parent is in a correctional facility the intake phone call will take place as arranged during the referral process. An additional phone call will be made on the day prior to the conference to ensure the parent will be available at scheduled conference time.

Intake with the child

Under the *Child Protection Act 1999*, a child is recognised as a party in child protection proceedings and therefore has a right to participate in the conference should they wish to do so. Although a child is a party, and the Act provides that the parties must attend the conference, a child cannot be compelled to attend a conference.

Separate representative - A child's participation in a conference can be facilitated by the appointment of a separate representative for the child. The court has power to make an order that the child be separately represented by a lawyer if the court considers such an appointment is necessary in the best interests of the child: s.110 *Child Protection Act 1999*

The appointment of a separate legal representative is at the discretion of the court and is not made in all cases.

The role of the separate representative is to represent the child's best interest regardless of any instructions from the child; and as far as possible, present the child's views and wishes to the court: s.110(3).

Direct representative - A child's participation in a conference can also be facilitated when a child directly engages a lawyer to represent them. Unlike a separate representative, a direct representative must act in accordance with the child's instructions. Accordingly, in this circumstance, the child needs to have sufficient maturity and focus so as to provide instructions to the lawyer.

Participation in person- A child can also participate in person with or without the assistance of legal representation. The child should be made aware however, that they can seek legal assistance from a variety of sources such as Legal Aid Queensland.

When a child indicates that they would like to attend the conference in person, Child Safety departmental officers and / or the child's lawyer (if they have one) should inform the child about the possible impacts of their attendance including the fact that they may hear things that they don't like. The child should also be informed that participation does not guarantee that they will get what they want. If the child still wishes to participate, the convenor, Child Safety departmental officers, the child's lawyer and child should discuss options to minimise any potential negative impacts. These options are flexible and should be

considered in the light of each individual situation. They might include (but are not limited to) any of all of the following:

- visiting the conference location on a day prior to the conference
- speaking to the convenor before the conference
- attending a separate or shuttle conference
- attending for part of the conference
- participating via telephone or audio visual link
- remaining only as long as the child feels comfortable
- identifying a physical sign that indicates the child wishes to leave the conference without having to say so
- expressing their viewpoint via a letter, picture or a pre recorded message, which may be presented in their presence or absence
- having a support person present.
- In addition to identifying suitable safeguards, the CPCU, in collaboration with Child Safety departmental officers and the child's lawyer (if any), will also ensure an age appropriate discussion takes place with the child before the conference about:
 - the purpose and process of the conference
 - who will be present and their roles
 - how the child's viewpoint may be taken into consideration in relation to the conference
 - confidentiality conditions and reporting to court
 - the nature of the application before the court
 - how the child can prepare
 - what will happen if the convenor feels their continued presence is not in the child's best interests
 - identification of any safety concerns
 - how the child can get more information (website, brochure, CPCU intake staff, Legal Aid factsheets).

The child's ability to participate will also be assessed on the day by the convenor in collaboration with other professionals.

Intake with Child Safety departmental officers, lawyers, Recognised Entity representatives and others

When appropriate, intake will be undertaken with the other participants, including professionals.

Discussion will include:

- the purpose and process of the conference
- the central concerns of the conference
- the roles, responsibilities and expectations of professionals in the conference
- the parameters of confidentiality
- the importance of bringing up-to-date information
- commitment to participate in process
- how they can prepare

- identification of any safety concerns
- the circumstances when a conference might be ended early
- whether non-participants should be present (e.g. support person, interpreter)
- how the professionals can get more information (website, brochure).

Selection of a convenor

As soon as a date is identified, the CPCU selects a convenor from their panel to chair the conference.

The *Child Protection Act 1999* s. 69(2) notes that the chairperson must have the qualifications or experience prescribed under rules of court made under the *Childrens Court Act 1992*. These are:

- (a) an ability to facilitate voluntary dispute resolution processes
- (b) a knowledge and understanding of the issues and processes for the protection of children under the *Child Protection Act 1999*
- (c) an ability to communicate effectively with a broad range of people.

All CPCU convenors are mediators employed by the Dispute Resolution Branch and are experienced dispute resolution practitioners with National Mediator Accreditation.⁴ In addition they have suitable tertiary qualifications and / or experience in the provision of human services. Convenors have also undertaken specific training in relation to their role as a convenor including consideration of the issues and processes for protection of children under the *Child Protection Act 1999*.

The CPCU will endeavour to use Indigenous convenors in conferences that include Indigenous participants and continue to develop culturally inclusive (or appropriate) conferences for Aboriginal and Torres Strait Islander families. When Indigenous convenors are not available, culturally sensitive convenors will be sought. The same approach will be followed with families from culturally and linguistically diverse (CALD) backgrounds.

If, at any time, a convenor has a conflict of interest or is unable to be impartial and free of bias, they must disqualify themselves from convening the conference and notify CPCU who will arrange another convenor. Similarly, if the CPCU identifies a convenor has a conflict of interest or is unable to be impartial and free of bias, the CPCU will arrange a different convenor.

Conference participants

Conference participants must include:

- the parents of the child
- a representative for Child Safety
- a separate representative for the child (if ordered by the court).

Conference participants may also include:

- the child (only when they wish to participate)
- if the parties are legally represented, their legal representatives

⁴ National Mediator accreditation is part of the National Mediator Accreditation System (NMAS), an industry based scheme administered by the Mediator Standards Board (MSB). The NMAS is intended to enhance the quality of mediation and other ADR services. http://www.nadrac.gov.au/what_is_adr/NationalMediatorAccreditationSystem/Pages/default.aspx Assessed April 2013

- if the child is Aboriginal or Torres Strait Islander, a representative from a Recognised Entity for the child
- the Child Safety Officer from Child Safety
- the Team Leader or Manager from Child Safety
- a Guardian from the Office of Adult Guardian representing a party with impaired decision-making capacity.

Other people who may attend the conference with the convenor's approval include interpreters and support people or agencies. The role of support people is non-participatory unless negotiated otherwise prior to the conference with the convenor.

Location of conference

Conferences are often held at the courthouse where the application was filed. However, alternative venues may be utilised when the CPCU believes this will provide a more effective conference. The consideration of an alternative venue will be discussed with the parents and as many attending professionals as possible before a decision is made regarding the alternative venue.

Conference purpose

The purpose of the conference is to identify issues in dispute, consider alternatives and try to reach agreement over the action to be taken in the best interests of the child. This includes discussing the specific concerns that are held by Child Safety departmental officers, the parents' understanding of and responses to these concerns, the strengths of the family and possible options and strategies to ensure the future well being and safety of the children.

Conference process

The convenor will conduct the conference in accordance with the Queensland Conference Model (see following section). This model provides a checklist which helps ensure that no important elements are missed. It also promotes a high and consistent standard of dispute resolution. While the model provides a guide, it is important to remember that the convenor has discretion to adapt this model to ensure the 'Central Concerns' noted above are met.

The CPCU seeks to provide the same quality of service to rural and remote communities. Every attempt will be made to create opportunities for face to face meetings which generally provide the best opportunity for effective discussion and problem solving. The CPCU is committed to looking into options for the convenor travelling to remote communities. However, at times, resource limitations may mean that telephone conferences may be the only option.

There are other circumstances that may also dictate that not everyone can physically be present in the room, such as concerns around safety, incarcerated parents, parents in difference locations or funding constraints. In these circumstances alternative approaches may be used such as:

- the participation of one or more participants by telephone / video link
- separate conference/s for each parent
- shuttle conferences, where the convenor moves between separately placed parties facilitating discussion.

Queensland conference model

Preparation

Introductions

What are you seeking today?

Clarify and explore

- What's working well? (family strengths, current placement advantages)
- What are we worried about? (Past harm, future danger and complicating factors, current placement disadvantages)
- Next steps? (How can the risks be minimised, nature of proposed order, what does the family need to do to demonstrate safety)

Agreement, court report and evaluation

Responsibilities of the convenor

During the conference, the convenor has the responsibility to:

- assist all participants to remain focused on the interests of the child
- promote the emotional well being of any child present at the conference
- control the proceeding with appropriate assertiveness
- demonstrate impartiality, objectivity and freedom from bias
- promote a non-adversarial tone
- ensure a procedural fairness that is evident to all 5
- foster respectful interactions
- ensure power imbalances are considered and managed
- manage challenging behaviours
- encourage and enable participants to directly participate and contribute and ensure participants (particularly parents) feel heard
- promote common understanding and effective communication through clarification, effective questioning, option generation, reality testing, summarising and identification of common interests and areas of disagreement.
- assist the participants to identify and clarify the facts, opinions and interests of other participants including
 - What is working well?
 - What are the concerns?
 - What needs to happen next?
- facilitate opportunity for negotiation and joint problem solving
- reality test potential decisions thoroughly
- endeavour to establish agreement in appropriate cases.

5 Perceptions of just process are "... a major predictor of compliance with agreements, perceptions of legitimacy and ongoing co-operative behaviours..." Final Report: Pilot of Signs of Safety lawyer-assisted Conferences and Meetings, June 2011 p.47

Attendance of a child at the conference

For some children, participation at the conference has potential benefits.⁶ However, to ensure these benefits are not outweighed by any potential detriment, suitable safeguards should be employed to protect the safety and wellbeing of the child.

A child should attend a conference only after comprehensive intake has been undertaken.

Immediately before the conference the convenor should meet with the child, their support person (if present) and / or Child Safety departmental officers to:

- briefly revisit the discussions covered in the intake process
- answer any of the child's questions
- check whether the child wishes to continue as originally planned, a revised version of that plan or not at all
- assess their current ability to participate.
- During the conference, the convenor should be mindful of, and take appropriate action in relation to:
 - the potential impact of discussions on the child
 - facilitating the child's participation in a meaningful way
 - the child indicating, verbally or non-verbally, they wish to leave the conference.

After the conference the child should be given opportunity to discuss the experience. This might happen with the support person, the child's lawyer or Child Safety departmental officers. This debrief is considered part of the conference and consequently falls under the same confidentiality provision.

Discussion can include:

- the confidential nature of this discussion
- what took place
- whether it was what the child expected
- whether the child felt they were able to say what they wanted and why that was
- what decisions were made
- what those decisions might mean to the child
- the child's thoughts and feelings about what was said or happened
- the child's thoughts and feelings about the decisions that were made
- what might happen next.

It is hoped that permission would be gained from the child to share any feedback to the CPCU that might promote future good practice.

Children do not routinely attend conferences. The particular vulnerabilities of the children involved require careful consideration and should inform the decision whether this post conference discussion takes place and who with.

Responsibilities for parents and professionals

Conferences are most effective when all participants:

- remain focused the best interests of the child.

⁶ Listening, hearing and acting : Approaches to the participation of children and young people in decision making – a review of the literature, Queensland Government, Department of Child Safety, 2006

- arrive on time and remain for the whole of the conference
- respect the authority of the convenor
- adopt a non adversarial approach
- treat other participants respectfully
- are prepared and understand the purpose and process of the conference
- clearly state their point of view particularly in regards to
 - What is working well?
 - What are the concerns?
 - What needs to happen next?
- are flexible, willing to consider the other participants' options for resolving the protective concerns
- have sufficient level of advice, information and understanding to make decisions
- are familiar with the file materials
- alert the court and / or convenor if they become aware of any safety concerns.

Lawyers representing participants - additional responsibilities

Alongside their professional responsibilities to their clients and in addition to responsibilities noted directly above, effectiveness will be maximised when lawyers:

- prepare their clients before the conference about the nature and purpose of the conference including advising their client that the participants will discuss
 - What is working well?
 - What are the concerns?
 - What needs to happen next?
- encourage their client to directly participate and contribute to the process
- assist their client to understand and be open to new solutions that may present themselves during discussion
- endeavour to manage the behaviour of the client.

Child Safety officers, team leaders and managers - Additional Responsibilities

In addition to responsibilities for all participants noted above, effectiveness will be maximised where participants from Child Safety

- have the authority to negotiate future options
- seek any legal or other advice that is known or likely to be required prior to the conference
- keep all explanations simple and in 'easy to understand' language
- identify concerns in specific terms, identifying behaviours and how those behaviours specifically create risk factors for the child
- participate in a discussion regarding the strengths within the family
- maintain flexibility in decision making in response to proposals put by or on behalf of the parents.

Evaluation and feedback

The CPCU actively seeks feedback from participants and other stakeholders and is willing to receive this any time on a formal or informal basis.

In addition, CPCU will contact Child Safety departmental officers and the court registrar annually in each region to discuss ways of improving the service.

At the end of each conference, all participants will be invited to fill out a very brief survey of their experience and leave it with the convenor.

When a child has been present or participated in another way in the conference, their feedback will specifically be sought via feedback from Child Safety departmental officers or directly as appropriate.

Post conference considerations

In accordance with s.72 of the *Child Protection Act 1999*, as soon as practicable after the conference the convenor will prepare and file in the court a report of the conference. This report will state whether the parties have reached agreement in relation to the child protection application.

Note: There are currently no Childrens Court Rules which prescribe the particulars to be contained in the report. Section 71 however, provides that anything said at the conference is inadmissible in a proceeding before any court other than with the consent of all the parties.

Copies of the Report will be made and:

- placed on the court file
- given to any adult participants who wish to receive one
- saved electronically to the CPCU file to enable statistical analysis of practice.

Convenor debriefing

CPCU convenors can request a debriefing at any time. This can be done by contacting the CPCU by phone or email to arrange a mutually acceptable time.

The CPCU will contact the convenor to offer support or discuss matters relating to child protection conferences at least 3 times a year. In addition, they will co-convene every six months (or other appropriate interval) to create an opportunity for feedback and regularly attend Professional Development Training.

