



**Australian Government**  
**Australian Institute of Criminology**

Evaluation of alternative  
dispute resolution initiatives  
in the care and protection  
jurisdiction of the NSW  
Children's Court

Anthony Morgan  
Hayley Boxall  
Kiptoo Terer  
Dr Nathan Harris

**AIC Reports**  
Research and  
Public Policy Series

118



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# Foreword

The social and economic costs associated with child abuse and neglect, including the long-term negative impact on affected children, and the significant costs incurred by child protection agencies and the legal system have been widely acknowledged. As a result, there has been a concerted attempt nationally to improve the response to at-risk children and families, reflected in whole of government initiatives such as the *National Framework for Protecting Australia's Children 2009–2020*. Similarly, a number of state and territory governments have, in recent years, undertaken large-scale reviews of their child protection systems, with the common goal of making changes to better protect vulnerable children and young people.

In New South Wales, a range of important reforms have been introduced as part of *Keep Them Safe: A Shared Approach to Child Wellbeing 2009–2014*, the state government's response to the findings of the *Special Commission of Inquiry into Child Protection Services in NSW*. One of these reforms has been the introduction of alternative dispute resolution (ADR) at various points of the child protection system, including as part of the care and protection jurisdiction of the NSW Children's Court.

ADR involves the use of an independent person to help resolve disputes between two parties and to try and avoid the need for a trial or hearing. It has been introduced in the legal systems of a number of Australian jurisdictions and used for a variety of legal disputes, ranging from commercial law to family law matters. While court-referred ADR has been used extensively for care and protection matters in other countries, including Canada and the United States, and at other stages of the child protection continuum (specifically through family group conferencing), the use of ADR after a care application has been filed with the court is a relatively recent development for children's courts in Australia.

Using ADR to resolve child protection disputes before the Children's Court is appealing for a number of reasons. Court processes that are underpinned by adversarial principles are conflict-driven by nature, with parties competing against one another to 'win'. However, care and protection matters heard before the children's court routinely involve family members and child protection workers who must continue to work together to ensure the safety and wellbeing of the child well into the future. Giving parties an opportunity to resolve child protection disputes outside of a hearing and where this is not possible, at least reducing the amount of time families and professionals have to spend in the courtroom, serves to minimise the potential detrimental impact of contested hearings on individuals and relationships. ADR, and its focus on collaborative decision making, has the potential to encourage more positive working relationships between families and child protection workers. Providing an opportunity to discuss and consider the range of possible options available can lead to decisions that are better informed and more responsive to the needs of children and therefore more likely to be implemented.

These are all important outcomes. However, as with any new initiative, it is vital that there is appropriate investment in evaluation to assess whether the introduction of ADR into the care and protection jurisdiction of the Children's Court delivers these anticipated benefits. In this report, findings are presented from the Australian Institute of Criminology's (AIC) evaluation of two ADR programs recently introduced as part of the care and protection jurisdiction of the NSW Children's Court—the new model of Dispute Resolution Conference (DRC) and the Legal Aid Pilot.

These were two ambitious programs. The nature of disputes within the care and protection jurisdiction of

the NSW Children's Court means that conferences deal with incredibly personal, complex and sensitive issues with significant implications for those people involved. DRCs were rolled out across the whole of New South Wales and the Legal Aid Pilot represented the first real attempt in New South Wales to regularly bring in expert mediators from outside of the Children's Court to convene conferences. Both programs therefore required a high level of support and interagency collaboration and a significant amount of training and professional development for conference convenors, legal practitioners and Community Service staff in order to be successfully implemented. They also represented a significant investment of resources by the NSW Government and an acknowledgement that changing the way in which child protection disputes are resolved in the NSW Children's Court will need a long-term commitment.

The results of this evaluation have been positive. The NSW Department of Attorney General and Justice, the NSW Children's Court and Legal Aid NSW worked together effectively to overcome initial resistance and hesitation about the use of ADR, resulting in a high level of support for the two programs. The majority of parents and family members, Community Services staff and legal practitioners who participated in a conference were satisfied with the way it had been run, felt they had been treated fairly and had been given an opportunity to have their say. Importantly, a large proportion of conferences resulted in the issues in dispute either being resolved or narrowed, which

appeared to have a positive impact in terms of the proportion of matters that required a hearing and the time spent in the court system.

Nevertheless, these initiatives are in their relative infancy and there is still scope to further enhance the effectiveness of ADR by addressing some of the challenges highlighted by the evaluation. The findings and recommendations outlined in this report are relevant not only to the new model of DRC and the Legal Aid Pilot, but to other ADR processes operating in the care and protection jurisdiction of Children's Courts elsewhere in Australia and overseas. Thus, this research provides policymakers, judiciary and child protection agencies with an evidence base upon which to make decisions regarding the future use and expansion of ADR services to deal with child protection disputes.

Overall, it appeared that the ADR has delivered a range of benefits for those involved and for this reason, the AIC has recommended that court-referred ADR should continue to operate as an integral feature of care and protection proceedings in the NSW Children's Court. The NSW Attorney General, the Hon Greg Smith, has already publicly stated that he is committed to the use of ADR, which is very positive in light of the findings presented in this report and reflects the government's commitment to reforming the child protection system in New South Wales.

**Adam Tomison**  
**Director**

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# Acronyms

<b>ADR</b>	alternative dispute resolution
<b>AIC</b>	Australian Institute of Criminology
<b>ALS</b>	Aboriginal Legal Services
<b>AVL</b>	audiovisual link
<b>AVO</b>	apprehended violence order
<b>DAGJ</b>	Department of Attorney General and Justice
<b>DCP</b>	Department of Child Protection
<b>DLR</b>	direct legal representative
<b>DoCS</b>	Department of Community Services (now Family and Community Services)
<b>DRC</b>	dispute resolution conference
<b>FaCS</b>	Department of Family and Community Services
<b>FGC</b>	Family Group Conferencing
<b>GAL</b>	guardian ad litem
<b>HREC</b>	Human Research Ethics Committee
<b>ILR</b>	independent legal representative
<b>LAC</b>	lawyer assisted conferences

# Executive summary

The NSW Department of Attorney-General and Justice (DAGJ) contracted the Australian Institute of Criminology (AIC) to undertake a process and outcome evaluation of the new model of dispute resolution conference (DRC) and the Legal Aid Pilot in the NSW Children's Court. The purpose of the evaluation, which commenced in March 2011, was to assess the implementation and effectiveness of alternative dispute resolution (ADR) in the care and protection jurisdiction.

The new model of DRC and the Legal Aid Pilot were implemented in response to recommendations made as part of the *Special Commission of Inquiry into Child Protection Services in NSW* to increase the use of ADR prior to, and in, care and protection proceedings (Wood 2008). The NSW Government's response to the Wood (2008) Inquiry, *Keep Them Safe: A Shared Approach to Child Wellbeing 2009–2014*, led to the establishment of four models of ADR used at different stages of the child protection system. This included the new model of DRC, the Legal Aid Pilot, Nowra Care Circles Pilot and Family Group Conferencing Pilot program.

The new model of DRC commenced operation across New South Wales in the care and protection jurisdiction of the Children's Court in February 2011, in place of the previous model of preliminary conferences. The Legal Aid Pilot, which is based on the Legal Aid Family Dispute Resolution Service, was established in September 2010 for care matters referred from the Bidura Children's Court. The DRCs and Legal Aid Pilot provide an opportunity for the parties involved in a matter to meet as part of a non-adversarial process where all parties can openly and respectfully discuss the issues relevant to the care application. While there are some important differences between the two models of operation,

both programs involve conferences that are facilitated by a neutral third party and aim to:

- provide the parties with an opportunity to agree on the action that should be taken in the best interests of the child and where an agreement cannot be reached, narrow the scope and length of the court hearing;
- produce child protection decisions that are better informed and more responsive;
- foster collaborative, rather than adversarial, relationships between the Department of Family and Community Services and families; and
- lead to outcomes that are accepted by all parties and therefore more likely to be implemented (ADREWP 2009).

To evaluate the two programs, the AIC developed a program logic model and evaluation framework that aligned with the implementation plan for the evaluation of *Keep Them Safe* (Urbis 2011). This evaluation framework formed the basis of the AIC's evaluation and informed the development of a comprehensive methodology combining quantitative and qualitative research methods. This included:

- a comprehensive literature review;
- the analysis of surveys completed by participants at the end of each conference;
- observations of a number of conferences across New South Wales;
- brief face-to-face interviews with parents and family members;
- interviews, focus groups and a qualitative survey to seek feedback from stakeholders involved in both programs;
- the analysis of data extracted from post-conference reports completed by Children's Registrars and mediators;

- the analysis of data extracted from court files for a sample of matters referred to ADR and matters completed prior to the introduction of the DRCs and Legal Aid Pilot; and
- a cost-savings comparison using court file data and Legal Aid grant data.

## Implementation of the new model of dispute resolution conference and Legal Aid Pilot

The findings from a review of the design, implementation and operation of the new model of DRC and the Legal Aid Pilot demonstrated that, overall, both programs had been implemented successfully and that the standard of ADR delivered was high. This component of the evaluation also showed that:

- the two models of ADR and the commitment to genuine ADR within the care and protection jurisdiction were generally well supported by those involved in the process;
- there has been a significant investment in training to support the introduction and establishment of the two programs and a commitment to educating and preparing parents and family members who have been referred to ADR;
- there was a high level of awareness and understanding of the conference process and the parameters that define the operation of the two programs among the stakeholders involved in DRCs and the Legal Aid Pilot;
- a concerted effort had been made to ensure that both programs were consistent with good practice for court-referred ADR and there were processes in place to ensure that there was continuous improvement in the delivery of ADR services and that implementation challenges were addressed;
- there was a high number of referrals to both programs (relative to their size), evidence that a significant proportion of care matters had been referred to ADR and the majority of matters referred to a DRC or the Legal Aid Pilot proceeded to conference on the first scheduled date;
- both programs achieved a high rate of attendance at scheduled conferences among family members and professionals, reported as being a significant improvement over preliminary conferences and this had increased the capacity of participants to reach agreement at the conference;
- the conferences held as part of the new model of DRC and the Legal Aid Pilot were generally well run and stakeholders attributed the perceived success of the conferences to the role of Children's Registrars and mediators in preparing for and managing the process (which was due largely to their training and previous experience);
- Children's Registrars and mediators were adept at providing all participants, especially parents and family members, with an opportunity to speak and contribute to the decision-making process, while ensuring that the conferences remain focused and on track; and
- there was evidence that both programs have had some success in providing a more culturally appropriate process for Indigenous families and families from a culturally and linguistically diverse background to discuss and agree on the best way forward.

The implementation of ADR processes in the care and protection jurisdiction of the NSW Children's Court requires a significant adjustment to the way the parties approach certain issues and conduct themselves during proceedings. Based on the experience of ADR in other aspects of the legal system, this requires long-term commitment and will inevitably involve some refinements to ensure ADR becomes embedded as a core part of the process. While there were significant gains made during the evaluation period, there were some areas that have scope for further improvement. The evaluation showed that:

- there was, and continues to be, some resistance to the use of ADR from some Community Services staff, legal practitioners and Magistrates, although this resistance appeared to have eased as the programs were established and exposure to the program increased;
- while there was a steady increase in the number of conferences held since the two programs were established, there was some evidence that referral rates for the Legal Aid Pilot from the Bidura Children's Court were inconsistent and lower than the referral rates for DRCs;

- while agreeing that there should be flexibility to accommodate differences between matters, most stakeholders argued for a greater focus on ensuring matters were referred to ADR earlier in the care and protection process—once the need for care and protection had been established and prior to the development of a care plan;
- there were occasions where one of the participants had not advised the Children’s Registrar or mediator of new information that could have significant implications for the way the conference was run, or where one or more of the participants were underprepared and unfamiliar with the matter;
- although both programs provided opportunities for the parents and family members to contribute to the proceedings, some conferences were dominated by professionals, possibly because parents involved in these matters preferred their lawyer to speak on their behalf (which did not necessarily preclude them from being engaged in the process);
- participants (family members and professionals) did not always appear willing to work together to come to a mutual agreement about the best course of action and there were a number of conferences observed where the parents and staff from Community Services seemed reluctant to alter their position;
- the Community Services legal representative and Manager Casework tend to do most of the talking during conferences, which means that Caseworkers (who have ongoing contact with the family) need to be encouraged to participate as much as possible in conferences in order to build effective relationships with parents and families;
- two hours (the current length of DRCs) was often not enough time for all of the issues to be discussed and for agreement to be reached at the conference, which suggests that the length of time allocated to ADR should be increased to three hours; and
- there is a need to clarify the terms of confidentiality and communicate these to all parties involved in both the DRCs and the Legal Aid Pilot, to ensure that as much information is being reported to the court as possible without infringing on these confidentiality provisions.

## Reaching agreement on issues in the care application

The issues that were discussed most often at conferences were parental responsibility (79% of DRCs and 75% of conferences held as part of the Legal Aid Pilot), whether there was a realistic possibility of restoration (79% and 83%) and contact (79% and 90%). The findings from the analysis of post-conference reports completed by Children’s Registrars and mediators showed that, for a large proportion of matters referred to either a DRC or Legal Aid Pilot, the issues in dispute were either resolved or at least narrowed through the use of ADR. Eighty percent of DRCs and 82 percent of Legal Aid Pilot conferences resulted in the issues in dispute being narrowed or resolved. Further, ADR resulted in agreement on final orders in a significant number of matters. Thirty-six percent of matters referred to a DRC and 37 percent of matters referred to the Legal Aid Pilot resulted in final orders being agreed at the conference and a care plan either being agreed or supported with further amendments. There was little evidence that certain types of disputes were more likely to be resolved (or issues in dispute narrowed) through the use of ADR or that parties were more likely to reach agreement on final orders in one program than the other.

The evidence presented in this report demonstrates that, while a large proportion of matters referred to a DRC or the Legal Aid Pilot were able to resolve issues and disputes about contact between the child and parents (or other family members), there was still a large proportion that were not resolved through ADR. This highlights the need for an appropriate review mechanism for resolving contact disputes when ADR is unsuccessful in resolving contact disputes or where full agreement cannot be reached (but the issues in dispute have been narrowed). There continues to be strong support among most stakeholders for the Children’s Court to retain the power to make final orders in contact disputes.

## Participant satisfaction with the conference process and outcomes

The post-conference surveys completed by parents and family members, legal representatives and Community Services Caseworkers and Managers Casework were analysed to determine participant satisfaction with the conference process and outcomes. There was a high level of satisfaction among parents and family members with the conference process, particularly in terms of having an opportunity to tell their side of the story, other people listening to what they had to say and being treated fairly. A number of parents and family members who participated in a conference said that it was the first time they felt that they had been given an opportunity to speak directly to the other parties and to express their point of view.

The level of satisfaction with the conference process among legal representatives and Community Services was also high, particularly as it related to the level of satisfaction with the way conferences were run and the extent to which they believed it had been useful. Both the new model of DRC and Legal Aid Pilot achieved a high rate of satisfaction with the conference process, which reflects the high standard of ADR delivered through both programs and the commitment of the parties involved to genuine ADR.

The level of satisfaction with the outcomes of the conference (in terms of whether a good outcome was reached for the children) was lower than the level of satisfaction with the process and this was consistent among parents and family members, legal representatives and Community Services Manager Casework. However, although there was some variation between the different groups of participants, a large proportion of participants still reported being satisfied with the outcomes from the conference.

Further analysis demonstrated that parents who reported a higher level of satisfaction with how the conference was run were more likely to report being satisfied with the outcomes delivered by a conference. This analysis also showed that a parent's satisfaction with Community Services during the conference was the strongest predictor of satisfaction with conference outcomes. These

results suggest that satisfaction with the conference outcomes could be improved if Community Services were perceived by parents as more willing to work with them during the process.

## Improving the relationship between families and Community Services

The emphasis on collaborative processes in the two programs aims to improve the working relationships between families and Community Services. ADR aims to enhance communication between the parties, especially Community Services and the parents of the children or young people subject to the care application. Results from a quantitative and qualitative assessment of the impact of the DRCs and Legal Aid Pilot on the relationship between families and Community Services showed that participation in ADR was perceived by many participants as contributing to a more positive relationship between Community Services and families. However, there is room for improvement.

A number of factors were found to influence the quality of the relationship between parents, family members, Community Services Caseworkers and Managers Casework. As a result, there was considerable variation in terms of the apparent impact of ADR on the relationship between parents and Community Services. Nevertheless, the observations, stakeholder consultations and family interviews showed that the attitude and behaviour of Community Services and the family towards each other during the conference can have an important impact on their future relationship. While parents have been happy about the chance to talk and be heard during the conference, there seems to be much less satisfaction with the position of Community Services and perceived unwillingness to negotiate with families, and this is likely to have an impact on how parents feel towards Community Services. Community Services need to be encouraged to explain the reasons for their position on key issues in dispute, as this can help parents to understand the Department's position and the reasons for the application initiating care proceedings.

# Impact of the dispute resolution conferences and Legal Aid Pilot on the NSW Children's Court

The final component of the outcome evaluation assessed whether the DRCs and Legal Aid Pilot have had an impact on the proportion of matters that proceeded to hearing, the length of time taken to finalise matters and the cost savings to the Children's Court, Legal Aid and Community Services. This required the collection and analysis of data relating to matters that had been referred to either a DRC or Legal Aid Pilot conference during the evaluation period (the intervention group) and an equivalent group of matters finalised prior to the introduction of the DRCs and Legal Aid Pilot (the comparison group). For this component of the evaluation, four evaluation sites were selected—Parramatta, Broadmeadow, Albury and Wagga (Riverina) Children's Courts for assessing the impact of the new model of DRC and the Bidura Children's Court for assessing the impact of the Legal Aid Pilot.

The results from this analysis showed that matters referred to the Legal Aid Pilot required fewer days to finalise than matters finalised in the Bidura Children's Court prior to the introduction of ADR, particularly in terms of the number of days until the start of a placement hearing. This may have been due to the matter having been referred to ADR, or due to changes in the way the Magistrates in the Bidura Children's Court dealt with matters. There was no difference in the length of time required to finalise matters between the intervention and comparison group in the Parramatta, Broadmeadow and Riverina Children's Courts.

The proportion of matters referred to a DRC that involved at least one hearing was considerably lower than the comparison group. Similarly, the proportion of matters referred to a DRC that involved a placement hearing was lower than matters in the same court locations finalised prior to the introduction of ADR. Data supplied by the NSW Children's Court on the total number of new applications, pending hearings and hearing delays in the Parramatta Children's Court supported this finding. Taken as a whole, these results suggest that the introduction of the new model of DRC appears

to have contributed to a reduction in the proportion of matters that result in a hearing. The proportion of Legal Aid Pilot matters that were referred to the Legal Aid Pilot and required at least one hearing or involved a placement hearing was similar across both the intervention and comparison groups.

There was no significant difference between the matters that were referred to a DRC or Legal Aid Pilot conference and the matters that were finalised prior to the introduction of ADR in terms of the:

- prevalence of scheduled hearings that did not proceed;
- the length of court hearings;
- the proportion of matters resolved on the basis of consent (although this was high in both groups, which was a positive result);
- the proportion of mothers and fathers who agreed with the care plan; or
- placement outcomes for children.

Finally, a cost-savings analysis was conducted to determine whether the increased time and therefore cost associated with the implementation of ADR across New South Wales had been offset by a reduction in the total time and cost associated with court hearings. This was undertaken in two stages. The first stage involved comparing the staffing costs (including salary on-costs) associated with matters referred to the DRCs and Legal Aid Pilot with those matters in the comparison group (using the court file data). In the Parramatta, Broadmeadow and Riverina Children's Courts, the difference between the average cost of each matter ranged from two to 13 percent (depending on the model used), with matters referred to a DRC consistently more expensive on average. In the Bidura Children's Court, the difference between the average cost of each matter ranged from eight to 25 percent, with matters referred to the Legal Aid Pilot also consistently more expensive on average.

The second stage of the cost-savings analysis involved comparing the total value of grants paid to practitioners representing clients involved in care and protection matters in the period during the operation of the DRCs and Legal Aid Pilot, to an equivalent period prior to the introduction of the two programs. There was little difference in the average total grant paid between the two periods for matters initiated in the Parramatta, Broadmeadow and Riverina Children's Courts or for matters initiated in the

Bidura Children's Court (taking into account the small number of clients for whom data was available). However, the results from this part of the analysis showed that the average total fees paid for actual court time was lower for clients involved in matters that were referred to ADR, which suggests that the length of time that practitioners (and therefore clients) spend in court (not limited to hearings) appears to have fallen.

## Conclusion and recommendations

The evidence presented in this report supports the continued involvement of ADR processes in care and protection proceedings in the NSW Children's Court. The results from a quantitative and qualitative assessment of DRCs and the Legal Aid Pilot demonstrated that there has been a range of outcomes delivered by both programs and that both programs were relatively cost efficient in delivering important benefits to the parents and families involved in care proceedings. There appears to be a growing acceptance among stakeholders involved in the management and delivery of DRCs and the Legal Aid Pilot that ADR processes should and will continue to be an integral feature of care and protection proceedings within the NSW Children's Court.

This report ends by making a number of recommendations to improve the operation and effectiveness of DRCs and the Legal Aid Pilot and to ensure the long-term involvement of ADR in care and protection matters.

### Recommendation 1

The findings presented in this report have demonstrated that the introduction of DRCs and the Legal Aid Pilot have delivered a range of benefits for the parties involved in care and protection proceedings in the NSW Children's Court. As such, the NSW Children's Court, Legal Aid and Community Services are encouraged to continue to support the use of ADR in care matters and court-referred ADR should continue to operate as an integral feature of care and protection proceedings in the NSW Children's Court.

### Recommendation 2

The current model, whereby the Bidura Children's Court refers care matters to external mediation and all other Children's Courts refer matters to a DRC, is not sustainable in its current form. DRCs should be expanded to the Bidura Children's Court.

A decision needs to be made about the expansion of the Legal Aid Pilot to other Children's Court locations and the model that should be adopted.

Irrespective of the approach, a continuation of ADR in the Children's Court will require that the following conditions be met:

- availability of an established pool of convenors with training in ADR and knowledge of the care and protection jurisdiction;
- availability of suitable facilities that can accommodate conferences involving multiple parties;
- Magistrates who are supportive and willing to refer matters to ADR;
- administrative staff to support the program;
- adequate resourcing to enable ADR to be delivered in accordance with the current standard; and
- if both programs continue, clear guidelines that allow for an assessment of the suitability of matters for each program and that enable certain matters to be referred to either program on a regular basis.

### Recommendation 3

The NSW Children's Court, Legal Aid and Community Services should continue to be funded for their involvement in ADR in care and protection proceedings to ensure their continued support and participation. DAGJ should continue to be funded to provide cross-organisational support to both programs. DRCs and external mediation should continue to be funded to allow conferences to be delivered in accordance with the current standard.

### Recommendation 4

Stakeholders involved in the management and delivery of ADR in care and protection proceedings should be supported by an ongoing program of training and professional development, and funding should continue to be allocated for this purpose. Training needs to be ongoing, targeted at those

professionals with identified needs and available to those professionals new to the care and protection area and/or ADR processes. This includes formal training for existing Children's Registrars and mediators to maintain a high standard of conciliation and mediation, training for new Children's Registrars (ADR) and mediators (care and protection matters), and training for Magistrates, legal representatives and Community Services.

### **Recommendation 5**

In addition to formal training opportunities, Children's Registrars and mediators should be encouraged to continue observing one another (ie the cross-observational program) and there should be regular opportunities for conference convenors to meet and discuss how they deal with particular issues and to identify opportunities for formal training in areas that might assist them to perform their role.

### **Recommendation 6**

The decision to refer a matter to ADR should remain at the discretion of the Magistrate or Children's Registrar based on an assessment of the merits of individual matters and their suitability and appropriateness for ADR (ie additional eligibility criteria should not be imposed). However, there needs to be greater clarity as to the 'circumstances, identified by the Children's Court Rules, in which the requirement for a dispute resolution conference may be dispensed with' (s 65 *Children and Young Persons (Care and Protection) Act 1998*). The same applies to external mediation. Magistrates and parties to an application need to be provided with clear guidance that can be used to determine whether a matter is unsuitable for ADR.

### **Recommendation 7**

Given the range of benefits associated with the use of ADR in the care jurisdiction, there is a need to continue to build support for the use of ADR among Children's Court Magistrates, legal representatives and Community Services. Along with training, this can be achieved through the distribution of information about the program (including the findings from the evaluation) and through the advocacy role performed by program staff, including Children's Registrars and mediators.

### **Recommendation 8**

The regular attendance and participation of Community Services legal representatives, Managers Casework and Caseworkers at conferences is essential to the ongoing success of ADR in the care jurisdiction and should remain an integral feature of both programs.

### **Recommendation 9**

There is a need to address the perception among all parties, including families, that some Community Services staff are reluctant to participate in conferences, approach ADR with fixed positions and appear unwilling to work with families. This will require a significant cultural shift among Caseworkers and Managers Casework, which can be achieved over time through training, promoting success and identifying Community Services representatives who are supportive of ADR and can act as champions in their region.

### **Recommendation 10**

There is a need to more clearly define the role of Indigenous mediators in the Legal Aid Pilot and the rationale for appointing Indigenous mediators to conferences involving Indigenous families, and communicate this to the other parties involved in conferences. This should focus on their role of engaging Indigenous participants in the conference and encouraging them to speak openly, their understanding of cultural issues that should be considered during the mediation and their understanding of issues in the community that may impact upon the family and therefore need to be raised during the mediation.

### **Recommendation 11**

Cultural awareness training should continue to be provided to professionals involved in ADR and families should continue to be offered the opportunity to have a conference convenor from the same cultural background as their own, wherever possible. Drawing on Care Circles, consideration should be given to the following options to further increase the cultural appropriateness of DRCs and the Legal Aid Pilot for Indigenous families:

- using a co-conciliation model in the DRCs for Indigenous families, whereby the Children's Registrar is assisted by a representative of the Indigenous community, such as an Elder (giving consideration to the necessary requirements in terms of relevant knowledge and expertise);
- inviting Elders to be in attendance at the conference to provide advice on cultural matters (but not with a co-conciliation or co-mediation model);
- introducing an Indigenous support worker who can talk to and provide advice to Indigenous parents and families prior to the conference on how the two programs operate, what will happen and what will be expected of them; and
- conducting conferences away from the Children's Court in a more neutral environment.

A review of these options should also consider the relevant practical and resource implications. Additional resources should be provided to Aboriginal Legal Services (ALS) to enable them to be involved in a higher proportion of matters with Indigenous families.

### **Recommendation 12**

While there should continue to be flexibility and discretion in the timing of a referral to ADR, more effort is needed to ensure that conferences are held as early as possible in proceedings while also allowing sufficient time for all the parties to form an opinion about the matter and to obtain, prepare and respond to any reports. Where possible, ADR should take place prior to a care plan being completed. While it does not appear to impact on the likelihood that the issues in dispute will be resolved or that agreement will be reached on final orders, this may help to provide greater opportunity for parents and family members to contribute to the final care plan and to encourage Community Services and families to work together (both at the conference and afterwards).

### **Recommendation 13**

This evaluation has demonstrated the importance of ensuring that all participants are prepared for the conference. Legal representatives and Community Services should ensure that they are adequately prepared for each conference. Any steps that need

to be taken by the relevant parties and the timeframe in which they need to be completed should be agreed upon at the time of referral.

### **Recommendation 14**

The majority of parents and family members who participated in ADR reported that they felt prepared for the conference and knew what to expect and what would happen, but there is room for improvement. Legal representatives for parents and family members should be encouraged and supported to increase their client's understanding of what ADR involves and what will happen at the conference prior to a referral being made. This includes the dissemination of pamphlets that have been developed and are already available in a number of languages.

### **Recommendation 15**

Given the proportion of matters where an apprehended violence order (AVO) is present, along with the safety concerns raised by a small number of participants, the Children's Registrar or Legal Aid conference organiser should continue to screen matters to ensure that the matter is appropriate for ADR and to ensure the safety and wellbeing of participants.

### **Recommendation 16**

There is a need to increase the length of DRCs to three hours to allow sufficient time for all of the issues to be discussed at the conference and to provide sufficient opportunity to resolve the issues in dispute and reach agreement. This will require adequate funding to enable legal representatives to be paid for the three hours they attend the conference.

### **Recommendation 17**

ADR works most effectively when all participants can attend the conference in person. The use of teleconference and audiovisual facilities, while not ideal, is sometimes required to enable parents or family members to participate in a conference. The accessibility of these facilities, along with the availability of a suitable room to hold the conference in, should be considered when scheduling conferences. The need for adequately sized rooms to conduct conferences in should be taken into account when planning new Children's Court facilities.

## Recommendation 18

There is a need to clarify the terms of confidentiality for reporting on conference outcomes (including areas where agreement has or has not been reached) and communicate these to all parties involved in both DRCs and the Legal Aid Pilot, to ensure that as much information is being reported to the court as possible without infringing on these confidentiality provisions. There should also be a greater focus on ensuring that there is adequate time allocated at the end of every conference to reach agreement on what information will be reported to the court.

## Recommendation 19

Processes for monitoring the implementation and outcomes from ADR processes need to be established and/or maintained, including:

- regularly completing a shortened version of the post-conference report;
- distributing post-conference surveys at a select number of sites for short periods to assess participant satisfaction; and
- instituting a standardised care register that enables information on the referral rate for ADR to be recorded on a routine basis (along with other information on care matters).

## Recommendation 20

The lack of a formal information management system represents a significant challenge to the evaluation and ongoing monitoring of programs like DRCs and the Legal Aid Pilot. While this will require significant short-term funding, the establishment of a formal information management system will support the continued improvement of NSW Children's Court processes. The NSW Children's Court should be provided with adequate resourcing to establish a formal information management system to increase the availability of administrative data for future evaluations of programs operating in the care and protection jurisdiction.

## Recommendation 21

ADR processes in the NSW Children's Court should be subject to an evaluation to measure the longer term impact of ADR on care matters, including the impact on costs to the NSW Children's Court, Legal Aid and Community Services.



# Introduction

DAGJ contracted the AIC to undertake a process and outcome evaluation of the new model of DRC and the Legal Aid Pilot in the NSW Children's Court. The purpose of the evaluation, which commenced in March 2011, was to assess the implementation and effectiveness of ADR in the care and protection jurisdiction.

## Background

The new model of DRC and the Legal Aid Pilot were implemented in response to recommendations made as part of the *Special Commission of Inquiry into Child Protection Services in NSW* (Wood 2008). Wood (2008) examined the use of alternative models of decision making in the care and protection jurisdiction in New South Wales (including the role of ADR) and made a number of recommendations to increase the use of ADR for child protection matters.

Wood (2008) noted that provisions existed within the *Children and Young Persons (Care and Protection) Act 1998 (NSW)* (the Care Act) for the use of ADR services prior to and during care and protection proceedings. However, evidence provided to the Inquiry indicated that, in practice, ADR did not operate in the care and protection jurisdiction.

There were mixed views regarding the role and value of preliminary conferences (replaced by the new model of DRC), which were intended to facilitate the early resolution of matters by ensuring the matter was ready for hearing and resolved issues in dispute. Wood (2008: 469) heard evidence from some Community Services Caseworkers that preliminary conferences had been run like mediation on some occasions, whereas others felt that they had 'simply become another delay in the court process'. Both Community Services and Legal Aid NSW submitted that preliminary conferences tended to be run as directions hearings. Similarly, while the Care Act also provided for matters to be referred to independent ADR, this was not occurring in practice and there had been no referrals to external ADR.

Wood (2008: 470) noted that 'DoCS, the parties and the Court need to do much more to bring ADR into child protection work' and therefore made a number of recommendations relevant to the use of ADR in care and protection matters. Recommendation 12.1 stated that

adequate funding should be provided so that alternative dispute resolution is used prior to and in care proceedings in order to give meaning to s 37 of the *Children and Young Persons (Care and Protection) Act 1998*, in relation to:

- placement plans;
- contact arrangements;
- treatment interventions;
- long term care issues;
- determination of the timing/readiness for returning a child to the home;
- determination of when to discontinue protective supervision;
- the nature and extent of a parent's involvement;
- parent/child conflict;
- lack of or poor communication between a worker and parents due to hostility;
- negotiation of length of care and conditions of return; and
- foster care, agency and/or parent issues' (Wood 2008: 491).

Further, recommendation 13.12 stated that

Registrars of the Children's Court should be legally qualified and alternative dispute resolution trained and sufficient in number to perform alternative dispute resolution and to undertake procedural and consent functions (Wood 2008: 543).

The government's response to the Wood Inquiry *Keep Them Safe: A Shared Approach to Child Wellbeing 2009–2014* (NSW Government 2009) supported these recommendations and led to the establishment of an ADR Expert Working Party in 2009. The ADR Expert Working Party comprised representatives from ADR Directorate of DAGJ, the Children's Court, Legal Aid, Community Services, the NSW Law Society and Bar Association and academic community. The Expert Working Party was responsible for reviewing and recommending possible models of ADR to be used in NSW's care and protection jurisdiction. The final report from the ADR Expert Working Party recommended four models of ADR to be used, occurring at different stages of the child protection system. This included:

- further developing, promoting and implementing Family Group Conferencing;
- establishing a new model of dispute resolution conferencing to operate in the care jurisdiction of the Children's Court;

- establishing a Legal Aid Pilot to operate for 100 care matters in the Bidura Children's Court; and
- monitoring and evaluating the Nowra Care Circle Pilot, giving consideration to extending the model to other parts of New South Wales (ADREWP 2009).

The introduction of ADR at various points in the child protection system aims to improve the resolution of care and protection cases prior to and during court proceedings by providing collaborative, inclusive and empowering decision-making processes for children and families (Urbis 2011). The NSW Government has since accepted the recommendations made by the ADR Expert Working Party and the various models have been implemented. A number of these are currently being evaluated.

## The new model of dispute resolution conference and the Legal Aid Pilot

The new model of DRC commenced operation in the care and protection jurisdiction across New South Wales in February 2011 in place of the previous model of preliminary conferences. The Legal Aid Pilot, which is based on the Legal Aid Family Dispute Resolution Service, was established in September 2010 for care matters referred from the Bidura Children's Court, located in central Sydney. Both programs involve conferences that are convened by a neutral third party—DRCs are convened by Children's Registrars and conferences held as part of the Legal Aid Pilot are convened by mediators.

Both programs aim to provide an informal and non-threatening environment where the parties involved in a care application are able to meet and discuss the matter in an open and respectful way. DRCs and the Legal Aid Pilot provide greater opportunity for the participation of the child and the child's family in the decision-making process, which is conducted in a more informal environment outside of the courtroom. Families are encouraged to speak for themselves wherever possible (rather than through their legal representative), and legal

representatives and Community Services staff involved in proceedings are encouraged to limit the use of legal jargon during the conference. The aim of both programs is to:

- provide the parties with an opportunity to agree on the action that should be taken in the best interests of the child and where an agreement cannot be reached, narrowing the scope and length of the court hearing;
- produce child protection decisions that are better informed and more responsive;
- foster collaborative, rather than adversarial, relationships between FaCS and families; and
- lead to outcomes that are accepted by all parties and therefore more likely to be implemented (ADREWP 2009).

## Structure of this report

This report presents the findings from the AIC's process and outcome evaluation of DRCs and the Legal Aid Pilot, drawing upon the range quantitative and qualitative research methods used to address the key research questions. The report is organised into a number of sections:

- an overview of the primary evaluation questions addressed by the process and outcome evaluation, along with the quantitative and qualitative methodology used in the evaluation;
- a description of the program logic and evaluation framework that has formed the basis for determining the full range of evaluation questions and performance indicators that guided the evaluation;
- an overview of findings from a review of similar programs operating in other Australian jurisdictions and overseas, including a summary of good practice principles for ADR in care and protection matters;
- a summary of key findings from a review of the implementation and operation of the two programs, organised into five sections:

- the implementation of DRCs and the Legal Aid Pilot;
  - the referral of care matters to ADR;
  - conferences held as part of the new model of DRC and the Legal Aid Pilot;
  - reaching agreement on issues relevant to the care application; and
  - the contribution of DRCs and the Legal Aid Pilot to court orders and care plans.
- findings from the analysis of qualitative and quantitative data relating to key outcomes that have been delivered by the two programs, including:
    - participant satisfaction with the conference process and outcomes;
    - the impact of the programs on the relationship between families and Community Services; and
    - the impact of ADR on the Children's Court, Legal Aid and Community Services, particularly in terms of time and cost savings.
  - conclusions from the evaluation and a number of recommendations to inform the future operation of ADR in the NSW Children's Court.

## Terminology

There are important differences between the way DRCs and the mediations held as part of the Legal Aid Pilot are run. These differences are described in this report. However, for the purpose of this report, the facilitated sessions that are held as part of both programs are referred to as 'conferences'. Similarly, there are important differences between the role of Children's Registrars in DRCs and mediators in conferences held as part of the Legal Aid Pilot. However, for the purpose of this report, Children's Registrars and mediators will be collectively referred to as 'conference convenors'.

# Evaluation methodology

The AIC evaluation has addressed a number of questions related to the operation and effectiveness of DRCs and the Legal Aid Pilot. These questions formed the basis of the AIC evaluation and helped to inform the research methodology.

## Process evaluation

The process evaluation aimed to improve understanding of the activities that are delivered as part of DRCs and the Legal Aid Pilot. It also focused on the implementation, operation and management of these activities; assessing whether they are being delivered as planned and in accordance with the design of the programs, determining how well they are being delivered and identifying factors that may have impacted upon the delivery of these activities. Specifically, the process evaluation addressed the following key research questions:

- Have DRCs and the Legal Aid Pilot been implemented as they were originally designed (ie program fidelity)?
- What is the nature and extent of stakeholder (family, legal practitioners and Community Services) attendance and involvement in all aspects of the two programs?

- To what extent do matters referred to ADR actually proceed to an external mediation or DRC and do the programs adequately meet the needs of participants?
- What cases are best suited to ADR (in terms of the nature of the matter and client characteristics) and are there particular cases that are best suited to either DRCs or the Legal Aid Pilot?
- What is the optimal time to refer a case to ADR in terms of delivering the most positive outcomes for participants?
- Are the programs consistent with best practice in terms of their design and implementation?
- What factors impact positively or negatively upon the implementation or operation of the programs?
- What improvements could be made to the design, implementation and management of the two programs?

An important issue for consideration as part of the process evaluation was to explore which ADR model is best placed to deal with contact disputes, the level of demand for a review mechanism for matters in which ADR is not able to resolve contact disputes and the implications of the Children's Court retaining jurisdiction to make final contact orders in the event that ADR is unsuccessful.

## Outcome evaluation

The outcome evaluation was concerned with the overall effectiveness of the two programs, examining whether the stated aims had been achieved and determining what outcomes (intended or unintended) had been delivered as a result (including the impact of the program on participants and the Children's Court). In particular, the outcome evaluation addressed the following key research questions:

- To what extent have DRCs and the Legal Aid Pilot achieved a high level of satisfaction among all parties (family, legal practitioners and Community Services) as far as the decision-making process and outcome of the conferences is concerned?
- To what extent has the focus on a more collaborative approach to child protection decision-making led to an improved working relationship between Community Services and families?
- To what extent has providing parties with an opportunity to reach agreement on the child's future led to cost and time savings for the Children's Court, Community Services and Legal Aid, specifically in terms of:
  - increasing the number and proportion of matters being resolved on the basis of consent, particularly among contact disputes?
  - reducing the total number of matters listed for hearing?
  - reducing the total number and length of court hearings?
  - reducing the number of appeals and applications under s 90 of the Care Act?
  - reducing the legal costs for Community Services and Legal Aid associated with care and protection matters?
- What factors impacted positively or negatively on the effectiveness of DRCs and the Legal Aid Pilot and the outcomes that are being delivered?
- What changes could be made to the programs or models to improve their overall effectiveness?

## Research methods

To address these questions, the AIC's evaluation involved both quantitative and qualitative research methods. The research methods involved in these two components of the evaluation are described briefly below.

### *Develop a program logic model and evaluation framework*

A review of program documentation and materials was used to develop a program logic describing the operation of DRCs and the Legal Aid Pilot. Additional information was sought from key stakeholders as part of the initial round of interviews to refine this model. The purpose of the logic model was to describe the various components of the two programs and the logical sequence of steps necessary to deliver positive outcomes for participants. This model formed the basis for an evaluation framework, which set out the key evaluation questions and performance indicators used to guide the AIC evaluation.

Further, the program logic model and evaluation framework for this evaluation are aligned with the implementation plan for the evaluation of *Keep Them Safe* (Urbis 2011). This enables the evaluation to draw conclusions about the overall contribution of the new model of DRC and the Legal Aid Pilot to the objectives of the NSW Government's five year plan for improving the safety and wellbeing of children and young people. The logic model and evaluation framework are described in the next section of this report.

### *Review of similar programs in Australia and overseas*

A literature review focused primarily on evaluations of the operation and effectiveness of similar ADR programs operating in other jurisdictions and contexts, including family dispute resolution and child protection mediation. It drew extensively upon a number of issues papers prepared by DAGJ to inform the development of the two programs and the Expert Working Party's report. The findings from this review, presented in this report, have been used to identify a number of principles for good practice against which the operation of the DRCs and Legal Aid Pilot may be compared.

## Post-conference surveys of participants

Participant surveys were distributed at the completion of each conference by the Children's Registrar (DRC) and mediator(s) (Legal Aid Pilot) to assess the satisfaction of families, legal representatives and Community Services with the conference process and outcomes. This questionnaire asked participants about their views prior to, during and after the conference. The AIC made a number of recommendations to improve the original survey and to collect data relevant to the evaluation questions in a format suitable for analysis. This included additional questions for family members and Community Services about whether they believed the conference would help to improve the relationship between the family and the Department.

Completed surveys did not record participants' personal information for confidentiality reasons and were collected by the Children's Registrar or mediator at the conclusion of each conference. All conference participants from each conference held as part of the new model of DRC and the Legal Aid Pilot during the evaluation period were asked to complete the survey, limiting the potential for selection bias. The results from the analysis of survey data (both the new version and appended data combining data from the new and old version of the survey) are presented in a number of sections of this report. Limitations of the survey data are described in the section *Participant satisfaction with the conference process and outcomes*.

## Conference observations

The evaluation also included an observational component. The AIC research team aimed to observe eight to 10 conferences in each program, with the consent of all parties involved, at a variety of metropolitan and (in the case of DRCs) outer metropolitan and regional locations across New South Wales. For the DRCs, metropolitan locations included Parramatta, Campbelltown, outer metropolitan locations included Broadmeadow and Woy Woy and regional locations included Albury and Wagga Wagga. During the evaluation period, the AIC research team observed a total of 13 conferences as part of the new model of DRC (10 in metropolitan

locations throughout New South Wales, 3 in regional locations) and eight conferences held as part of the Legal Aid Pilot. All conferences that were held as part of the Legal Aid Pilot took place in the Legal Aid NSW head office in central Sydney.

The purpose of the observational component was to:

- observe the different models of mediation and conciliation used in the two programs;
- observe how the various parties interact as part of the conferences and their level of participation;
- develop an understanding of the conference process itself (and degree to which they operate in accordance with relevant guidelines); and
- examine how the current courthouse and Legal Aid facilities impact how conferences are conducted.

The observations were also designed to validate information obtained through the participant surveys and provided during the interviews and focus groups (see below). The AIC observed a range of different matters, such as those that included contact issues, Indigenous families, younger parents, families with a long history of contact with Community Services and families with multi-generational involvement with the care system, in order to determine the appropriateness of ADR when dealing with a variety of child protection issues and different families. Information was recorded in accordance with an observation protocol developed specifically for this research project. In addition to drawing on the findings from these observations in various sections of this report, several case studies were prepared to illustrate important issues.

## Interviews with parents and family members

The AIC methodology also included brief semi-structured face-to-face interviews with parents and family members conducted shortly after their attendance at a conference observed by the research team. The focus of the interviews was on collecting additional information to determine whether the family was satisfied with their experience at the conference, whether they felt it was beneficial (particularly in terms of their relationship with Community Services) and whether there were things about DRCs or the Legal Aid Pilot that they felt could be improved.

During the evaluation period, the AIC research team conducted eight interviews with parents and family members who participated in a DRC, and four with parents and family members who were involved in the Legal Aid Pilot. While relatively small in number, this represents a high response rate. The interviews were conducted immediately following the observed conferences and parents were not always willing to remain to speak with an interviewer or were, on occasion, visibly upset by what had taken place and were therefore not approached to participate. Feedback from these parents and family members helped to contextualise the quantitative data obtained through the participant surveys and the research team's own observations of the process and as such, are considered together.

### *Interviews with key stakeholders involved in the two programs*

An important component of both the process and outcome evaluation was the interviews and focus groups conducted with key stakeholders involved in the management and delivery of the two programs. The AIC worked with DAGJ to identify key stakeholders involved in the DRCs and Legal Aid Pilot and to engage them in the interview process. Key stakeholders involved in the conferences observed by the AIC were also approached at the completion of the conference to participate in a brief interview (where possible).

Over the course of the evaluation, the AIC completed more than 30 semi-structured, face-to-face and telephone interviews and focus groups with key stakeholders to discuss issues relating to the operation of the two programs, factors impacting upon their success and possible strategies to improve their operation. These interviews also examined what outcomes were achieved for participating clients as a result of their involvement in the programs and what benefits were delivered by the programs for the care and protection jurisdiction of the NSW Children's Court. This helped to inform a qualitative assessment of the impact of the program. Stakeholders were interviewed in two stages during the evaluation period (stage one was completed in August–September 2011 and stage two was completed in February 2012). This allowed the AIC to assess whether stakeholder attitudes towards and experiences in the programs had changed over time.

Stakeholders involved in the DRCs and Legal Aid Pilot who participated in the consultation process included:

- the President of the Children's Court and Executive Officer (interviewed in stage one and two);
- Children's Court Magistrates who were involved in the referral of matters to both programs in metropolitan and (in the case of DRC) regional locations (focus group in stage one and individual interviews in stage one and two);
- the Senior Children's Registrar and Children's Registrars involved in DRCs in metropolitan and regional locations (focus groups and individual interviews in stage one and two);
- mediators involved in the Legal Aid Pilot (a focus group in stage one and stage two);
- a number of representatives from Legal Aid NSW involved in the management of the Legal Aid Pilot (interviews in stage one and two), as well as a number of lawyers involved in both programs (interviews at the completion of observed conferences);
- the Director of the ADR Directorate of the DAGJ (interview stage two only);
- a representative from Aboriginal Legal Service (ALS) (interview in stage one and stage two);
- the Director, Legal Services of Community Services (interview in stage one and stage two); and
- representatives from Community Services, including in-house legal representatives, Manager Casework and Caseworkers who had participated in a DRC of conference held as part of the Legal Aid Pilot (interviews at the completion of observed conferences).

The feedback obtained through this extensive consultation program is presented throughout this report.

### *Qualitative survey of legal representatives and Community Services*

The AIC also developed a qualitative survey that was distributed to Legal Aid lawyers, ALS lawyers and Community Services Caseworkers, Manager Casework and lawyers, Children's Registrars and mediators who had participated in a DRC or Legal

Aid Pilot conference. The purpose of this additional survey was to seek input from those stakeholders who were unable to be interviewed during the evaluation period.

The survey was distributed twice during the evaluation period. This gave people who had been involved in a DRC or Legal Aid Pilot conference subsequent to the distribution of the first survey an opportunity to provide input into the evaluation and helped the AIC make an assessment as to whether stakeholder attitudes towards and experiences in the two programs had changed over time.

Questions in the survey addressed a range of issues relating to the operation of the two programs and aimed to identify areas where the processes that were in place might be improved. Specifically, respondents were asked to submit their views about the appropriate timing of referrals, families and matters that may be more or less suited to ADR, the cultural appropriateness of conferences for Indigenous families, benefits from the two programs and whether there were any changes that could be made to not only improve the outcomes of the conferences, but also to assist the respondents to perform their duties before, during and after conference proceedings. These were issues that had been identified through the face-to-face interviews, observational fieldwork and literature review as requiring further examination.

At the completion of the first survey period, the research team received completed surveys from 14 Community Services Managers Casework, 17 Community Services Caseworkers, 23 legal representatives and two support persons. At the completion of the second survey period, the research team received completed surveys from 20 Caseworkers, 22 Managers Casework, 26 legal representatives, seven Children's Registrars, five mediators, one support person and one observer. Responses to these surveys were analysed to identify common themes and responses, and results from the survey have been included in this report.

### *Analysis of administrative data*

The final component of the evaluation involved the analysis of quantitative data relating to the operation of and outcomes from DRCs and the Legal Aid Pilot.

This included data collected by Children's Registrars and mediators in a post-conference report, as well as data extracted by DAGJ and Children's Registrars from court files for matters that have been referred to ADR and a matched group of matters finalised prior to the introduction of new ADR programs. A detailed description of the process involved in the collection and analysis of court file data is provided in the final section of this report.

At the completion of each conference, the Children's Registrar and mediator complete a form with information about the matter, including who attended, the demographic characteristics of the family, the issues that were discussed (and were or were not resolved), the outcomes from the conference and any future scheduled court hearings or conferences. For the purpose of this report and to undertake necessary quality assurance checks, the AIC was provided with an extract of data on all matters referred to the Legal Aid Pilot between September 2010 and February 2012 and DRCs between February 2011 and February 2012. These data were cleaned and analysed, and are presented throughout this report.

### *Ethical research*

The AIC's evaluation received approval from the AIC Human Research Ethics Committee (HREC), which is a registered HREC with the National Health and Medical Research Council. The AIC HREC ensures that AIC research projects will be conducted in accordance with the National Statement on Ethical Conduct in Human Research (NHMRC 2007) and among other protocols, the Guidelines under s 95 and s 95A of the *Privacy Act 1988*.

Consideration was given to the potential impact of the proposed research on participants, particularly those families who were referred to and participated in a DRC or the Legal Aid Pilot. Appropriate steps were taken to ensure the potential risk and discomfort to participants was minimised. Similarly, appropriate processes were established to obtain the informed consent of research participants and to maintain the confidentiality of all participants and data collected as part of the evaluation.



# Program logic and evaluation framework

A review of program documentation and meetings with key stakeholders involved in the two programs has informed the development of a program logic describing the operation of the DRCs and Legal Aid Pilot (see Figure 1). A logic model is a way of describing the program, tying together in a logical order the inputs, processes, outputs and outcomes involved in a program. The logic model encourages those responsible for the design and management of programs to think through, in a systematic way, what the program aims to accomplish in the short and longer term and the sequential steps by which the program will achieve its objectives (Schacter 2002). Importantly, this model provides the foundation for identifying a set of appropriate performance indicators and determines what outcomes can be reasonably attributed to the two programs.

A model was developed that outlines the key elements of DRCs and the Legal Aid Pilot, including the relationship between the range of activities undertaken by the various stakeholders involved in the programs and the hierarchy of short, intermediate and long-term outcomes. This model details the preconditions that must be met in order for the high-level outcomes of the *Keep Them Safe* plan to be achieved, which include improving the safety and wellbeing of at-risk children.

There are a number of assumptions that underpin the logic model for the two programs. Specifically, the logic model assumes that:

- if appropriate resources are invested in the program for the duration of the Pilot, the program design and management are sound and the relevant stakeholders are involved in the program, the program activities will be implemented as intended;
- if the program activities are implemented as intended, participants involved in DRC and Legal Aid Pilot conferences will be provided the opportunity to identify, discuss and agree on actions that are in the best interest of the child, leading to interim or final orders being made on the basis of consent;
- if participants are able to reach agreement as to the most appropriate course of action, or are able to substantially narrow the issues in dispute, the time and costs associated with finalising the matter in the NSW Children's Court will be reduced;
- if participants are provided with the opportunity to work together to resolve issues in dispute and to determine an appropriate course of action, the relationship between families and Community Services will be improved;

- if the families are supportive of the agreed course of action, they are more likely to implement agreed care plans, abide by orders that are imposed and to attend and participate in programs that assist them to address those issues that may have led to the involvement of Community Services in the first place; and
- if the factors that led to the involvement of Community Services are addressed and the agreed course of action is implemented as intended, the safety and wellbeing of at-risk children will be improved.
- issues in dispute are not resolved and a course of action cannot be agreed; and/or
- the relationship between Community Services and families does not improve;

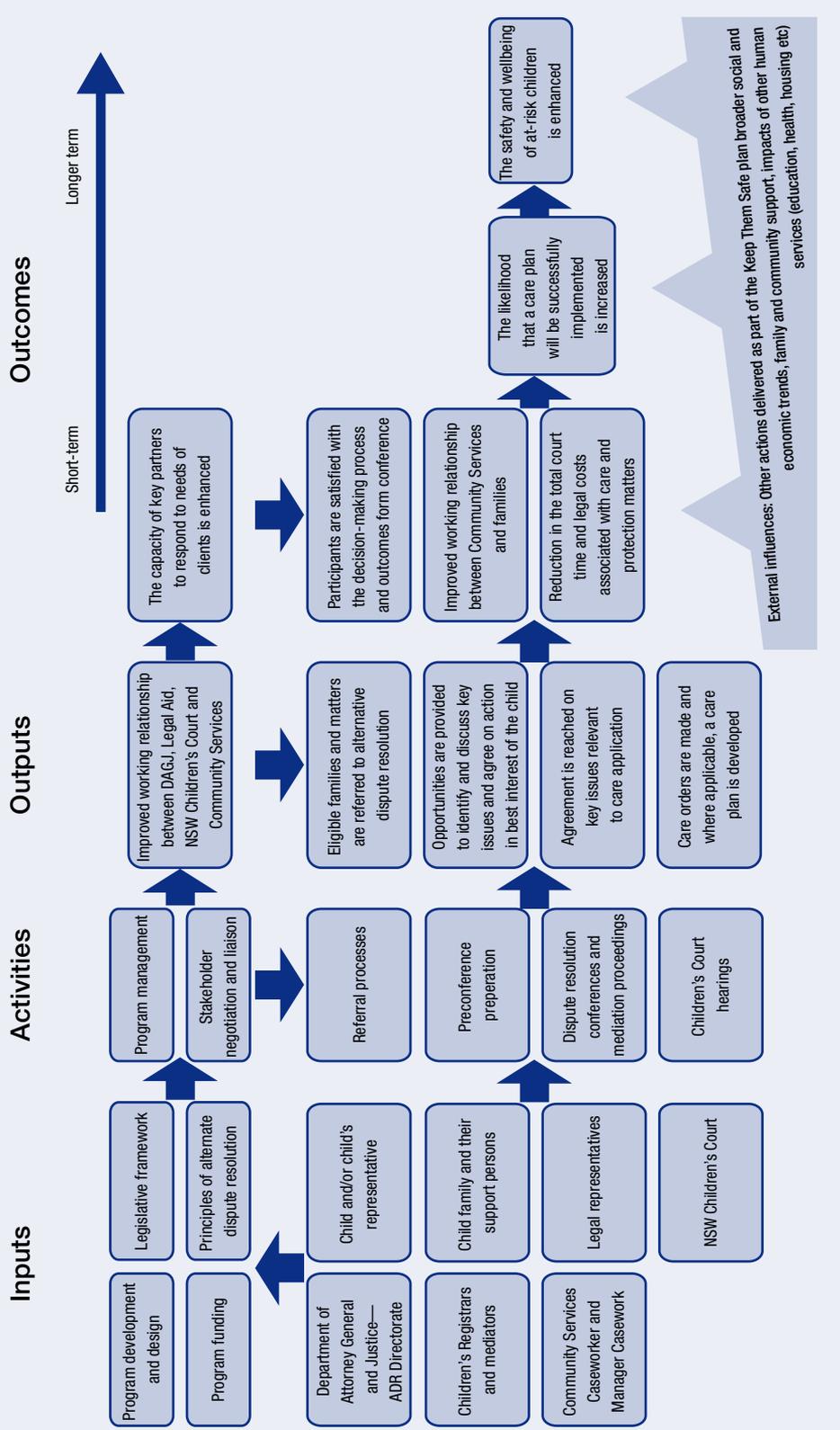
then the likelihood that the agreed course of action will be successfully implemented is low and the safety and wellbeing of at-risk children will not be improved.

From this model, an evaluation framework was prepared that outlines key evaluation questions relating to the various components of the program, along with appropriate performance indicators and data sources and data collection methods (see Table 1). This evaluation framework has formed the basis of the AIC's evaluation of DRCs and the Legal Aid Pilot, informing the development of the various research methods. The logic model and evaluation have been updated and revised during the interim stages of the evaluation as a better understanding of the two programs and their objectives has been developed.

Alternatively, the evaluation framework suggests that if:

- adequate resources are not invested in the program for the duration of the Pilot; and/or
- the program design and management is flawed; and/or
- stakeholders that are necessary for the operation of the DRCs and Legal Aid Pilot are not involved; and/or
- DRC and Legal Aid Pilot activities are not implemented as intended; and/or

**Figure 1** Logic model describing the new model of DRC and the Legal Aid Pilot



**Table 1** Evaluation framework for the new model of DRC and the Legal Aid Pilot

Program component	Key evaluation question(s)	Performance indicator(s)	Data collection (method and source)
Program design and funding (input)	<p>How appropriate are the governance arrangements, operating guidelines and current legislative framework in supporting the operation of the two programs?</p> <p>Are the programs adequately resourced?</p> <p>Are both programs consistent with ADR principles of mediation and/or conciliation, collaboration and participation?</p> <p>Are the two program models appropriate for the client group?</p> <p>What improvements could be made to the design and implementation of the program?</p> <p>How well do the different models of ADR (including family group conferencing) work as part of an integrated service delivery system for child protection matters?</p>	<p>Extent to which stakeholders report being satisfied with the program design, legislative framework and operating guidelines and program resourcing.</p>	<p>Interviews with key stakeholders involved in the two programs.</p> <p>Review of program documentation and relevant legislation.</p>
Key stakeholders involved in the program, including Children's Registrars, mediators, child's family and support persons, Community Services and legal representatives (input)	<p>Are the stakeholders required to successfully implement the programs involved at each stage of the process?</p> <p>What is the nature and extent of stakeholder (Children's Registrars, mediators, child's family and support persons, Community Services and legal representatives) attendance and involvement in the two programs?</p> <p>To what extent are the various stakeholders supportive of the programs in their current form?</p>	<p>Extent to which stakeholders report being involved/engaged in and supportive of the two programs.</p> <p>Attendance and participation of key stakeholders in both DRCs and Legal Aid Pilot conferences.</p>	<p>Interviews with key stakeholders involved in the two programs.</p> <p>Post-conference forms completed by the Children's Registrar and external mediators.</p> <p>Qualitative survey of legal representatives and Community Services staff.</p>
Program management and stakeholder collaboration (activity)	<p>Are there adequate governance arrangements in place, and are the DRCs and Legal Aid Pilot managed effectively?</p> <p>Is there a high degree of stakeholder communication, negotiation and liaison?</p>	<p>Extent to which stakeholders report being satisfied with the overall management of the programs.</p> <p>Extent to which stakeholders report high levels of communication and collaboration between DRC and Legal Aid Pilot partners.</p>	<p>Interviews with key stakeholders involved in the two programs.</p>

**Table 1 (continued)**

Program component	Key evaluation question(s)	Performance indicator(s)	Data collection (method and source)
<p>Activities delivered as part of DRCs and the Legal Aid Pilot:</p> <ul style="list-style-type: none"> <li>• referral processes</li> <li>• pre-conference preparation</li> <li>• DRC and Legal Aid Pilot conference proceedings</li> <li>• Children's Court hearings (activities)</li> </ul>	<p>What are the main components or activities delivered as part of each program?</p> <p>To what extent have the two programs and their various components been implemented as intended during the Pilot period?</p> <p>Are the programs consistent with best practice in terms of their design and implementation?</p> <p>Do the programs adequately meet the needs of participants?</p> <p>What are the barriers to implementing the two programs as intended?</p>	<p>Extent to which stakeholders report the various components of the program as having been implemented as intended during the Pilot period.</p> <p>Comparison between the operation of DRC and Legal Aid Pilot processes and accepted good practice in the delivery of ADR in the care and protection jurisdiction.</p>	<p>Observations of dispute resolution and external mediation conferences.</p> <p>Interviews with key stakeholders involved in the two programs.</p> <p>Review of program documentation and relevant legislation.</p>
<p>Improved working relationship between DJAG, Legal Aid, NSW Children's Court and Community Services (output)</p>	<p>Has the level of collaboration between these partners improved through the introduction of DRCs and the Legal Aid Pilot and what benefits have resulted?</p>	<p>Extent to which various partners report the working relationship between the various agencies as having improved since the introduction of the two programs.</p>	<p>Interviews with key stakeholders involved in the two programs.</p>
<p>Eligible families and matters are referred to ADR (output)</p>	<p>How many matters are referred to a DRC and Legal Aid Pilot programs?</p> <p>What are the key characteristics of these matters and the families who participate in a DRC or the Legal Aid Pilot?</p> <p>To what extent do matters referred to DRCs and the Legal Aid Pilot actually proceed to conference?</p> <p>What cases are best suited to ADR (in terms of the nature of the matter and client characteristics)?</p> <p>Are there particular cases that are best suited to either DRCs or the Legal Aid Pilot?</p> <p>Is there an optimal time for referral of a matter to ADR?</p>	<p>The total number and proportion of new matters referred to a DRC and Legal Aid Pilot during the evaluation period.</p> <p>The total number and proportion of new matters referred to DRC and Legal Aid Pilot that proceed to conference.</p> <p>The total number of DRC and Legal Aid Pilot conferences held during the evaluation period.</p> <p>The type of matters that are dealt with in each program, compared with the care and protection jurisdiction of the Children's Court (eg contact issues).</p> <p>The characteristics of those families referred to a DRC and Legal Aid Pilot, including (but not limited to) indigenous status, the age of the child, family circumstances, prior contact with the Children's Court (number and proportion of each).</p> <p>The timing of the matter being referred to a DRC or Legal Aid Pilot conference.</p>	<p>Administrative data obtained from the Children's Court care register (in selected locations).</p> <p>Post-conference forms completed by the Children's Registrar and external mediators.</p> <p>Administrative data obtained from court files in accordance with classification framework.</p> <p>Interviews with key stakeholders involved in the two programs.</p>

**Table 1 (continued)**

Program component	Key evaluation question(s)	Performance indicator(s)	Data collection (method and source)
Agreement is reached on key issues relevant to care application (output)	<p>To what extent are the issues in dispute narrowed or resolved through the matter being referred to ADR?</p> <p>To what extent do the programs identify the needs of the family, their support requirements and referral pathways?</p>	<p>Number and proportion of conferences that result in the issues in dispute being narrowed or all of the issues in dispute being resolved.</p> <p>Number and proportion of participants who report that they:</p> <ul style="list-style-type: none"> <li>• agree with the course of action that has been determined;</li> <li>• feel as though they have contributed to the end result;</li> <li>• feel as though the outcome is good for the children.</li> </ul>	<p>Post-conference forms completed by the Children's Registrar and external mediators.</p> <p>Post-conference survey administered to participants of both programs (child's family and support persons, Community Services and legal representatives).</p>
Care orders are made and where applicable, a care plan is developed (output)	<p>What orders are made for those care matters that are dealt with through DRCs and the Legal Aid Pilot?</p> <p>To what extent do DRCs and the Legal Aid Pilot inform final orders and the development of care plans?</p>	<p>Orders made for those care matters referred to DRC and the Legal Aid Pilot (eg interim/final orders, care plans etc) compared with a matched group of matters dealt with prior to the introduction of DRCs and the Legal Aid Pilot.</p> <p>Number and proportion of conferences that result in final orders and/or care plans being agreed.</p> <p>Extent to which stakeholders report the DRCs or Legal Aid Pilot conferences as having informed interim and final care orders.</p> <p>Extent to which stakeholders report DRCs or the Legal Aid Pilot conferences as having informed the development of a care plan.</p>	<p>Post-conference forms completed by the Children's Registrar and external mediators.</p> <p>Post-conference survey administered to participants of both programs (child's family and support persons, Community Services and legal representatives).</p> <p>Interviews with key stakeholders involved in the two programs.</p>
The capacity of the key partners to respond to the needs of clients is enhanced (short-term outcome)	<p>Are legal practitioners and Community Services staff better placed to respond to the needs of their clients through DRCs and the Legal Aid Pilot than in mainstream Children's Court processes?</p>	<p>Extent to which stakeholders perceive DRC and Legal Aid Pilot as being able to deliver positive outcomes in terms of responding to the needs of families who have contact with the NSW Children's Court.</p> <p>Extent to which stakeholders identify barriers to delivering positive outcomes.</p>	<p>Interviews with key stakeholders involved in the two programs.</p>

**Table 1 (continued)**

Program component	Key evaluation question(s)	Performance indicator(s)	Data collection (method and source)
<p>Participants are satisfied with the decision-making process and outcomes from conferences (short-term outcome)</p>	<p>To what extent are participants satisfied with the conference process and any outcomes that are agreed at the conference?</p> <p>To what extent have both programs led to an increased level of satisfaction among all parties with the decision-making process and outcomes, compared with other methods of decision-making in care and protection matters (ie preliminary conferences)?</p>	<p>Number and proportion of family members, Community Services Caseworkers and managers and legal representatives who, at the completion of the conference, report being satisfied with:</p> <ul style="list-style-type: none"> <li>• the level of support provided to them prior to and during the process;</li> <li>• the extent to which they were able to contribute to the process; and</li> <li>• the way in which the conference had been run.</li> </ul> <p>Number and proportion of family members, Community Services Caseworkers and managers and legal representatives who, at the completion of the conference, report being satisfied with the outcome that has been reached, including any orders that are agreed.</p> <p>Extent to which key stakeholders in the DRCs and Legal Aid Pilot (Children's Registrars, mediators, child's family and support persons, Community Services and legal representatives) report being satisfied with the operation of and outcomes from the conferences in which they have been involved.</p>	<p>Post-conference survey administered to participants of both programs (child's family and support persons, Community Services and legal representatives).</p> <p>Interviews with parents and family members who participate in a conference.</p> <p>Interviews with key stakeholders involved in both programs.</p>
<p>Improved working relationships between Community Services and families (short-term outcome)</p>	<p>Has the emphasis on collaborative processes in the two programs resulted in improved working relationships between families and Community Services?</p>	<p>Extent to which stakeholders report the DRCs and Legal Aid Pilot as having improved (or as being likely to improve) the relationship between Community Services and families referred to either program.</p> <p>Number and proportion of family members and Community Services staff who report that:</p> <ul style="list-style-type: none"> <li>• the other party has given them a fair go;</li> <li>• conflict between two parties has been resolved; and</li> <li>• the relationship between the two parties is likely to improve.</li> </ul>	<p>Interviews with key stakeholders involved in the two programs.</p> <p>Post-conference survey administered to participants of both programs (child's family and support persons and Community Services).</p>

**Table 1 (continued)**

Program component	Key evaluation question(s)	Performance indicator(s)	Data collection (method and source)
<p>A reduction in the total court time and legal costs associated with care and protection matters (short-term outcome)</p>	<p>To what extent has providing parties with an opportunity to reach agreement on the child's future led to cost and time savings for the Children's Court, Community Services and Legal Aid, specifically in terms of:</p> <ul style="list-style-type: none"> <li>• increasing the number and proportion of matters being resolved on the basis of consent, particularly among contact disputes?</li> <li>• reducing the total number of matters listed for hearing?</li> <li>• reducing the total number and length of court hearings?</li> <li>• reducing the overall time to finalisation?</li> <li>• reducing the number of appeals and applications under s 90 of the Care Act?</li> <li>• reducing the legal costs of Community Services and Legal Aid?</li> </ul>	<p>Number and proportion of matters dealt with through DRCs or Legal Aid Pilot that are resolved on the basis of consent (particularly among contact disputes), compared with a matched group of matters dealt with prior to the introduction of DRCs and the Legal Aid Pilot.</p> <p>Number and proportion of matters dealt with through DRCs or Legal Aid Pilot that are listed for hearing (and <i>do</i> proceed to hearing), compared with a matched group of matters dealt with prior to the introduction of DRCs and the Legal Aid Pilot.</p> <p>Number and proportion of matters dealt with through DRCs or the Legal Aid Pilot that are listed for hearing (and <i>do not</i> proceed to hearing), compared with a matched group of matters dealt with prior to the introduction of DRCs and the Legal Aid Pilot.</p> <p>Number of days from initiating care proceedings until case resolution for matters dealt with through DRC or the Legal Aid Pilot, compared with a matched group of matters dealt with prior to the introduction of DRCs and the Legal Aid Pilot.</p> <p>Number of court hearings (and conferences) from initiating care proceedings until case resolution for matters dealt with through DRC or Legal Aid Pilot, compared with a matched group of matters dealt with prior to the introduction of DRCs and the Legal Aid Pilot.</p> <p>Number of appeals and applications under s 90 of the Care Act for matters dealt with through DRC or the Legal Aid Pilot, compared with a matched group of matters dealt with prior to the introduction of DRCs and the Legal Aid Pilot.</p>	<p>Analysis of administrative data for matters dealt with through DRC or Legal Aid Pilot, compared with matched comparison group (where specified).</p> <p>Post-conference forms completed by the Children's Registrar and external mediators.</p>
<p>The likelihood that a care plan will be successfully implemented is increased (intermediate outcome)</p>	<p>To what extent do program partners believe that the likelihood that care plans developed through DRC and the Legal Aid Pilot will be implemented?</p>	<p>Extent to which stakeholders report the likelihood of care plans being successfully implemented as having increased</p>	<p>Interviews with key stakeholders involved in the two programs</p>
<p>The safety and wellbeing of at-risk children is enhanced (longer term outcome)</p>	<p>To what extent do program partners believe that the introduction of DRC and the Legal Aid Pilot will improve the safety and wellbeing of at-risk children who come into contact with the care and protection jurisdiction?</p>	<p>Extent to which stakeholders report perceiving the introduction of DRC and the Legal Aid Pilot as contributing to the improved safety and wellbeing of at-risk children who come into contact with the care and protection jurisdiction.</p>	<p>Interviews with key stakeholders involved in the two programs.</p>



# Alternative dispute resolution in care and protection matters

The following section presents the findings from a literature review that has examined the development of court-based ADR in dealing with care and protection matters. This has included a national and international review of the outcomes from court-referred ADR programs for care and protection matters, to identify lessons about the effective management and implementation of programs like the new model of DRC and the Legal Aid Pilot. This review draws extensively upon a number of issues papers prepared by DAGJ (on behalf of the Expert Working Party) to inform the development of the two programs.

This review focused on the use of court-referred care and protection ADR processes, similar to the new model of DRC and the Legal Aid Pilot, both in Australia and overseas. There is a significant body of literature that has examined the use of Family Group Conferencing (FGC) which, like court-referred ADR processes, is underpinned by ADR principles. Because there are significance differences between FGC and court-referred ADR processes, the main being that family group conferences usually take place outside of the court process and do not involve legal professionals, FGC has not been reviewed here. For a comprehensive review of the use of FGC in care and protection in Australia see Harris (2008; 2007) and Huntsman (2006).

## The use of alternative dispute resolution in care and protection matters

ADR describes ‘processes where an independent person (an ADR practitioner) assists people in dispute to sort out the issues between them’ (NADRAC 2011: 15). The aim of ADR is to encourage participants to reach agreement on an appropriate course of action or, where agreement cannot be reached, to narrow the issues in dispute. More specifically, court-referred ADR processes aim to increase the likelihood that a matter will be resolved outside of the courtroom or, if the matter does proceed, reduce the length of any subsequent court appearances (Howieson 2002; NADRAC 2011).

Developed in response to the high cost associated with court proceedings and recognition of the potential negative impact on those involved, ADR has been used as an alternative to judicial determination in a number of Australian jurisdictions for decades. ADR is currently used in a range of legal contexts, including national land rights, maritime law, labour law and juvenile justice. In particular, ADR has been used successfully to resolve a range of family law disputes, including adoption cases. It was primarily due to its success in the family

law area that ADR was adapted for use in the care and protection jurisdiction (Carruthers 1997).

ADR in the care and protection jurisdiction

assists those involved in family breakdown to communicate better with one another, and to reach informed decisions about some or all of the care and protection concerns about their children (NSW DCS 2001: 2).

ADR processes are increasingly being used in the care and protection sector in a number of Australian and international jurisdictions. Their popularity is in part due to the perceived limitations of traditional court processes to deal with child welfare concerns appropriately and efficiently (McHale, Robertson & Clarke 2011; 2009). In Australia, these concerns include the rising number of children and young people in out-of-home care placements for extended periods of time and the increasing rates of repeat interactions between families and Community Services that characterise chronic child maltreatment issues (Jonson-Reid et al. 2010; Wood 2008). Other issues relevant to the NSW child protection system include:

- overrepresentation of Indigenous families;
- perceived lack of culturally appropriate interventions for Indigenous children;
- increasing number of Risk of Harm (ROH) reports (now ROSH reports);
- high number of families who have repeated interactions with child protective services, which is characteristic of chronic child neglect and or abuse; and
- significant court costs associated with lengthy and protracted court hearings (Johnson-Reid et al. 2010; Wood 2008).

It has been suggested that court hearings in the care and protection jurisdiction are adversarial and conflict driven by nature and as such, do not facilitate positive working relationships between family members and child protective services (Giovannucci 1997; NSW DCS 2001; Olson 2003; Pearson et al. 1986):

The traditional response [to child abuse and neglect] has involved apprehension or removal of the abused or neglected child from his or her home, followed by an adversarial, deficit-focused

trial process designed to prove, or disprove, that the child is in need of protection. After many years of experience, it has become clear that the protection afforded children by this model is less than perfect. The process is slow and cumbersome and generally ill-suited for the complex and emotionally charged nature of child welfare problems. The stress on the child and parties is prolonged over critical months, or possibly years, in the child's development. More fundamentally, the adversarial model sets up a problematic dynamic between the parties. It frames the question of the child's welfare as a contest, and positions the parties as opponents (McHale, Robertson & Clarke 2009: 87).

ADR processes are focused on maintaining strong relationships between people who have to work together after the initial dispute has been resolved (McHale, Robertson & Clarke 2011). Therefore, it has been argued that ADR may be better suited to resolving care and protection issues than traditional court processes.

## Mediation and conciliation

Two models of ADR are the most commonly used in care and protection ADR processes—mediation and conciliation. *Mediation* and *conciliation* can be broadly defined as facilitated discussions that are led by a neutral third party (the mediator or conciliator) who 'empowers participants to create individualised integrated solutions through non-adversarial means' (Olson 2003: 480). Both models are focused on decision-making processes and reaching an agreement between parties. Similarly, both models do not seek to determine what has happened in the past or to assign blame (Maughan & Dagiis 2005; NADRAC 2011).

Conciliation and mediation are similar, but there are important differences between the role of the mediator and conciliator. During a conference, mediators and conciliators perform similar duties (see Table 2). However, although neither mediators nor conciliators can make decisions for the parties, conciliators do perform an advisory role in the proceedings (NADRAC 2011). This means that a conciliator can guide the parties to consider all the

necessary legal issues and legal options available to assist the parties to resolve the matter and provide advice as to how the court has dealt with issues of a similar nature in the past. Generally speaking, conciliators have legal training and expertise and as such, are well placed to provide this advice; even if a mediator has the same legal knowledge and expertise, they are not allowed to advise parties in any way. The advisory role played by the conciliator is a notable difference between the two models and will be elaborated on later in this report. It should be understood at this point that the new model of DRC follows a conciliation model of ADR, while the Legal Aid Pilot is underpinned by a mediation model.

## Effectiveness of care and protection alternative dispute resolution processes

Although a relatively recent development in Australia, court-based care and protection ADR processes have been used in a number of international jurisdictions, particularly the United States and Canada, since the mid-1980s (Olson 2003). There is a growing body of research that has attempted to determine the impact of these programs and a number of Australian and international care and protection ADR programs have been evaluated (Carruthers 1997; Cunningham & van Leeuwen 2005; Dobbin, Gatowski & Litchfield 2001; Eaton, Whalen & Anderson 2007; Howieson & Legal Aid WA 2011; Maughan & Daglis 2005; Mayer 1989; Olson 2003; Pearson et al. 1986). This evidence base has helped to inform the development of the new model of DRC and the Legal Aid Pilot, and the methodology for the current evaluation.

The AIC examined the effectiveness of similar programs operating in other jurisdictions, to identify factors contributing to their success and identify challenges for implementing court-referred ADR programs. This review highlighted that there are important variations in how success was defined in different programs. Common measures of effectiveness include participant satisfaction, case settlement rates, family compliance with agreements and time to case resolution (Berzin et al. 2008;

Olson 2003). The outcomes from other programs therefore need to be understood in both the context in which they have been delivered (ie the organisational cultures, legislative framework and operating guidelines that govern the relevant program), as well as the methodology used to evaluate the program.

Taken as a whole, evaluations of the effectiveness of court-referred ADR in the care and protection jurisdiction have found that, when compared with traditional court processes, parties involved in ADR are more likely to reach an agreement on the issues in dispute and consent to orders than in traditional court processes (or achieve high rates of agreement, where no comparison is available), are more likely to comply with treatment referrals and contact arrangements, and report better relationships with the other parties involved in the matter (Eaton, Whalen & Anderson 2007; Howieson 2002; Howieson & Legal Aid WA 2011; Mayer 1989; McHale, Robertson & Clarke 2009; Thoennes 2009). There is also evidence that ADR reduces the time taken to finalise care and protection matters (Cunningham & van Leeuwen 2005; Eaton, Whalen & Anderson 2007; Howieson & Legal Aid WA 2011; Olson 2003). Professionals involved in court-referred ADR reported that the process was fairer and that the conferences result in better outcomes when compared with traditional court processes (Dobbin, Gatowski & Litchfield 2001; Howieson & Legal Aid WA 2011). Further, research also suggests that families involved in ADR:

- prefer ADR to traditional court processes;
- perceived the process as fairer;
- felt that they were an important part of the conference and were less likely to feel alienated from the process;
- were satisfied with their role in the decision-making process; and
- appreciated being given the opportunity to tell their side of the story, with some parents and family members involved in ADR suggesting that they felt that the conference was the first time they had really been able to speak and be heard (Howieson 2002; Howieson & Legal Aid WA 2011; McHale, Robertson & Clarke 2009; Pearson et al. 1986; Thoennes 2009).

**Table 2** The role of the conciliator or mediator

Duties performed by the conciliator/mediator	Duties not performed by the conciliator/mediator
Explain the way the conference will work	Make decisions
Provide a supportive environment and assist with venues and timing of meetings	Tell parties what to agree on
Assist participants to understand the situation	Decide what is right and wrong
Keep participants focused on resolving the disputes	Provide counselling services
Keep participants focused on resolving the disputes	
Make sure participants know and understand what issues have been resolved	
Facilitate communication between parties	
Ensure that the behaviour of all the parties is appropriate	
Manage the process so that it is fair	
Help participants to reach a final solution	

Source: adapted from NADRAC 2011

### Box 1 Signs of Safety (WA)

The Signs of Safety Pilot was implemented in the Perth Children's Court in 2009. The program combined aspects of the Legal Aid Family Dispute Resolution process with the Signs of Safety risk assessment framework used by the Department of Child Protection (DCP). The Pilot involved two separate processes—lawyer assisted meetings and lawyer assisted conferences. Lawyer assisted meetings were targeted at pregnant women who had been identified by the DCP as being at risk of having their child removed at birth. By contrast, lawyer assisted conferences (LAC) were aimed at families the DCP had initiated court proceedings against. LACs aimed to:

- maintain family relationships and keep parents and extended families engaged in the process;
- provide clarity around the reasons for removal;
- clarify for parents what they need to do so that their children are in care for shorter periods of time; and
- provide appropriate support for at-risk families so they are able to care for their children.

Matters could be referred to a conference once an application had been made to the Children's Court, although they typically occurred after the second mention. Referrals could only be made by the court. Although the Magistrate could order parties to attend a conference, this did not appear to have occurred in practice. Generally, the consent of all parties was required for a LAC to proceed. Once a matter had been referred, parties were required to submit an outline of what they wanted to talk about during the conference and what their position was in relation to certain issues to the LAC convenor and the other parties.

Conferences were facilitated by a pool of court-appointed and specially trained convenors. Convenors were expected to guide and facilitate the discussion but also had the power to make recommendations and identify potential options in the event that parties could not come to an agreement by themselves. Conferences were conducted in non-court settings and were attended by all the parties to the application, the child legal representative, the DCP professionals with carriage of the case and their legal representatives. Parties could also identify other people who they wanted to attend, but approval from the convenor was required. If deemed appropriate, the child/ren who was the subject of the application could attend the conference.

An evaluation of the Pilot found that of the 74 cases that were referred during the evaluation period, 61 settled either partially or fully. Further, the majority of professionals who participated in a conference/meeting felt that it had been procedurally fair. When compared with a non-matched control group, matters that proceeded to a conference/meeting took less time to finalise (9 months compared with 4 months), and resulted in fewer court events (9 events compared with 3.5 events) and a higher proportion of orders being made on the basis of consent (75–90% of matters compared with 60%). However, the evaluation also found that the program had encountered a number of implementation issues. For instance, some practitioners involved in the program appeared to be reluctant to engage with parents in collaborative decision-making processes, while some families found it difficult to trust caseworkers to fulfil their obligations as identified in agreements reached through a conference/meeting. Further, there appeared to be some tensions between practitioners from different agencies.

Source: Howieson & Legal Aid WA 2011

The research also shows that agreements developed through care and protection ADR processes are more specific in the way they address logistical and practical issues such as the supervision of contact meetings. Other research suggests that matters referred to ADR are more likely to result in family placements (Thoennes 2009). To illustrate the range of outcomes that can be delivered, two Australian care and protection ADR models are described in detail in Boxes 1 and 2.

The cost-saving benefits of care and protection ADR processes are less clear, largely due to a lack of rigorous economic assessment of programs and the inaccuracy of costing data available to researchers. However, the research that is available suggests that ADR processes do generate some cost saving benefits, although the figures vary considerably (Howieson & Legal Aid WA 2011; Thoennes 2009). Cost-benefit analyses of programs that are in some respects comparable to care and protection ADR programs suggest that the economic benefit of ADR is considerable. A recent evaluation of the Legal Aid Family Dispute Resolution Service found that over the period 2004–05 to 2007–08, for every dollar invested, the program delivered a return of \$1.48, as measured in fewer court events and associated costs (KPMG 2008).

## *Implementation challenges for court-referred alternative dispute resolution processes*

A review of previous evaluations also highlights the fact that court-referred ADR programs have encountered a number of implementation and operational challenges. Despite evidence that suggests that a number of positive benefits can result from care and protection ADR processes, there may still be some resistance among practitioners towards its use. For instance, a number of programs suffered from very low referral rates. This was attributed in many instances to resistance from key stakeholders to the program, particularly in certain locations. In particular, when stakeholders who were responsible for referring matters to the program (such as Magistrates) were resistant to the use of ADR, referral rates were more likely to be low and insufficient to sustain the program (Carruthers 1997; Howieson & Legal Aid WA 2011; Maughan & Daglis 2005; Olson 2003; Thoennes 2009).

Certain barriers have also prevented some parties from being actively involved in conferences. This has included a lack of training for the parties involved, legal representatives not having enough time to prepare for each conference, tension between

### **Box 2 Pre-hearing conferences (Victoria)**

With the amendment of the *Children and Young Persons Act in 1992*, the Children's Court of Victoria was given the authority to refer family protection division matters to a pre-hearing conference. The aim of the conferences was to provide family members and the Department of Human Services protective workers with an opportunity to have an open and confidential discussion that would (hopefully) lead to a voluntary agreement that addressed the issues of concern.

Referrals to the program could only be made by Magistrates working in the family division of the Children's Court and the focus was on contested pre-establishment applications. Once a matter had been referred to the program, the parents and the Secretary of the Department of Human Services were legally obliged to attend the conference. The court could also order the attendance of other parties. Notably, parties did not have to be legally represented during the conference and the child could only be legally represented if they were old enough to give instructions.

The conferences followed a blended mediation and conciliation model of ADR and were conducted by court-appointed convenors. Notably, there was significant variation between the convenors working in metropolitan and regional areas. The metropolitan convenors typically came from a social sciences background and had limited (if any) legal experience. By contrast, convenors working in regional areas were Registrars with little to no experience in the social sciences.

An evaluation of the program found that between 2003 and 2004, 36 percent of conferences resulted in settlement. However, stakeholders involved in the delivery and implementation of the program identified a range of issues they believed had limited the uptake and acceptance of the program among practitioners. In particular, there appeared to be significant variation between convenors regarding the way they ran conferences, which had led to frustration among practitioners. Further, the role of the convenor, and in particular whether they could provide advice during the proceedings, was unclear and had led to some tensions between convenors, practitioners and legal representatives (when they were present). Finally, the evaluation also found that Magistrates and Children's Registrars working in regional areas were reluctant to refer matters to conference.

Source: Maughan & Daglis 2005

practitioners from different agencies and the lack of clear guidelines around program operation (Howieson & Legal Aid WA 2011; Maughan & Daglis 2005).

An important issue raised in other programs is whether court-referred ADR processes duplicate other ADR services provided internally by child protection agencies (Barsky & Trocme 1998; Olson 2003). However, it has been suggested that families view ADR processes provided by child protection agencies with suspicion, particularly when there are high levels of conflict and perceived institutional bias. By comparison, many court-referred ADR processes are independent from child protection agencies and as such, may be viewed by families in a more positive light. Further, handing the mediation duties over to an external party allows parties to focus on the wellbeing of the child and can change the dynamic between the family and agency (Carruthers 1997). The availability of court-referred ADR also ensures access to ADR processes at all stages of the care and protection continuum.

An important principle for effective ADR is that it works best where all parties come to the negotiation table and participate as equals. In court-referred ADR, the significant power differential that may exist between parents and child protection workers in care and protection matters may have implications in terms of the ability of the parents to engage in the proceedings in a meaningful way (Cunningham & van Leeuwen 2005; Maughan & Daglis 2005; Olson 2003). However, experience has shown that this can be overcome through the presence of an effective mediator or conciliator who pays special attention to seating arrangements and ensures that proceedings are not dominated by one voice, that parties are comfortable and treat each other with respect (Barsky & Trocme 1998; Maughan & Daglis 2005). Further, it has been suggested that lawyer-assisted processes can help to reduce potential power differentials. The presence of legal representation can help to ensure that appropriate measures can be put in place to safeguard the security of those participating and that parties (who may not otherwise be able to) can put forward their views and participate in the conference.

Lastly, it has been argued that the best interests of the child who is subject to care and protection

proceedings cannot be promoted in a process that gives additional power to the perpetrators of the abuse, namely the parents (Carruthers 1997). This highlights the importance of ensuring children have a voice during the process, especially where they are not in attendance. Further, this requires an effective review process for any agreements reached during the conference—such as independent review of the agreement by a Magistrate or Judge.

### *Limitations of the evaluation literature*

Previous evaluations conducted in Australia and overseas have been limited by a number of methodological issues that have implications for the reliability of the findings. These include:

- small sample sizes, usually due to lower than expected program referral rates;
- the lack of long-term evaluations, since many programs had only been operating for a short period of time before they were evaluated and there was no follow up or long-term evaluation conducted;
- incomplete and inaccurate data being maintained for families involved in the care and protection jurisdiction;
- inadequate matching between comparison and intervention groups; and
- skewed samples (Berzin et al. 2008; Eaton, Whalen & Anderson 2007; Mayer 1989).

As a result, additional research into the impact of court-referred ADR processes in the care and protection jurisdiction is required (Eaton, Whalen & Anderson 2007).

## Principles for effective court-referred alternative dispute resolution in care and protection matters

There are significant operational and procedural differences between court-based care and protection ADR programs operating in different jurisdictions. Some practitioners have attempted to devise best practice guides for jurisdictions seeking

to implement a successful ADR program within the care and protection jurisdiction (Giovannucci & Largent 2009; NADRAC 2011). Although the principles outlined in Table 3 have been drawn primarily from the experiences of mediation programs, similarities between the mediation and conciliation models of ADR means that these lessons may also be applied to programs following a conciliation model of ADR. Findings from a comparison of the design and implementation of the new model of DRC and Legal Aid Pilot with these good practice principles are presented in this report.

### *Stakeholder involvement in planning processes*

Giovannucci and Largent (2009) argue that effective programs should have the input of key stakeholders during the planning and implementation stages of project development. One way stakeholder input may be facilitated is through the formation of a

steering committee comprised of members of key stakeholder groups that include (but are not limited to):

- child protection workers and their legal representatives;
- legal representatives working in the care and protection jurisdiction;
- cultural leaders;
- conference convenors; and
- the judiciary.

It is particularly important that the judiciary are involved in the initial development and planning processes as they will often have primary responsibility for referrals, accepting agreements and upholding the confidentiality of ADR proceedings (Giovannucci & Largent 2009; Thoennes 2009). Giovannucci and Largent (2009) also argue that families should be represented on any steering committee, although it is unclear who would be an appropriate representative of such a disparate group. Suggestions include representatives from foster children support and advocacy groups.

**Table 3 Principles for the implementation of court-referred ADR for care and protection matters**

Stakeholder involvement in planning processes	Key stakeholder groups should be provided with the opportunity to participate in planning processes and should be represented on any steering committee
Stakeholder 'buy-in'	Stakeholder commitment to the program should be encouraged from the outset and throughout the life of the program
Program oversight	Programs should be supported by sufficient staffing and a program director or coordinator who oversees the implementation and management of the program
Clear eligibility criteria	Clear eligibility criteria should be established from the outset of the program and reflect program resources. In particular, these criteria should consider issues of consent, violence and power imbalances
Appropriate timing of referrals	Referrals should be made as early as possible but should also allow time for all the parties to form an opinion and respond to any reports
Trained and competent conference convenors	Conference convenors should have experience in ADR processes, have excellent communication skills and be culturally sensitive. Conference convenors should be supported by ongoing and intensive training
Attendance of important parties	All the important parties in a matter should attend the conference and child protection workers should be in a position to authorise any agreement and negotiate a range of outcomes
Clear expectations of participants	Parties should be prepared to attend a conference and have a clear understanding of what will be expected of them. In particular, they should be encouraged to listen, negotiate in good faith and show respect for the other parties
Confidentiality of proceedings	Any discussions and notes taken during a conference should be covered by clear confidentiality protocols that are understood by all the parties. Any agreement reached during the conference should not be confidential to allow reporting to the court
Cultural appropriateness	The ethnicity and cultural needs of the families should be dealt with sensitively by the conference convenor and the processes adapted to suit the needs of the family
Sustainability	Clear data collection protocols should be established during the early program development and implementation stages to facilitate ongoing evaluation of the program

The steering committee may have a number of purposes, including maintaining the quality of services, overseeing the implementation and management of the program, securing funding, disseminating information about the program, and ensuring the committal of the relevant stakeholder groups. Although the lead agency involved in the project's development will take primary leadership of the steering committee, it has been proposed that a neutral conference convener should run meetings between representatives. This not only ensures that no one party dominates proceedings, but also exposes all the parties to ADR processes in the first instance (Giovannucci & Largent 2009).

### *Stakeholder 'buy-in'*

Stakeholder commitment to any program is essential to its success. A number of the reviewed programs identified stakeholder resistance towards the program as a significant issue, resulting in low referral rates and inappropriate behaviour during conferences (Carruthers 1997; Howieson & Legal Aid WA 2011; Maughan & Daglis 2005; Olson 2003). For example, the evaluation of a care and protection mediation program operating in Nova Scotia found that after three years only 23 matters had proceeded to mediation. The low referral rates were attributed (in part) to the lack of support from child protection workers (Carruthers 1997).

Providing key stakeholder groups with the opportunity to be represented on steering committees is an essential first step to ensuring stakeholder buy-in and support. Other suggested methods for promoting stakeholder buy-in include:

- educational seminars that provide stakeholders with information about the program, including its purpose and how it differs from other pre-existing options;
- keeping stakeholders informed about the program's progress, any changes that are made, as well as any success stories;
- providing stakeholders with the opportunity to give feedback about their experiences in the program and their concerns; and
- mandatory referral and attendance protocols (Giovannucci & Largent 2009).

### *Program oversight*

Programs should be supported by a strong administrative team, including a dedicated program director or coordinator. A project coordinator is particularly important when a program is implemented across a number of sites as they ensure that consistent practices and procedures are employed. The project coordinator is also responsible for:

- communicating and implementing common procedures;
- ensuring that all courts have copies of any practice directions or other related resources;
- organising training for new conference convenors and information sessions for legal representatives and other professional parties on procedures;
- compiling and publishing regular statistics from the program and disseminating them to program parties such as conference convenors; and
- dealing with concerns raised about any conference convenors (Maughan & Daglis 2005; Giovannucci & Largent 2009).

### *Clearly defined eligibility criteria*

Clearly defined program eligibility criteria are essential to a successful program (Berzin et al. 2008; Maughan & Daglis 2005). Program developers should be mindful of program resources and funding when determining the eligibility criteria for a program, as having no restrictions on referrals will be costly and resource intensive. If a program does have an exclusionary set of referral criteria, it should be clear from the outset whose responsibility it is to determine the appropriateness of certain matters (Giovannucci 1997).

There is extensive discussion within the literature as to the suitability of certain care and protection matters for referral. For instance, many practitioners have suggested that conferences are not a suitable venue for determining whether or not a child has been abused or neglected, or are in need of care and protection more generally (Carruthers 1997; NSW DCS 2001). Further, practitioners generally agree that parties should only be involved in a conference if they have the capacity to engage in the decision-making process, and to understand their responsibilities and obligations about any

agreement that may be reached. For example, in the majority of the reviewed programs, parents who have a diminished decision-making capacity were excluded from participating.

Despite these small areas of consensus, the literature is divided on a number of eligibility criteria, particularly in relation to issues of consent, violence and power imbalances.

## Consent

Some practitioners suggest that participation in ADR should be consensual as the ability to choose whether or not to participate empowers parties (Giovannucci & Largent 2009). One of the rationales behind the use of ADR in the care and protection jurisdiction is that parents have a right to participate in decisions that will affect them and their child/ren. If the referral process is not one in which the parents are involved, this principle could be undermined. However, it has been noted that engaging families in ADR processes may require some level of coercion and mandatory referral processes do address the low referral rates that often plague new programs (McHale, Robertson & Clarke 2011).

If participation is voluntary, this should be made clear to all parties. Some research has found that even when participation in ADR is voluntary, parties sometimes do not believe they have a choice, especially where referrals are made by the court (Pearson et al. 1986).

## Violence

The suitability of matters that involve current domestic violence is debated within the literature. Many of the reviewed programs allowed for the referral of matters involving familial violence, although this was considered on a case-by-case basis and usually required assurances that the victim of the abuse was comfortable with the other party's attendance. Wood (2008) also stated that matters that involve familial violence should not be precluded from referral to ADR. The Inquiry noted that violence (actual, threatened or apprehended) is a constant feature of child protection work. As such, its 'presence should not operate to exclude ADR, rather those conducting it should have appropriate training' (Wood 2008: 489).

A number of commentators have argued that many matters involving violence between parties are suitable for ADR as long as the process includes 'screening, education, safety procedures, and well-trained mediators' (Edwards, Baron & Ferrick 2008: 589). For example, some programs that are in many ways comparable to care and protection ADR have developed intake screening tools to identify matters in which violence between parties is a barrier to participation. Convenors involved in the Family Dispute Resolution program operating in New South Wales ask conference participants a series of questions, such as 'do you feel able to talk in front of the person in question?', during the pre-conference consultations to help determine whether the party would be able to engage in the process ADR in a meaningful and appropriate way (KPMG 2008: 33).

Further, it has been suggested that the presence of a well-trained facilitator, victim support persons and legal representatives can help mitigate the power imbalances that exist between victims and perpetrators of violence (Edwards, Baron & Ferrick 2008; Field 2010). In particular, it has been argued that facilitators should be given the power to terminate a conference if they believe that a party or parties are not engaging in the proceedings as a result of violence. Field (2010) also argues that victims and perpetrators of violence should be provided with education prior to their attendance at ADR so they know what the ADR process involves, and how they can communicate with one another and other parties in a healthy and meaningful way.

## Power imbalances

ADR processes work optimally where all parties can participate as equals. Significant power imbalances between the family and child protection services may exist in the care and protection jurisdiction and it is important that this is managed carefully by the conference convenor (Cunningham & van Leeuwen 2005; Maughan & Dagleis 2005; Olson 2003). This can be done by establishing clear rules at the beginning of the conference that all participants are expected to abide by (Olson 2003). However, if an imbalance of power is unresolvable or unmanageable, practitioners agree that the conference convenor should have the necessary authority to terminate the conference (Giovannucci 1997).

## *Appropriate timing of referrals*

There is debate within the literature about the most appropriate timing of referrals to court-based ADR processes in the care and protection jurisdiction. Some commentators and the evaluation literature suggest that early referrals are more likely to result in an agreement, possibly because early referrals avoid the entrenchment of fixed positions, conflict between family members and between family and child protection workers, and negative attitudes towards the process (Edwards 2009; Harris 2007; Olson 2003). However, legal representatives involved in the Victorian pre-hearing conferencing program expressed frustration with the early timing of conferences, arguing that it left them with little time to respond to the submitted case report (Maughan & Daglis 2005).

## *Trained and competent conference convenors*

Culturally competent conference convenors with strong communication skills and experience in ADR are crucial to the success of a program and the lack of suitable conference convenors was highlighted as a deficiency in some of the reviewed programs. The majority of the reviewed programs used professional conference convenors, many of whom had experience in family law ADR processes (Carruthers 1997).

Even if a conference convenor has extensive experience in ADR, it has been argued that they should still receive intensive education and training in child protection ADR processes (Giovannucci 1997). Giovannucci and Largent (2009) suggest that, at a minimum, conference convenors should be provided with training that covers:

- basic mediation skills;
- the distinction between various types of alternative dispute resolution;
- the detection and management of mental illness, drug and alcohol issues and intellectual disabilities;
- an overview of the specific child welfare system;
- an overview of the roles of each possible mediation participant;
- effective mediation techniques to deal with impasse or emotionality;

- ethical considerations; and
- specialised topics such as substance abuse, child development, domestic violence, program guidelines and the referral process.

## *Attendance of important parties*

A number of commentators have emphasised the need for all major parties involved in a matter to participate in a conference. At a minimum, this requires the parent(s) and child protection caseworker to attend (Giovannucci 1997; Thoennes 2009). In particular, it is important that the child protection agency representatives present at a conference have the authority to negotiate around a range of possible outcomes and to authorise any agreement made during the proceedings (Giovannucci 1997; Maughan & Daglis 2005).

The absence of key decision makers at a conference can create unnecessary delays and undermine the negotiation process. For example, in the Victorian pre-hearing conferencing program, the caseworker present at the proceedings often did not have the necessary authority to validate agreements and would be required to contact their supervisor for approval. This sometimes resulted in parties becoming frustrated, especially when the supervisor did not agree to the plan (Maughan & Daglis 2005).

The attendance of legal counsel is a significant point of variation across jurisdictions. Some programs require that every party at the table have legal representation, others encourage legal counsel but do not mandate it and some discourage the attendance of legal counsel altogether (Thoennes 2009). It has been suggested that the attendance of legal counsel at a conference is undesirable as they may dominate the proceedings and stop their client from talking directly to the other parties if they are worried about self-incrimination (Maughan & Daglis 2005). However, some concerns have been raised in relation to programs that discourage legal representation (eg FGCs) as some parties, particularly family members, may be negotiating away their legal rights.

Whether a child or young person should be expected to attend a conference is another point of division in the literature. It has been suggested that children experience benefits from participation in a conference,

such as feelings of empowerment arising from their involvement in decisions that directly affect them. However, participation in a conference has the potential to be emotionally distressing and traumatising for children (Carruthers 1997). Many of the reviewed programs allowed the conference convenor to make a case-by-case determination about the appropriateness of a child's attendance. Conference convenors took a range of issues into account when making this determination, including the child's:

- age;
- maturity and development level;
- emotional state;
- ability to understand the nature of the process;
- ability to articulate their wishes; and
- desire to participate and the purpose of their participation (Giovannucci & Largent 2009).

Even if the child/ren is not present during the conference, commentators generally agree that their wishes should still be a factor in the decision-making process (Giovannucci & Largent 2009; Thoennes 2009).

Child participation in ADR can be facilitated in a number of ways, including the presence of a legal representative for the child or young person at the table, pre-conference interviews with the conference convenor and/or submitting a written statement that is read out during the conference. Regardless of whether the child is involved in the discussions directly or through another party, there needs to be strict guidelines and practices in place to ensure that the child understands the proceedings and can make informed choices about their level of involvement (Maughan & Daglis 2005).

### *Clearly defined terms of participation*

ADR practice guides specify that parties are expected to:

- participate in good faith;
- approach the process with an open mind;
- talk to the other participants openly and respectfully;
- provide information that the other parties have asked for;

- show commitment to the process by listening to the other views and by putting forward and considering options for resolution; and
- aim to reach an agreement (NADRAC 2011).

Parties attending a conference should have a clear understanding of what is expected of them during and after the proceedings and the conference convenor should proactively enforce these codes of practice (Giovannucci 1997). However, a number of the reviewed programs found that many participants often did not understand the conference process or their part in it. This resulted in some participants behaving in an adversarial or aggressive manner, or taking positional stances that were not open to negotiation (Olson 2003; Pearson et al 1986). Practitioners argue that programs should include clearly defined guidelines around participation in program policies, which are communicated to parties in the referral orders, and in any discussions that the conference convenor has with the parties prior to their attendance (Giovannucci & Largent 2009; Maughan & Daglis 2005).

Research also indicates that it is important that the conference convenor's role is clearly understood by all the parties involved in a conference and by the conference convenor themselves. An evaluation of the Victorian pre-hearing conferencing program found that many of the conference convenors were unclear about whether they were mediators or conciliators. This lack of clarity resulted in tension between conference convenors and legal representatives, who were resentful when the conference convenor acted outside of their neutral mediator role (Maughan & Daglis 2005).

### *Clearly defined confidentiality protocols*

Confidentiality is a cornerstone of effective ADR processes. Appropriate confidentiality protocols encourage open and frank discussions, break down barriers and increase trust and communication (Barsky & Trocme 1986; NADRAC 2011). Confidentiality protocols should clearly define what information can (and cannot) be reported (Olson 2003). In addition, any agreement reached in a court-based care and protection ADR program will typically need to be reported back to the court for

endorsement. Therefore, the confidentiality protocols should also outline what constitutes an agreement and agreement reporting processes.

To ensure that parties understand the meaning and limits of confidentiality, ADR practice guides suggest that the conference convenor explain the confidentiality protocols to parties prior to and at the beginning of the conference (Giovannucci 1997; NADRAC 2011). The research indicates that it is particularly important that conference convenors ensure that family members fully understand the terms of confidentiality. For example, a survey of parents who participated in a Canadian child mediation program found that even after being provided with information about the confidentiality protocols by their legal representative, 25 percent of respondents reported that they still did not understand them (Dobbin, Gatowski & Litchfield 2001). Conference convenors and legal representatives should use plain language during conversations with family members about confidentiality and in any confidentiality agreements.

### *Cultural appropriateness*

A number of factors contribute to the cultural appropriateness of court-based ADR processes in the care and protection jurisdiction. These include the identity and behaviour of the conference convenor and attendees, the timing and location of a conference and the processes involved. In particular,

the use of language is important. Language should be jargon-free and easily understood by all parties. The native language of the parents should be recognised and accommodated through the use of an interpreter (Giovannucci & Largent 2009). Ideally, the ethnicity and cultural backgrounds of the families being served by the mediation program will be represented in the conference convenor pool. Conference convenors should be culturally competent and willing to adjust their methods to suit the cultural needs and ethnicity of the families they are meeting with. This may be facilitated through cultural sensitivity training, which is ongoing throughout the life of the program (Giovannucci & Largent 2009).

### *Sustainability*

The long-term sustainability of an ADR program is dependent upon its formalisation and institutionalisation, which will inevitably involve some form of evaluation. However, a common issue encountered by researchers analysing the effectiveness of care and protection ADR processes has been incomplete and inaccurate client data (Berzin et al. 2008; Eaton, Whalen & Anderson 2007; Mayer 1989). During the implementation phase of the project, clear and consistent data collection protocols should be instituted, as well as suitable information technologies that facilitate such processes.



# The design and implementation of the new model of dispute resolution conference and Legal Aid Pilot

The following sections of the report present the findings from the AIC's evaluation of the design, implementation and operation of the new model of DRC and the Legal Aid Pilot (the process evaluation). This includes a review of the establishment of DRCs and the Legal Aid Pilot, the referral of care matters to ADR, DRCs and conferences held as part of the Legal Aid Pilot, agreements reached on issues discussed at the conferences and the contribution of DRCs and the Legal Aid Pilot to care orders and care plans. Issues impacting on the operation of the two programs are identified and discussed.

## Key features of the dispute resolution conferences and Legal Aid Pilot

The new model of DRC and the Legal Aid Pilot are both court-referred ADR programs that operate within the care and protection jurisdiction of the NSW Children's Court. There are important differences between the two programs and other decision-making processes, including the previous model of preliminary conferences and Children's Court hearings. Understanding the nature of these differences is important in evaluating the

mechanisms through which the two programs aim to contribute to more positive outcomes for families within the care and protection jurisdiction and for the Children's Court.

It is possible to identify a number of features that distinguish DRCs and the Legal Aid Pilot from Children's Court hearings, based on a review of program documentation and interviews with those stakeholders involved in the two programs:

- DRCs and the Legal Aid Pilot provide an opportunity for the parties involved in a matter to meet as part of a non-adversarial process where all parties can openly and respectfully discuss the issues relevant to the care application.
- The ADR process is less formal than a court hearing and while there is a basic model that underpins this process, there is sufficient flexibility to enable the process to be adapted to the needs of the parties involved and the issues that are being discussed.
- Parents and other family members are encouraged to speak for themselves wherever possible (rather than through their legal representative) and similarly, legal representatives and Community Services staff involved in proceedings are encouraged to speak directly to the family and to limit the use of legal jargon during the conference.

- Conferences take place outside of the courtroom in an attempt to provide a less threatening setting in which to discuss issues relevant to the care application.
- Conferences are facilitated by a neutral third party, whose role is to encourage parties to work together to reach an agreement on the action that should be taken in relation to the child or young person, as opposed a Magistrate reaching a final decision based on the information that is presented to them.
- there are clearer guidelines about the attendance, participation and responsibilities of the various parties' legal representatives and Community Services, and how these responsibilities differ to a Children's Court hearing.

## Key differences between the two programs and preliminary conferences

There are also a number of important differences between the new model of DRC, the Legal Aid Pilot and preliminary conferences that were conducted in the Children's Court under s 65 of the Care Act. Wood (2008) heard evidence that suggested that there was no real form of ADR operating within the care jurisdiction in New South Wales. In response to these findings and the recommendations made by Wood (2008), a concerted effort has been made to ensure the integration of ADR into care and protection matters. DRCs and Legal Aid Pilot conferences therefore differ from preliminary conferences operationally in a number of ways:

- there is a stronger emphasis on the direct participation of the child or young person's family in the decision-making process;
- clear guidelines have been established to ensure that DRCs and Legal Aid Pilot conferences operate in accordance with the principles of ADR (participation of all parties, commitment to good faith negotiations etc);
- DRCs and Legal Aid Pilot conferences run for longer (DRCs are scheduled to run for a minimum duration of 2 hours and conferences under the Legal Aid Pilot for a minimum of 3 hours);
- Children's Registrars have been provided with training in ADR to assist them to perform their role as conference convenors and the mediators in the Legal Aid Pilot, who are all experienced mediators on the Legal Aid Family Dispute Resolution Service panel, have been offered additional training in the care and protection jurisdiction; and
- The Legal Aid Pilot has operated exclusively in dealing with Bidura Children's Court matters. DRCs operate across New South Wales (some matters from the Bidura Children's Court may be referred to a DRC if they do not meet the eligibility requirements for the Legal Aid Pilot), including both metropolitan and regional locations. This has a number of important implications for the implementation and operation of the Legal Aid Pilot that need to be considered in reviewing the findings presented in this report. Specifically:
  - the Legal Aid Pilot is dependent upon appropriate matters coming before the Bidura Children's Court and the willingness of a small number of Magistrates working in that Court to refer matters to the program;
  - the localisation of matters to Bidura means that only a limited number of legal representatives, Community Services Caseworkers and Managers Casework are involved in the program;
  - matters referred to the Legal Aid Pilot are limited to a specific geographically defined demographic; and
  - there are issues relating to the implementation and operation of the Legal Aid Pilot that mirror issues relevant to the operation of DRCs in regional areas (eg lack of available legal representatives etc).
- Because they operate within the NSW Children's Court, DRCs are convened by a Children's Registrar, while the conferences held as part of the Legal Aid Pilot are convened by external mediators.

## Key differences between the two programs

Overall, the new model of DRC and Legal Aid Pilot share a number of similarities in terms of their design and implementation. However, there are also key differences between the two programs.

- DRCs operate in accordance with a conciliation model of ADR, because this mode of operation better suits the skills and experience of the Children's Registrars (ie because of their knowledge of and legal expertise in the care and protection jurisdiction). Conferences held as part of the Legal Aid Pilot operate in accordance with a mediation model of ADR. There are important differences in the role of the Children's Registrar and mediator.
- Care matters may be referred to a DRC at any stage in the process after a care application in relation to a child or young person has been filed in the Children's Court and relevant parties have been notified. A matter may only be referred to the Legal Aid Pilot after it is has been established that the child is in need of care and protection or after the granting of leave (for s 90 applications; referred to as establishment throughout this report).
- The length of time allocated to each conference differs between the two programs. Due to resourcing constraints, DRCs are scheduled to run for two hours and in the Legal Aid Pilot, three hours are allocated to each conference.
- Conferences held as part of the new model of DRC take place in the relevant Children's Court building (usually but not always outside of the courtroom). Conferences held as part of the Legal Aid Pilot are conducted in Legal Aid NSW head office in central Sydney.

These issues are discussed in more detail in the remaining sections of this report. It is not the purpose of this report to directly compare the DRCs and Legal Aid Pilot in terms of their overall performance. Instead, the report aims to identify the strengths of both programs, as well as a number of factors that may be impacting upon their operation and effectiveness.

## Program guidelines and operating framework

Section 65 of the Care Act stipulates that, once a care application has been filed in relation to a child or young person and the relevant parties have been notified, a Children's Registrar is to arrange and

conduct a DRC between the parties involved in the matter (or defer it to a later time in proceedings). The Care Act also prescribes the conditions that must be met in order for the requirement of a DRC to be dispensed with. Section 65A of the Care Act also empowers the Children's Court to make an order that the parties to a care application attend an ADR service (external to the court) in relation to the proceedings before the court or any aspect of those proceedings.

The purpose of the DRCs and role of the Children's Registrar are both outlined in the Care Act. However, in February 2011, the President of the NSW Children's Court issued Practice Note 3, which clearly describes in more detail the purpose of the DRC, the process involved once a matter is referred to a DRC, who is required to attend the conference and the roles and responsibilities of parties involved in a DRC. While Practice Note 3 primarily deals with the operation of the DRC, it also states that:

Where the Court makes an order that the parties to a care application attend external ADR under s 65A of the Care Act, the Court expects that all attendees at that service will comply with the responsibilities and obligations that apply in a DRC as required by this Practice Note (paragraph 18).

This means that the practice and procedures set out in this Practice Note 3 also apply to the Legal Aid Pilot. The purpose of a conference held as part of the Legal Aid Pilot and the roles and responsibilities of the parties involved (with the exception of the mediator) are therefore the same as the DRC.

Several documents have been produced to support the implementation and operation of DRCs and the Legal Aid Pilot, providing guidance to the parties involved in accordance with the procedures outlined within Practice Note 3. These include guidelines for conducting a DRC and a practice and procedure manual for Community Services Caseworkers. In July 2011, Legal Aid NSW released a document that describes the mediation process and the steps to be taken by the mediator at each stage in the proceedings.

The Legal Aid Pilot was in operation prior to the release of Practice Note 3 and is based on the Legal Aid Family Dispute Resolution Service, adapted to

suit care and protection matters. The Legal Aid Pilot was developed in accordance with the original proposal considered by Wood (2008) and described in the ADR Expert Working Party (2009) report. Those stakeholders involved in the program indicated that the implementation of the Legal Aid Pilot involved some adjustment during its initial stages, as the Family Dispute Resolution Service model was adapted to suit the unique requirements of care matters.

Feedback from the various stakeholders involved in DRCs and the Legal Aid Pilot indicate that there is a high level of awareness and understanding of the conference process and the parameters that define the operation of the two programs. This is likely to be due to a combination of factors, including the availability of information regarding their operation (eg the Practice Note, guidelines developed by Legal Aid in mid-2011, promotional material etc) the experience of these stakeholders with the previous preliminary conferences and Family Dispute Resolution Service, the development of promotional material supporting both programs and the investment in training and awareness raising that has supported the implementation of the DRCs and Legal Aid Pilot (see below).

However, feedback from other stakeholders suggests that the absence of specific guidelines that described the procedures within the Legal Aid Pilot initially resulted in some confusion among participants as to how the conferences were intended to be run and how and why they differ from conferences held as part of the DRC. In particular, there appeared to be different views regarding the role of the mediators in conferences held as part of the Legal Aid Pilot among legal representatives, Community Services Caseworkers and Managers Casework and the mediators themselves. The development and distribution of additional guidelines describing the operation of the Legal Aid Pilot, the ongoing process of building awareness and understanding of the program and practitioners' experience in the program over time appear to have improved practitioners' understanding of the mediation process. There was little evidence provided during the second stage on interviews and qualitative survey to suggest that this issue had persisted during the second half of the evaluation period.

## Program funding

The implementation of DRCs and the Legal Aid Pilot were supported by additional funding provided to the Children's Court, Legal Aid and Community Services. This included funding to cover:

- the appointment of a Senior Children's Registrar and four additional Children's Registrar positions;
- travel by Children's Registrars to attend DRCs held across New South Wales;
- the involvement of mediators from the Family Dispute Resolution Service panel as part of the Legal Aid Pilot, as well as administrative support for the program;
- the attendance of Legal Aid lawyers at DRCs and conferences held as part of the Legal Aid Pilot;
- the attendance of FaCS lawyers, Caseworkers and Managers Casework at the conferences, as well as an increase in the number of positions to support the involvement in ADR; and
- training for Children's Registrars, mediators, Community Services Caseworkers and Managers Casework, and legal practitioners involved in care and protection proceedings.

Feedback from these stakeholders indicated that the program has been adequately resourced for the duration of the evaluation period. There was some feedback from Legal Aid that additional support was required for tasks associated with the administration of the program, including tasks associated with the ongoing monitoring of the program as part of the evaluation. Other issues relating to program funding and resourcing are discussed in relevant sections of this report. However, many of those involved in the program argued that both the DRCs and Legal Aid Pilot required a sustained level of funding to support the continuation of the program (subject to the findings from the evaluation).

## Building the capacity of those involved in alternative dispute resolution through training and development

Wood (2008) recommended that, in order to increase the use of ADR in care matters, there

needed to be a sufficient number of legally qualified Children's Registrars and that these Children's Registrars needed to be provided with adequate training to enable them to perform their role as ADR conference convenors. Previous experience implementing ADR processes in the child protection system has highlighted the importance of conference convenors having expertise or experience in ADR processes as well as strong communication skills (Giovannucci 1997; Giovannucci & Largent 2009). Previous experience has also highlighted the importance of an ongoing program of training and development for conference convenors and other parties involved in proceedings. The Expert Working Party recognised the need for training in ADR to be provided to Community Services staff and lawyers practising in the Children's Court, so that they could participate effectively in DRCs and the Legal Aid Pilot (ADREWP 2009).

There has been a significant commitment to, and investment in, training to support the introduction and establishment of the two programs. The introduction of the new model of DRC was supported by the appointment of four additional Children's Registrars and a Senior Children's Registrar, and training is being provided to Children's Registrars, legal practitioners, Community Services Caseworkers and Managers Casework. Training was provided prior to and at the commencement of the program, and continues to be provided on an ongoing basis.

The range of training provided to stakeholders involved in DRCs and the Legal Aid Pilot is summarised in Table 4. DAGJ and Legal Aid contracted LEADR, a professional ADR membership organisation that also provides training and accreditation services, to undertake a significant proportion of the formal training. In addition to the formal training offered to parties involved in ADR, other less formal training opportunities and information materials have been made available. For example, the DRCs conference coordinator regularly provides legal representatives with resources including a DVD and pamphlets to assist them to better understand their role in ADR processes and a similar information brochure is now available to participants and practitioners involved in the Legal Aid Pilot.

Further, a cross-observational program between the Children's Registrars and mediators commenced in September 2010 and continues to operate. This recognises that the external mediators and Children's Registrars bring to their roles expertise and knowledge in different areas. The mediators have extensive prior experience in ADR processes in a range of matters, but less experience in the care and protection jurisdiction. Children's Registrars have extensive legal knowledge and understanding of the care and protection area, but the majority lack prior experience in ADR. Providing the opportunity for Children's Registrars and mediators to observe one another and then to provide feedback (where appropriate) or suggestions based on their own experience or expertise is important. Feedback from the Children's Registrars and mediators provided through the interviews and focus groups indicated that this was a highly valued exercise that helped to provide practical examples and situations to demonstrate how to apply and adapt the skills developed through formal training.

Further, a number of Children's Registrars and external mediators suggested that part of their role as conference convenors has been to raise awareness and help inform other participants (especially legal representatives and Community Services staff) about the ADR process and their role within the process. For example, a number of Children's Registrars said that they had, on a number of occasions, counselled participants on what was appropriate and inappropriate behaviour in a conference. However, while some mediators suggested that they too have an education role, they also argued that this was difficult to negotiate in practice considering their perceived lack of expertise in care and protection matters. One mediator also questioned whether they would be stepping outside of their role as an independent conference convenor by appearing to challenge the conduct of a legal representative.

Nevertheless, interviews with parties involved in ADR and the qualitative survey identified some areas for additional training and development. Mediators involved in the Legal Aid Pilot noted that, while they have been provided with a number of opportunities to observe DRCs and provide feedback to Children's Registrars, there had been limited opportunities to meet as a group to discuss issues relating to the

**Table 4 Summary of training provided to stakeholders involved in ADR**

Stakeholder	Description of the training provided
Children's Registrars	<p>Five day mediation course</p> <p>One day workshop prior to the introduction of the new model of DRC to discuss the model to be used and to workshop various scenarios that they may encounter during a conference</p> <p>Co-conferencing</p> <p>Two one-day team meetings involving all Children's Registrars to provide a forum to raise issues and workshop solutions as a peer group</p> <p>Two day conciliation workshop covering effective questioning techniques, working with young parents and people with mental health and substance abuse issues, confidentiality and debriefing</p>
Mediators	<p>Five day induction training workshop for the initial intake of mediators. A second round of new mediators participated in a one day abridged induction course</p> <p>Half day workshop on recent changes to the care and protection jurisdiction</p> <p>Two day workshop in advanced conciliation skills</p> <p>One day workshop on Indigenous cultural awareness</p> <p>One day care and protection conference</p> <p>Half day development training workshop</p> <p>Ongoing clinical supervision by the Senior Mediation Co-Ordinator</p> <p>Half day workshop focused on reviewing/amending the model</p>
Legal representatives and Community Services	<p>All Community Services in-house lawyers took part in five day ADR course</p> <p>Information sessions conducted by DAGJ for lawyers and Community Services managerial staff (including Manager Casework) throughout New South Wales. Sessions covered the purpose of child protection ADR, the model used in conferences, pre-conference preparation required of lawyers and Community Services, the role of lawyers and Community Services in conferences and how lawyers and Community Services can participate meaningfully in the process. Community Services issued a casework practice topic to all Caseworkers and Managers Casework. Document covers the purpose of ADR in the care jurisdiction, the preparation expected of Caseworkers prior to a conference, the role of Caseworkers in a conferences and confidentiality, as well as other procedural information</p> <p>Information sessions on the Legal Aid Pilot conducted by Legal Aid for all relevant Community Services Centres</p> <p>Two hour seminars conducted by DAGJ and facilitated by LEADR throughout New South Wales. The purpose of these seminars was to further clarify what conciliation is, the role of lawyers in preparing their client for conciliation and the role of lawyers within conferences</p> <p>Fifteen in-house Legal Aid care and protection lawyers and 15 DAGJ Courts and Tribunal staff undertook a five day ADR course</p>
Magistrates	<p>During the Children's Court Magistrate's conference held at the beginning on 2011, two sessions were held in relation to ADR; one on the new model of DRC and the Legal Aid Pilot and the other on the use of ADR techniques in court</p> <p>The President of the Children's Court gave a presentation to Local Court Magistrates at both the South and North Regional conference that included a section on the new DRC model</p>

running of conferences and share knowledge or experiences. During the first focus group, there were a number of suggestions about the adaptation of the Family Dispute Resolution Service model of mediation to care and protection matters based on practical experience shared among the group. Mediators that had recently joined the Legal Aid Pilot appeared to find this particularly valuable and there was a suggestion that future opportunities should be provided to facilitate this discussion.

Further, Magistrates from the Bidura Children's Court, a number of legal representatives who had participated in the Legal Aid Pilot and the mediators themselves suggested that there was a need to provide additional training to mediators to improve their knowledge of the Care Act, the care and protection jurisdiction more generally and the policies of Legal Aid and Community Services relevant to issues dealt with during conferences. In mid-2011, Legal Aid held a half day workshop for the mediators on changes to the care and protection jurisdiction of the Children's Court. The impact of this additional training in addressing the concerns raised by different stakeholders about the mediators' knowledge of the care and protection jurisdiction is difficult to assess, but feedback from the mediators suggests that their understanding of the care and protection jurisdiction had improved and that this had improve their capacity to convene conferences effectively.

Finally, while legal representatives and Community Services have been provided with opportunities for training in the use of ADR, there was some suggestion that those practitioners that had participated in the training were those that were largely supportive of the programs and engaged in the process, and that those in need of the training were the ones less likely to receive it. Training therefore needs to be ongoing, targeted at those professionals with identified needs and available to those professionals new to the care and protection area and/or ADR processes. The purpose of describing the training that has been provided in this report was to demonstrate the level of investment that will be required to sustain the programs in the longer term, particularly as new conference convenors are appointed.

## Stakeholder support for the new model of dispute resolution conference and the Legal Aid Pilot

The review of the use of ADR for care and protection matters highlighted the importance of stakeholder involvement in the development of the program and ongoing support post-implementation. Specifically, previous experience has highlighted the need for key stakeholder groups to be provided with the opportunity to participate in planning processes and to provide oversight through representation on relevant steering committees. Similarly, stakeholder commitment needs to be maintained throughout the implementation of ADR processes to ensure that the program can be sustained.

There are a number of stakeholders who are involved in the delivery and management of the two programs. This includes Children's Court Magistrates, DAGJ, Children's Registrars, mediators, Legal Aid, Community Services, ALS and various program staff. In order for DRCs and the Legal Aid Pilot to be successful, they require a high level of support from these stakeholders, as well as a high level of participation in the program.

Overall, it appears that the DRCs and Legal Aid Pilot are generally well supported by those involved in the process and stakeholder feedback suggests that this support has continued to increase during the evaluation period. The ADR Expert Working Party provided an important vehicle through which to engage the relevant stakeholders in the development and design of the two programs. This group was disbanded after the delivery of its final report to government in December 2009. An ADR Steering Committee, which comprises representatives from the various stakeholders involved in the programs, now meets on a quarterly basis to monitor the implementation and oversee the operation of the two programs.

Nevertheless, there was a range of views about the programs expressed by different parties who participated in an interview, focus group or qualitative survey. It is possible to draw the following conclusions based on the views that were expressed about the use of ADR in the care and protection jurisdiction:

- The commitment to genuine ADR within the care and protection jurisdiction is a positive step that has the potential to deliver positive outcomes for families and for the Children's Court.
- Resistance to the programs has gradually eased since they were established and the attitudes of those stakeholders who were initially less supportive of the programs are slowly changing.
- The majority of legal practitioners reported being supportive of the use of ADR and are willing to engage in the process in a meaningful way, although in certain locations, particularly in some regional areas, legal practitioners continue to approach conferences with an adversarial and litigious mindset.
- There is a perception that some Community Services staff were reluctant to participate in conferences, tended to approach ADR with fixed positions and as a result, appeared unwilling to negotiate with families.
- Most of the Magistrates interviewed as part of the evaluation are supportive of the use of ADR in care and protection matters. A smaller number of Magistrates are of the view that those matters that are going to be settled or resolved on the basis of consent would be resolved with or without being referred to ADR and that the defining feature of the introduction of ADR was that parties have been provided with an opportunity to resolve the matter outside of the courtroom.
- The implementation of ADR processes requires a significant adjustment in the mindset of parties involved and the way the parties approach certain issues and conduct themselves during proceedings.
- Achieving this change in thinking and behaviour requires a cultural shift and based on the experience of ADR in other jurisdictions, requires long-term commitment in order to affect sustainable change.

Stakeholders' perceptions of DRCs and the Legal Aid Pilot appeared to be based on their (sometimes limited) experience in one or both programs. Their views about the ability of Children Registrars and/or mediators to successfully encourage parties to reach agreement appear to have a significant influence over their view of the programs more generally. Further, most of the criticisms regarding the use of ADR, either as part of the DRCs or Legal Aid Pilot, are primarily focused on specific aspects of the process or issues relating to their operation (and are discussed in the relevant sections of this report), rather than opposition to the use of ADR in the care and protection jurisdiction in general. This is encouraging, as it suggests that if these concerns are addressed, stakeholder support for the programs may continue to increase.



# The referral of care matters to alternative dispute resolution

This section of the report describes issues relating to the referral of matters to ADR. It begins by providing an overview of the referral process and data on the number of referrals to both the DRCs and Legal Aid Pilot, and then examines two key issues relevant to the referral process—the suitability of different matters for ADR and the timing of referrals.

## The referral process

The decision to refer a matter to DRC or the Legal Aid Pilot is at the discretion of the Children’s Court. Once an application to initiate care proceedings has been filed in the Children’s Court, the Magistrate or Children’s Registrar responsible for the management of the case will determine if and when the matter should be referred to ADR, in consultation with the parties involved in proceedings. Section 65 of the Care Act stipulates that care matters may be referred to a DRC at any stage in the process after a care application in relation to a child or young person has been filed in the Children’s Court and relevant parties have been notified. According to Practice Note 3 (paragraph 20.1) a matter may only be referred to the Legal Aid Pilot after it has been established that the child is in need of care and protection or after the granting of leave (for s 90 applications).

## Matters referred to alternative dispute resolution

The NSW Children’s Court does not routinely record information on whether a matter is referred to ADR, although processes have been established in an attempt to collect this information. As such, it was not possible to determine the total proportion of all matters that were referred to ADR. Therefore, in order to determine the rate of referral to ADR for care applications filed with the NSW Children’s Court, it was necessary to identify suitable alternative measures based on available data. Two measures were identified—the total number of conferences held as part of each program and the ratio of conferences held to new applications filed.

Officers appointed to support the implementation of ADR in the Children’s Court record the total number of conferences held in each Children’s Court location. Based on these data, the total number of DRCs held across New South Wales by month from February 2011 (when the program commenced) until December 2011 is presented in Figure 2. There were 1,096 conferences held during this period. As shown by the trend line, the number of conferences held gradually increased over this period, before stabilising towards the end of 2011.

To generate an equivalent measure for the Legal Aid Pilot, the post conference reports completed by mediators were used to determine the total number of conferences held as part of the program since it was established. The number of conferences held as part of the Legal Aid Pilot by month from September 2010 (when the program commenced) until December 2011 is presented in Figure 3. There were a total of 84 conferences held during this period. As shown by the trend line, the number of conferences held gradually increased over time. It is important to note that the comparatively low number of conferences held as part of the Legal Aid Pilot is due to the Pilot being restricted to the Bidura Children's Court, whereas the new model DRC operates across metropolitan and regional New South Wales.

While these data provides some indication of the number of conferences held as part of both programs (and associated trends), it does not enable an assessment of the proportion of matters that were referred to ADR during the evaluation. Therefore, additional data were sourced on the number of care applications that were filed in a number of Children's Court locations (Parramatta, Broadmeadow, Bidura, Albury and Wagga Wagga Children's Courts). These locations were selected because they were included in the court file review (reported in later sections of this report). The AIC was provided with a copy of the care register for each Children's Court, which records basic information about applications filed with the court (including the date of application).

This information was used to determine the number of new matters initiated in each court location over the same period that DRCs and the Legal Aid Pilot were in operation. Within these care registers, an application refers to an application to initiate care and protection proceedings for one child. Given that a conference will often deal with multiple children from the same family (and a matter was defined as care and protection proceedings for one or more children from the same family dealt with at the same time), it was necessary to develop counting rules to determine the number of matters that could be referred to ADR. For the purpose of this evaluation, the number of new matters was calculated using the following counting procedure:

- the surname of the child and date of application (exact or near match) were used to identify children from the same family (ie unique matters);
- the first application date for each family during the evaluation period was identified and recorded as the commencement date for that matter; and
- (where possible) s 76 and s 82 reports were identified and excluded from the total number of matters as these application types were not eligible for referral to ADR.

At the end of this process, it was determined that the information available in the care register from Broadmeadow was insufficient to identify unique matters and monthly figures were not available for Wagga Wagga Children's Court. Using the data that were available, the ratio of DRCs held to the new matters commenced in the Parramatta, Albury and Wagga Wagga Children's Courts between February 2011 and December 2011 was calculated (see Table 5). The ratio of Legal Aid Pilot conferences held during the evaluation period to new matters initiated in the Bidura Children's Court during an equivalent period was also calculated (see Table 5).

These results show that the ratio of DRCs to new matters was 0.8 in the Parramatta Children's Court, 1.1 in the Albury and Wagga Children's Courts and 0.4 in the Bidura Children's Court, and that this ratio has varied over the period in question. There is an important lag effect to consider when interpreting these results. Matters that commenced in one month were not referred to ADR until some months later (eg conferences held in 2011 could be for matters initiated in 2010). The number of new matters in any given month could therefore be lower than the number of conferences. Further, the number of conferences held does not account for multiple conferences for the same matter and the number of conferences held does not include those matters that were referred to ADR but for which a conference never took place. Relying on these data as a measure of the referral rate for ADR assumes that the number of new matters has remained relatively steady from mid to late 2010, that the proportion of matters referred to ADR on multiple occasions was relatively low and that these court locations are representative of Children's Court practices across New South Wales (for DRCs).

**Figure 2** Total number of DRCs held across New South Wales, by month (with trend line)



Source: NSW Children's Court [computer file]

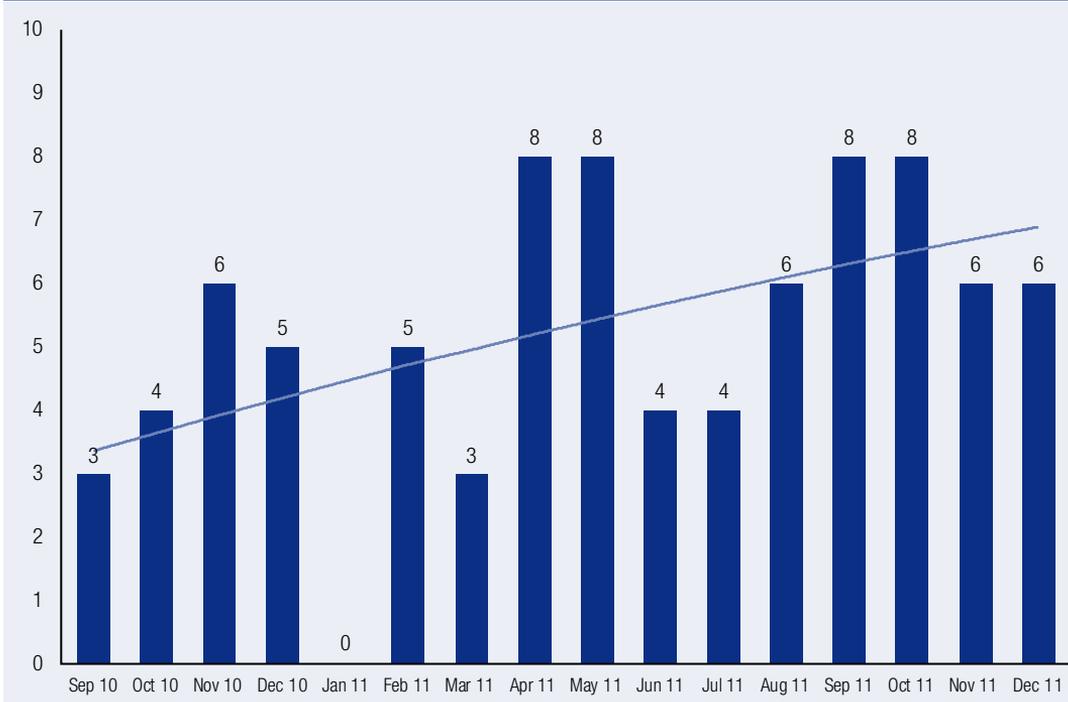
Limitations aside, taken as a whole these results suggest that there has been a steady increase in the number of conferences held since the two programs were established, which was consistent with the information provided by stakeholders involved in both the DRCs and Legal Aid Pilot. These stakeholders suggested that this increase was due to growing support for the use of ADR in care and protection matters. The ratio of DRCs held to new matters in the Parramatta, Albury and Wagga Wagga Children's Court was also high, suggesting that a large proportion of matters are being referred to ADR in these locations.

These results also indicate that the rate of referral of matters in the Bidura Children's Court to the Legal Aid Pilot was consistently lower than for matters referred to a DRC from the Parramatta Children's Court, which was consistent with the anecdotal feedback from stakeholders involved in the Pilot. Feedback from stakeholders involved in the Legal Aid Pilot suggests that referral rates to the program have been inconsistent since the process was established.

Although the precise reasons for this are unclear, there may be a number of contributing factors. The conditions that define the circumstances in which an eligible matter may be exempt from being referred are not stated in the Care Act or in Practice Note 3 and the final decision is at the discretion of the Magistrate (as it is for DRCs). Other stakeholders indicated that they were unsure of the criteria used by a Magistrate to determine the suitability of matters for referral to the Legal Aid Pilot. While there were no data available on the extent to which applications made by legal practitioners (for parents) to have matters referred to the Legal Aid Pilot have been refused, some stakeholders suggested that it was more common in the Bidura Children's Court for Magistrates to decide not refer a matter to the Legal Aid Pilot when the referral was opposed by Community Services.

The interview with Magistrates responsible for referring matters to the Legal Aid Pilot highlighted a number of issues relevant to the referral of matters to ADR. First, the referral of matters to ADR depends on the perceived likelihood that ADR will result in the issues

**Figure 3** Total number of Legal Aid Pilot conferences held, by month (with trend line)



Source: DAGJ post-conference report data September 2010–February 2012 [computer file]

relevant to the care application being resolved. Second, the provisions relating to the confidentiality of discussions that take place during a conference limits the amount of information that is reported back to the Court. Magistrates are therefore not receiving information on the benefits of a matter having been referred to ADR, unless the conference results in agreement being reached (this is discussed in later sections of this report).

A further issue relates to the delay in scheduling conferences. Magistrates involved in the Legal Aid Pilot reported that, due to resource constraints, on some occasions it was taking longer than the prescribed two to four weeks for a conference to be held, which may contribute to delays in finalising matters. The Children’s Court aims to finalise 90 percent of care matters within nine months from the date of commencement and 100 percent of care matters within 12 months from the date of commencement. Potential delays in the finalisation of matters (especially when ADR does not result in agreement) may therefore be a deterrent to matters being referred to the Legal Aid Pilot. Legal Aid NSW

has reported the reasons for these delays as being the availability of legal representatives (the preference being to ensure that the practitioners with carriage of the matter attend the conference rather than send an agent) and the need for certain steps to be taken and/or evidence obtained or filed prior to the conference being held. Similar issues were reported in the DRCs in some regional areas, where the number of available legal representatives is limited and the time taken to find a date where all parties are available can be considerable.

## Referral outcomes

Children’s Registrars and mediators completed a post-conference report for matters that were referred to ADR during the evaluation period. Information was recorded for a total of 784 unique matters that were referred to a DRC on at least one occasion and a further 91 matters that were referred to the Legal Aid Pilot. This information included whether the referral of a matter resulted in a conference being held.

**Table 5** Ratio of conferences held during the evaluation period to new matters, by Children’s Court location, February to December 2011

	Number of new matters	Number of conferences held	Ratio of conferences to new matters
<b>DRC</b>			
Parramatta Children’s Court	524	417	0.80
Albury and Wagga Wagga Children’s Court	38	42	1.11
<b>Legal Aid Pilot</b>			
Bidura Children’s Court	166	66	0.40

Source: DAGJ Post-conference report data September 2010—February 2012; NSW Children’s Court [computer files]

Table 6 shows that the majority of matters referred to a DRC or Legal Aid Pilot (approximately 9 in 10 referrals across both programs) proceeded to conference on the first scheduled date. This suggests additional resources are not being expended on rescheduling conferences. A small number of matters (25 in the DRC, 5 in the Legal Aid Pilot) were referred to the program but were either cancelled prior to the first (and only) scheduled conference, or were terminated after the conference had commenced.

There is a range of reasons why a conference may be cancelled or terminated. Some of the reasons listed by the conference convenor in the post-conference report include that:

- one of the parties was unable to attend due to health reasons;
- one or more parties failed to attend or left the conference shortly after it commenced;
- threatening or aggressive behaviour by one of the parties;
- the matter was no longer deemed suitable for ADR; and
- additional information or reports were required prior to the matter continuing.

While the post conference reports are likely to underestimate the number of referrals and matters that proceeded to conference (because those referrals that do not result in a completed conference will not always result in a post conference report), these results are positive. They suggest that the vast majority of referrals to ADR resulted in a conference proceeding. This would indicate that, when the decision is made to refer a matter to ADR, adequate

consideration has been given to the likelihood that a matter will proceed to conference and that a conference will take place as planned.

## The suitability of different matters for alternative dispute resolution

Specific eligibility criteria, or criteria that excludes certain matters from being referred to ADR, do not exist. There is little support among stakeholders for more restrictive eligibility criteria in either program. Parties are not required to consent in order for a matter to be referred to ADR. Feedback from stakeholders involved in the new model of DRC and Legal Aid Pilot suggests that, while they are supportive of the majority of matters being referred to either program, there have been instances where they consider the matter should not have been referred to ADR.

Stakeholders involved in one or both of the programs (Magistrates, Children Registrars, mediators, legal representatives and Community Services) have formed a range of views as to which families and matters are, in their opinion, most suitable, less suitable and not suitable for referral to ADR, based on the perceived likelihood that resolution can be reached on key issues relevant to the care application. These views are summarised in Table 7.

In general, the matters that were most frequently reported as not being suitable for ADR were those involving non-accidental injury, child sexual abuse, serious neglect or some other related criminal matter

**Table 6** Matters referred to alternative dispute resolution, by conference status

	DRC		Legal Aid Pilot	
	n	%	n	%
Referred to ADR and cancelled prior to first scheduled conference (no further conference)	5	1	3	3
Referred to ADR and terminated after first scheduled conference had commenced (no further conference)	20	3	2	2
Referred to ADR and proceeded to conference on first scheduled date	693	88	83	91
Referred to ADR and proceeded to conference on second scheduled date (cancelled prior to first scheduled conference)	5	1	0	0
Referred to ADR and proceeded to conference on third scheduled date (cancelled prior to first and second scheduled conference)	0	0	1	1
Referred to ADR on two occasions, proceeded to conference on both occasions	57	7	2	2
Referred to ADR on three occasions, proceeded to conference on all occasions	3	<1	0	0
Referred to ADR on four occasions, proceeded to conferences on all occasions	1	<1	0	0
Total number of matters referred to ADR	784		91	

Note: Percentage totals may not equal 100 due to rounding

Source: DAGJ Post-conference report data Sep 2010—February 2012 [computer file]

that would reduce the likelihood that parties would reach agreement on certain issues (because of perceived implications for the parallel criminal matter). However, Children's Registrars were of the view that while certain aspects of a matter cannot be negotiated, such as whether an injury was caused accidentally or whether child sexual abuse occurred, the existence of those alleged facts should not preclude the referral of a matter to ADR. Other aspects such as placement and contact can still be resolved through ADR, particularly after establishment. Prior to establishment, a DRC can resolve issues in relation to the future care of a child that leads to the development of a s 38 care plan without the need for the court to determine the facts that led to removal. This highlights the importance of a flexible approach to determining which matters should be referred to ADR and for what purpose.

In 2006, the Legal Aid Commission developed a draft proposal for a care and protection mediation Pilot (now the Legal Aid Pilot), based on its Family Dispute Resolution Service. The proposal indicated that a conference would not occur in circumstances where there was violence, where an AVO was in place and may be breached or where a party suffers from impaired functioning (Wood 2008). However, the ADR Expert Working Party (2009) recommended

that matters should be referred to ADR to assess whether appropriate arrangements could be made to ensure the safety of participants.

Matters cannot be referred to ADR where a party's attendance at, or participation in, the conference constitutes a breach of an AVO, unless arrangements can be made for a shuttle or telephone conference (ADREWP 2009). There have been 121 matters referred to a DRC (17% of those matters for which information about the presence of an AVO was recorded) and 13 matters referred to the Legal Aid Pilot (16%) where there was an AVO in place between the parties involved. Observations of the conference process and feedback from stakeholders involved in these matters suggest that shuttle and teleconferencing have been used effectively in these cases to ensure that the conditions of an AVO are not breached and that parties can participate in a meaningful way. Information provided to the AIC suggests that in the majority of cases, the AVO is between the parent(s) and a child, who is typically not present during the conference. In such events, an active AVO may not have an impact on the conference proceedings.

Other matters may involve parents where there is a history of domestic violence or parents that are aggressive towards other parties involved in

**Table 7** Suitability of different matters for referral to alternative dispute resolution

Most suitable for ADR	Less suitable for ADR	Not suitable for ADR
Families where there is no physical violence between parties	Families with high levels of conflict, including family or domestic violence	Matters involving non-accidental injury, child sexual abuse, serious neglect or some other related criminal matter
Contact disputes where the child has been placed with a family member	Families with significant marital conflict where the needs of the parents overshadow those of the child	Parents that are intoxicated at the time of conducting the conference
Parents that have minor issues relating to drug and/or alcohol abuse	Contact disputes where the Minister has Parental Responsibility	Parent or family members that engage in threatening or aggressive behaviour towards other parties
Young parents with limited support networks	Parents that have serious issues relating to drug and/or alcohol abuse	Parents with narcissistic personality disorders that make them unable to focus on the needs of the child
Matters for which Community Services are supporting restoration	Parents who do not have a support network	
Families with little prior contact with Community Services	Contested restoration matters	
Parents that are able to talk rationally and listen to others	Families with extensive prior contact with Community Services, particularly those who have had other children removed	
Family placements	Parent(s) with diminished decision making capacity (ie due to serious mental health problems or intellectual disability)	
Families in which parents show insight and are committed to addressing concerns	Families where both parents are in custody	
Parents that can remain child-focused	Parent(s) who have demonstrated an unwillingness to engage with Community Services	
Parents that have shown a willingness to engage with Community Services and the court		

proceedings. The Children's Registrars and mediators reported being conscious of these issues and unless safety concerns prevent the conference from proceeding, would take steps to ensure that the impact on the conference and participants is minimised. Nevertheless, the research team observed at least one matter in which the aggressive behaviour of one or more of the parties had a significant impact on proceedings. The presence of an aggressive party can impact on the ability or willingness of parties to participate in the proceedings, discouraging other participants from speaking openly or attempting to address those issues that were central to the application. In some instances, these matters may not be suitable for referral to ADR (eg Case Study 1).

Where a conference can proceed, it is important that any potential issues that may impact on the way a conference is run are identified in the pre-conference check (for the DRCs) or the intake forms (for the Legal Aid Pilot). However, due to the highly sensitive subject matter, parents may become extremely agitated or upset during a conference and this

cannot always be identified prior to the conference. It is therefore important that potentially disruptive behaviours are managed appropriately through the use of private sessions or breaks in the proceedings.

Overall, there is little support among stakeholders for more restrictive eligibility criteria in either program. Instead, it was argued that ADR offers potential benefits to all matters, irrespective of how complex that matter might be. One Children's Registrar stated that 'no [conference] has been a waste of my time'. According to a legal representative:

I have been surprised by some cases where I thought that the matter was not conducive to ADR due to (for example) the attitude of the parties or the position they were taking in response to the case...even in these cases there were advantages to holding the DRCs in terms of the parents' ability to personally say their piece and for the issues raised by the parents to be addressed by each party in a respectful manner. In my view this really enhances the parent's feeling of access to justice (legal representative personal communication 2011).

## Case study 1 (DRC)

In this matter, both parents (separated) were seeking restoration of the child who had been removed from their care and placed with the maternal grandparents. The mother had two other children, both of whom were also in the care of the maternal grandparents. Although the parents were seeking restoration they requested that, in the event the child was not returned to their care, the child be placed with the paternal grandmother. However, Community Services were not supporting restoration or the placement change.

Prior to the conference, the Children's Registrar was notified that the father was physically violent and had made threats against the Caseworker and Manager Casework responsible for the case. The presence of the father at the table clearly impacted on the ability of parties to negotiate and discuss the issues in dispute. While Community Services had identified the father's history of violence and threatening behaviour as being one of the reasons that they did not support restoration, the parties were reluctant to discuss this behaviour during the conference.

Instead, it was only when parties broke into private sessions with the Children's Registrar that the father's threatening behaviour and the reasons why Community Services were not supporting placing the child with the paternal grandmother were discussed. The conference ended with little progress being made on any of the issues in dispute and the parties agreeing that a hearing was required.

The majority of stakeholders therefore support the current arrangement, whereby the decision to refer a matter is at the discretion of the Magistrate or Children's Registrar and is based on an assessment of the merits of individual matters and their suitability and appropriateness for ADR. Nevertheless, there is scope to develop additional guidance as to the suitability of different matters and families, and the types of factors that should be considered, based upon the findings from this evaluation.

## The timing of referrals to alternative dispute resolution

Another important issue is the timing of referrals. Wood (2008) reported a range of views as to the most suitable point at which a matter should be referred to ADR. The ADR Expert Working Party recommended that there should be flexibility in terms of when a matter can be referred to ADR, noting that a decision should be made in consultation with the parties involved and in consideration of the specific issues and characteristics of the matter. Matters should be referred when appropriate and this could be at a variety of stages in the process.

However, the ADR Expert Working Party did recommend that matters be referred as early as possible to avoid the entrenchment of views and hostility between parties. This is consistent with Practice Note 3 that stipulates that conferences 'should as far as practicable be held as early as possible in the proceedings in order to facilitate the

early resolution of a care application' (paragraph 11.1). This position is consistent with the findings from the review of court-referred ADR in other jurisdictions, which concluded that referrals should be made as early as possible, but should also allow sufficient time for all the parties to form an opinion about the matter and to obtain, prepare and respond to any reports.

The ADR Expert Working Party (2009) suggested that there are a number of options in terms of when matters could be referred to ADR. Referring a matter to ADR after the initial application has been filed may result in significant savings to the court, as well as avoid parties becoming too hostile or entrenched in their positions (ADREWP 2009). At this stage, a conference may also assist in the drafting of care plans as well as final orders (by consent). The ADR Expert Working Party (2009) also suggested that holding a conference later in proceedings can ensure that parties have been given adequate time to prepare and that the necessary reports have been prepared and relevant assessments have been conducted.

Table 8 shows that, of the matters referred to ADR for the first time during the evaluation period, the majority related to new applications for care proceedings. Approximately one in 10 matters (14% in the DRC; 12% in the Legal Aid Pilot) referred to ADR involved an application for the rescission or variation of a care order.

Additional information regarding the timing of referrals to ADR is recorded in the post-conference reports completed by Children's Registrars and mediators. Findings from the analysis of these post-conference

reports (in terms of the timing of referrals) are reported in Table 9. As the Children’s Registrar or mediator has the option to record more than one referral point for a matter (eg post establishment and prior to a care plan being completed are 2 separate options), the latest point of referral in the care and protection continuum was calculated and reported for each matter referred to ADR.

Table 9 shows that 69 percent of new applications were referred to DRC relatively late in the process; after establishment and once a care plan had been completed. Eight percent were referred to a DRC prior to establishment and the remaining 22 percent of matters were referred to DRC after the need for care and protection had been established and prior to a care plan being completed. Magistrates involved in the Legal Aid Pilot appear to be referring matters earlier in the care and protection proceedings; after establishment but prior to a care plan being

completed (78%), although this difference may be due to differences in the way this information has been recorded.

There was a range of views expressed by stakeholders involved in both programs regarding the most appropriate time to refer matters to ADR. While acknowledging that there should be flexibility to accommodate the differences between matters, the majority of stakeholders argued that matters should be referred to ADR once the need for care and protection had been established, but prior to the development of a care plan. It would appear from the data presented in Table 9 that this is not the current approach for DRCs.

There are several benefits to an early intervention approach. Stakeholders (including Community Services) argued that once a care plan had been developed, Community Services are more likely to

**Table 8** Type of care application referred to alternative dispute resolution (first time referral only)

	DRC		Legal Aid Pilot	
	n	%	n	%
New application	649	86	73	88
Application for rescission or variation of care order	109	14	10	12
Total	758	100	83	100

Note: Excludes 26 DRC and 8 Legal Aid Pilot matters for which the type of application was not stated  
Source: DAGJ Post-conference report data Sep 2010—February 2012 [computer file]

**Table 9** Timing of referral for all matters referred to ADR (new applications and first time referral only), by program

	n	%
<b>DRC</b>		
Prior to establishment	55	8
After establishment but prior to a care plan being completed	143	22
After establishment and after a care plan has been completed	451	69
Total <sup>a</sup>	649	
<b>Legal Aid Pilot</b>		
After establishment but prior to a care plan being completed	57	78
After establishment and after a care plan has been completed	16	22
Total <sup>a</sup>	73	

a: The latest point of referral in the care and protection continuum was determined and reported for each matter referred to the DRC  
Note: Excludes 26 DRC and 8 Legal Aid Pilot matters for which the timing of referral was not stated. Percentage totals may not equal 100 due to rounding  
Source: DAGJ Post-conference report data September 2010—February 2012 [computer file]

have a fixed position and be less willing to negotiate key aspects of the care plan

...filing the care plan prior to mediation can lead to parties digging in to adhere to the plan or parents agreeing to something in existence just to make the matter go away (Community Services Caseworker personal communication 2011).

The ability of parents and family members to contribute to the final care plan during a conference is reduced if a care plan has already been drafted. Further, the level of information shared in conferences has, on occasion, resulted in new options being identified, such as alternative family placements and contact arrangements. These are integral to the care plan and more likely to be considered if a draft care plan does not already exist. One Community Services representative suggested that going into a conference with a draft care plan in place actually created more work for them as they would then have to amend the care plan or draft an addendum to reflect the changes agreed to during the conference.

However, it was also argued by a number of stakeholders that having a draft care plan prepared prior to ADR can help to inform the negotiation process by focusing the discussion, provide parties with a better understanding of the position of Community Services and an opportunity to consider their response. Similarly, a number of stakeholders, particularly legal representatives, argued that there is little to be gained from holding a conference before all the parties had filed their materials and relevant assessments had been conducted. This ensures that while 'parties are not firm in their views...there is sufficient evidence filed for parties to attend and negotiate realistically' (legal representative personal communication 2011).

Some stakeholders also suggested that matters where establishment was being contested may also benefit from referral to a DRC; if the family heard the concerns that Community Services had in relation to the child or young person directly from the Caseworker, they may be willing to acknowledge that the child is in need of care and protection. It was also suggested that holding a conference at this stage in the proceedings could facilitate the establishment of a positive working relationship between the parties involved. However, some Community Services representatives appeared to

be less supportive of matters being referred prior to establishment.

Matters should not be referred pre-establishment as nothing can really be discussed around a finding of care. This conversation should be happening in the office after the [child's] removal and should not be wasting the ADR slots that could be given to other families...either the child is in need of care or not (Community Services Caseworker personal communication 2011).

While a less commonly expressed view among those involved in the conference process, there was some suggestion that there may be benefits in referring certain matters at a later stage in proceedings, just prior to a hearing being scheduled. While this was not a common view, it was suggested that the 'threat of a looming hearing' may mean that parties are more likely to consent to orders, particularly where a Children's Registrar is able to provide advice regarding the possible outcomes from that hearing (ie reality testing). Further, a small number of Community Services representatives suggested that scheduling a conference at this stage in the proceedings would help parties to identify the issues that are being contested and for what reason, and therefore help parties to prepare for the hearing.

### *Multiple referrals to conference*

Related to the issue of timing is whether a matter should be referred to ADR on more than one occasion. Practice Note 3 includes a provision that enables more than one DRC (and Legal Aid Pilot) to be held for the same matter at different stages in proceedings. Some stakeholders suggested that holding a conference early in proceedings could be used to identify what needed to be done to resolve the matter and what action needed to be taken by the parents prior to reaching agreement on final orders. A second conference could then be held later in proceedings to follow up on the family's progress and to make a final decision regarding what course of action should be taken. While generally supportive of this approach, Children's Registrars conceded that it was not their role (or the role of ADR) to case manage families involved in care and protection proceedings, and the use of multiple conferences should remain focused on resolving the issues in dispute.

There was some evidence of this approach having been applied in practice, with 61 matters having been referred to a DRC and proceeding to more than one conference during the evaluation period. It was less common in the Legal Aid Pilot, occurring on only two occasions. There was mixed support for this approach among other stakeholders. A number of legal representatives that responded to the qualitative survey reported that they perceived multiple conferences to be a waste of time and some Magistrates were not supportive of matters being referred to conferences on multiple occasions on a more regular basis because it was potentially costly and would cause unnecessary delays.

They argued that it should be limited to particular circumstances. This would include situations such as where the first referral could not resolve the issues in dispute because parties were not in a position to negotiate but had identified the need and/or benefits of a subsequent conference; where the first conference took place prior to establishment and a second conference could be useful in resolving issues relevant to final orders; or where there had been a fundamental change in the circumstances of the family or young person during proceedings (such as a new baby or relationship breakdown).

# Dispute resolution conferences and Legal Aid Pilot conferences

This section of the report outlines the findings from a review of DRCs and conferences that have been held as part of the Legal Aid Pilot. Various components of these conferences are discussed and several issues are identified.

## Pre-conference preparation

Pre-conference preparation is an important part of the ADR process. The Children's Registrar or Legal Aid conference organiser will contact the relevant parties (or their legal representatives) prior to the conference to confirm their attendance and to identify other parties who should be present but that have not been invited. Further, it also provides parties with an opportunity to ask questions about the process and raise any issues they may have that could have implications for how the conference is conducted. The referral from the court may also include a broad overview of the issues that need to be addressed at the conference. To ensure that they are familiar with matters prior to conference, Children's Registrars are provided with the Children's Court file for the relevant matter and mediators are provided with relevant reports and other documentation that has been filed (excluding affidavits). All other parties are required to prepare for the conference by reviewing and familiarising themselves with the documents that have been filed.

Feedback from the Children's Registrars, mediators and other parties involved in proceedings identified a number of issues around pre-conference preparation. The time taken to prepare for each conference is substantial; however, it is integral to the smooth functioning of the conference that the Children's Registrar or mediator be familiar with the relevant details of the matter and any special considerations (such as conflict between parties). The appointment of additional Children's Registrars and large pool of mediators has allowed conference convenors adequate time to prepare for conferences. This has helped to ensure that both Children's Registrars and mediators are well prepared for conferences, are familiar with the matter and are an important factor in ensuring that the conferences are well run. As the programs grow, there may be a requirement for additional Children's Registrars and strategies to maintain a large pool of mediators to ensure the DRCs and Legal Aid Pilot remain adequately resourced.

Information reviewed prior to the conference will inform the agenda for the conference and the focus of the discussion, but it will also inform the Children's Registrar or mediator's decisions regarding how to run the conference, including the placement of parties around the table or the order in which they are invited to speak. Some legal representatives and Community Services staff suggested that it might be

useful for the Children's Registrar or mediator to circulate a draft agenda prior to the conference so that they can target their preparation more efficiently.

The information that is provided to mediators in the first instance is limited to the material filed at the time of the matter being referred. Between the date of referral and the date of the conference, new evidence that is relevant to the matter may be filed, unknown to the mediator. Children's Registrars have access to all material filed in relation to the matter until the date of the actual conference. Children's Registrars and mediators are both reliant on the legal representatives and Community Services staff informing them of any new information in the period leading up to the conference. There may be events or issues that are relevant to the matter but are not included in the materials and are therefore unknown to the Children's Registrars and mediators.

There have been a number of occasions when the relevant parties have not advised the Children's Registrar or mediator of new information that could have significant implications for the way the conference is run. For example, in one matter observed by the research team, the mother had made accusations of sexual abuse against the maternal grandfather who was caring for her three children. No one notified the Children's Registrar who had chosen to seat the mother directly across the table from the maternal grandfather. The mother became distressed early on in the proceedings and had to leave the room, at which point the conference was conducted using shuttle conferencing.

There were a number of conferences where one or more of the parties were underprepared and unfamiliar with the matter. This was especially common for matters involving new Community Services Caseworkers or where a legal representative had sent an agent. The ability of parties to adequately prepare for a conference is also reliant upon all parties filing the relevant materials in a timely manner. A number of legal representatives and Children's Registrars suggested that parties should be required to file all relevant materials before their attendance at a conference so that other lawyers have adequate time to properly review the material and consult with their client. There have been several occasions where important material has been filed shortly before the conference, having a

significant impact on how much progress could be made during the conference.

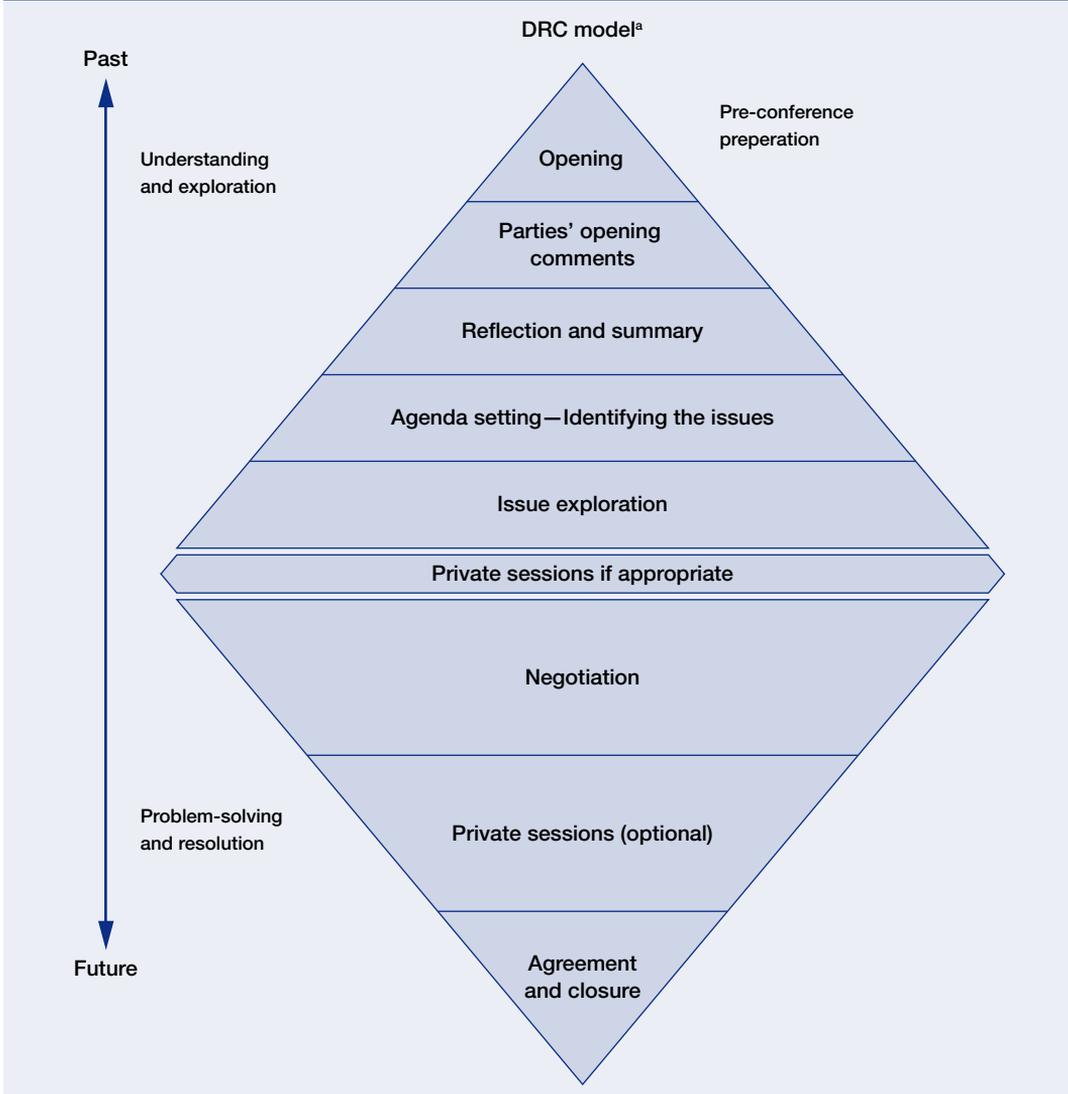
## The conference process

The basic process followed as part of DRCs and Legal Aid Pilot conferences is described in Figure 4. While most of the observed conferences appeared to follow these steps, there were variations in how conferences were run. These differences were not only noticeable between the two programs, but also between matters and conference convenors. The process itself is flexible, which enables the conference to be adapted to the issues being discussed and the parties that are involved in each matter. Children's Registrars and mediators shared a common view that no two conferences are the same.

Children's Registrars appeared to adhere more closely to the steps outlined in Figure 4. A small number of Children's Registrars said they were not sure whether they could deviate from the 'script'. In particular, some Children's Registrars appeared to be unclear on whether they could choose not to hold private sessions if they were not appropriate, required or requested by parties. In one of the DRCs observed by the research team, all of the issues had been discussed and handled by all the parties and final orders were being drafted. While this was happening, the Registrar said that they would now hold private sessions. A number of parties queried whether private sessions were necessary and so the Children's Registrar completed the conference. However, feedback from other Children's Registrars suggests that as their experience with ADR increased, they have felt more confident deviating from the set process where appropriate. Some of the mediators were more confident in deviating from these guidelines because of their experience in ADR. For example, they were willing to move the private sessions to a time when they felt they might help to overcome an impasse in proceedings.

While acknowledging the importance of flexibility and being able to adapt the conference process to individual matters, some stakeholders expressed concern with the lack of consistency between conferences and conference convenors. Legal representatives and Community Services staff can attend multiple conferences with different Children's

**Figure 4** Guidelines for conducting a dispute resolution conference



a: Based on the LEADR model of mediation  
Source: NSW DAGJ

Registrars and mediators in both programs. They reported inconsistencies in areas such as the opportunity provided to outline their position at the beginning of the conference and the extent to which they were able to respond to others.

Private sessions are a valuable part of the process and are used at different times during the conference. In a number of the observed conferences, the conference was suspended to allow for private sessions at a point where it

appeared little progress was being made. During these private sessions (some of which were observed by the research team), the conference convenor was able to work with parties individually to clarify their position and identify how they wanted the conference to proceed.

Children's Registrars have been provided with clear guidelines to assist them in preparing the content of their opening statement to read at the beginning of the conference. While Registrars must comply with

these guidelines, they have attempted to prepare statements that cover the issues they are required to address and also encourage participants to speak openly and informally. However reading these statements in full takes time and some stakeholders felt that it makes the process feel more formal and less personal. Mediators provide a more informal introduction (while covering the same issues around confidentiality etc).

The model in Figure 4 is based on ADR in other settings, which often allocate a longer period of time to the proceedings. Adjustments have therefore been made to the process to enable conferences to be completed within the allocated time. For example, mediators often prepare an agenda prior to the commencement of the conference based on the material presented to them beforehand. Feedback is then sought on the agenda. Parties are still given an opportunity to have input into the agenda, but the time to decide upon the focus of the conference is shortened considerably. Based on the conferences observed up until this point, it appears that the majority of Children's Registrars either do not refer to an explicit agenda, or develop the agenda during proceedings (as per Figure 4).

There were different views about the order in which the various parties should be invited to speak. Some Children's Registrars indicated that they believed the party that submitted the application should speak first to explain their position. Mediators appeared to show a preference for allowing parents to speak first, because they felt that it was the first time they had been given an opportunity to speak. Other Children's Registrars suggested that this could sometimes be problematic, as parents could often drag this process out or use it as a 'soapbox' to air their grievances about Community Services.

## Conciliation and mediation

The Children's Registrar and the mediator are both responsible for assisting the parties involved in the conference to 'identify the issues in dispute, develop options and try to reach an agreement' (NADRAC 2011: 66). However, there are important differences in the underlying mode of operation and in the role of the Children's Registrars and mediators.

DRCs are facilitated by a Children's Registrar and operate in accordance with a conciliation model of ADR. Practice Note 3 describes the role of the Children's Registrar as being

responsible for managing the dispute resolution process, including setting the ground rules, managing any apparent power imbalances between the participants and ensuring the participants conduct themselves appropriately (paragraph 15.2).

Consistent with the conciliation model, the Children's Registrar performs an advisory role, but not a determinative one. This means that they are empowered (and have relevant legal expertise) to provide advice on what the Children's Court has previously ruled (ie in terms of orders) for similar matters that have proceeded to hearing. This is done as part of the reality testing process.

The Legal Aid Pilot is based on a mediation model of ADR, which differs from the conciliation model in that the mediator does not provide advice on the issues that are being discussed. The Pilot originally involved conferences that were co-mediated by two external mediators (where two mediators were available). Legal Aid NSW have indicated that co-mediation has been a valuable training tool for the development of mediators, especially as the majority of the mediators have had little to no prior experience in the care and protection jurisdiction. As of August 2011, the Legal Aid Pilot has moved to a single mediator model, except when the matter:

- involves an Indigenous family;
- involves four or more parties; and/or
- is particularly complex.

Since moving to this new model of operation, the majority of conferences held as part of the Legal Aid Pilot have been convened by a single mediator. There appears to be mixed feelings within the mediator pool towards the solo mediation model. Some mediators suggested that solo mediation is preferable as it allows them to run conferences without having to account for the sometimes very different working styles of their colleagues. Conversely, it was also suggested that the co-mediation model was beneficial in that it exposed mediators to different mediation techniques and working methods. However, one mediator who stated a preference for the co-mediation model also

suggested that mediators should be able to identify other conference convenors they would prefer not to work with.

Mediators involved in the Legal Aid Pilot perform a facilitative role and do not provide advice on the matters in dispute. Mediators will perform a reality testing role with regard to both legal and practical considerations, particularly during private sessions, both through the legal representatives attending the conference, and the parents and family members themselves. For example, during private sessions, a mediator may ask a legal representative to tell their client what the court has ruled in similar matters. They will also reality test the practicalities of a party's proposed course of action, such as supervised contact arrangements, by asking the parent how they understand it will work from the point of view of a layperson.

It is possible to draw together the findings from interviews with Children's Registrars and mediators, and observations of the process to better define the common elements of the role of conference convenors in DRCs and the Legal Aid Pilot. This includes:

- clearly explaining to all parties how the conference will be conducted, its purpose and their expectations regarding how the parties will conduct themselves;
- ensuring that all parties act in accordance with the ground rules outlined at the commencement of the conference and responding to complaints from any party about the behaviour of another participant;
- facilitating an open dialogue between parties and managing the conference in a way that participants feel comfortable raising and discussing sensitive issues;
- ensuring that all parties are provided with an opportunity to have their say and to respond (when appropriate) to the issues raised by other parties;
- helping to clarify the content of the discussion and any decisions that are made, so that all parties understand what is being said or has been agreed (or not) and are able to maintain a record of what has been discussed; judicious
- keeping the discussions focused on the issues relevant to the care application and ensuring the conference remains on target, both in terms of the agenda and the scheduled time available; and

- addressing any power imbalances that may be present between parties by ensuring that no single party dominates the conference and that all parties treat each other equally.

It is also possible to draw a number of conclusions about the conduct of the Children's Registrars and mediators as part of DRCs and the Legal Aid Pilot, based upon the observational fieldwork, qualitative survey and interviews with Children's Registrars, mediators, legal representatives, Community Services, parents and family members.

- DRCs and conferences held as part of the Legal Aid Pilot are generally well run. The Children's Registrars and mediators are very clear in describing the process to participants and are adept at making sure that everyone has a chance to speak and that everyone understands what is happening. The degree to which participants were able to participate in proceedings did not appear to differ between the two programs.
- Overall, feedback from professionals involved in DRCs and the Legal Aid Pilot suggests that they are generally positive about the performance of Children's Registrars and mediators and attribute the perceived success of the conferences to the role of Children's Registrars and mediators in managing the process.
- The quality of facilitation provided by the Children's Registrars and mediators is high and is due to the training that they have been provided and their previous experience in ADR.
- Children's Registrars and mediators were effective in ensuring that participants are provided with an opportunity to speak freely and without restraint, enabling them to contribute meaningfully to the discussion and any agreements that were reached. Sometimes, one party would become frustrated and speak over other parties while attempting to explain their position. In these situations, Children's Registrars and mediators generally intervened quickly (eg Case Study 2).
- Children's Registrars will often clarify legal terminology for the parents and families to ensure that they understand. In the Legal Aid Pilot, mediators were more likely to enquire on behalf of family members. Asking the professionals to explain what they mean is seen as a way of encouraging them to avoid using legal jargon in the future.

## Case study 2 (DRC)

This matter involved two children who had both been in care for a number of years. Their parents had recently made an application to vary orders previously made by the Children's Court, which gave the foster carers sole parental responsibility. Community Services had not been involved in the matter since final orders had been made. The relationship between the legal parents and the foster carers had broken down years previously and was acrimonious. In light of this, the parties questioned whether a conference would assist with the matter.

During the first stage of the conference, the parents and the carers appeared to be unwilling to speak directly to each other and only spoke to the Children's Registrar. During the private sessions, the Children's Registrar asked each party to write down the contact plan they were proposing and to consider what it looked like from the children's perspective. At the end of the private sessions, the Children's Registrar asked each party to think carefully about whether their proposed contact arrangements were in the best interests of the children and whether they could 'live' with them.

The parties came back together and after a few minutes started speaking directly to one another. Significant progress was made in the conference with most of the contact issues being resolved. However, the question of whether the children would see their parents during the Easter break could not be resolved so the matter was adjourned for a hearing. At the end of the conference, the foster father and the legal father shook hands. They both told the Children's Registrar that they had not shaken hands since 'all of this happened' almost 10 years ago.

- The role of the Children's Registrar in performing a reality testing function is highly valued and was observed to help parents to consider the advantages and disadvantages of their position on key issues relevant to the application. Feedback from parents' lawyers was especially positive as the Children's Registrars' reality testing may provide another channel through which their client can hear advice that the lawyer has already provided to them, but that they did not fully comprehend or accept. For example, in one matter, the mother agreed to the position of Community Services on restoration after speaking privately to the Children's Registrar (along with her legal representative) who suggested to her that the court would (based on experience in similar matters) not look favourably on her apparent unwillingness to submit to urinalysis.
- On occasion, some Children's Registrars felt uncomfortable about the extent of their advisory capacity and said they found it difficult to negotiate the balance between directing the parties to consider the relevant legal issue while ensuring that they are perceived as an impartial third party.
- Mediators in the Legal Aid Pilot appear to have greater awareness than the Children's Registrars of the smaller gestures and the potential impact on the dynamic between participants. For example, mediators were more insistent in ensuring that participants speak on a first name basis and professionals speak directly to the parents present in the conference.
- Some mediators argued that the legal representatives attending conferences did not respect their status as a mediator, which they attributed to their lack of (perceived) legal expertise. Conversely, a number of Children's Registrars expressed frustration that legal representatives attending a conference expected them to use their legal powers to make orders or recommendations.
- Mediators reported that co-mediation in the Legal Aid Pilot provides greater flexibility to adjust the way the mediators (who each have different styles and backgrounds) run the conference to achieve the best possible outcome. It also helps to share the workload over the three hours. However, mediators also considered that co-mediation can be difficult to manage because of these different styles, particularly where one mediator disagrees with how the other mediator is conducting proceedings.
- There was some concern among a small number of legal representatives, Caseworkers and Managers Casework that a small number of mediators had, on occasion, not maintained an impartial position on issues relevant to the care application:

While it is not the norm there have been some (rare) occasions when the mediator has not appeared impartial—and has openly questioned the decisions of Community Services. While it is understandable that disadvantaged parents may appear to be in need of additional supports in

mediation as compared with Caseworkers, lack of neutrality has been demonstrated to be unhelpful to the process (legal representative personal communication 2011).

In relation to this last point, Legal Aid recently introduced a number of measures to address issues around perceived impartiality, including additional training on the role of Indigenous mediators in ADR. The AIC did observe a small number of instances where the conduct of mediators could have been interpreted as not maintaining an impartial position. However, based on these observations and the interviews conducted with various stakeholders (particularly during the second stage of interviews), it would appear that the concerns about the impartiality of mediators is most likely due to their independence from the Children's Court (unlike the Children's Registrars) and their persistence in ensuring that the parents and family members have a voice in proceedings.

## Attendance at the conferences

Practice Note 3 stipulates that DRCs and conferences held as part of the Legal Aid Pilot are to be attended in person by:

- the parties to the proceedings and if represented, their legal representatives;
- a guardian *ad litem*, if appointed by the court;
- the relevant Manager Casework and Caseworker from Community Services;
- the legal representative for the Director General of the Department of Human Services;
- the authorised clinician of the Children's Court Clinic where the clinician has carried out an assessment prior to the DRC (in appropriate cases and if available).

Attendance of a party by telephone or audiovisual link (AVL) can only occur in exceptional circumstances and at the discretion of the Children's Registrar or mediator. For example, the attendance of parties that are incarcerated at the time of the conference has been facilitated through the use of teleconference facilities and parties appear willing to accommodate these arrangements. The attendance of incarcerated

parties in person is possible in DRCs as the conferences are held on courthouse premises and Children's Registrars have the authority to direct the attendance of persons in custody to a DRC. A conference may also be attended by a support person, member of relevant kinship group, a non-legal advocate and/or interpreter, proposed carers and expert witnesses.

An important principle for effective court-referred ADR is that conferences need to be attended by all of the important parties involved in a matter. Both programs have achieved a high rate of attendance at scheduled conferences (see Table 10), which reflects a high level of commitment to the use of ADR within care and protection matters among the various parties. While historical data is not available, feedback from a number of stakeholders suggests that this represents a significant improvement when compared with the previous preliminary conferences. This is important, as the attendance of these parties in person at the conference increases the likelihood that an agreement can be reached on the day, that the issues in dispute can be narrowed and that a positive working relationship between the parties can be established.

As mentioned previously, a number of matters that were referred to ADR during the evaluation period involved an AVO between parties (17% of DRC matters and 16% of Legal Aid Pilot matters). Disaggregating parent and family member attendance rates between matters where an AVO was present between parties and those where there was no AVO suggests that there is no substantive difference between the two (see Table 11). The only exception to this was mothers involved in the Legal Aid Pilot, where the rate of attendance for conferences where an AVO was in place between the parties (77%) was lower than for conferences where there was no AVO in place (87%). However, the post-conference reports do not contain information on which parties were affected by the AVO and as such, given the relatively small number of conferences where an AVO was in place, these findings need to be interpreted with some caution. Overall, the results presented in Table 11 suggest that an AVO between parties is not a barrier to participation in DRCs and the Legal Aid Pilot, and that the strategies that have been implemented to overcome the challenges that are presented have been successful.

**Table 10** Participants in attendance at the conference

	n	%
<b>DRC</b>		
Mother	749	88
Father	536	63
Mother's lawyer	730	86
Father's lawyer	492	58
Child or young person	34	4
ILR/DLR	828	98
Community Services Caseworker	774	91
Community Services Manager Casework	817	96
Community Services lawyer	841	99
Other family member	269	45
Other family member's lawyer	81	19
Support person	139	23
Interpreter	29	3
<b>Legal Aid Pilot</b>		
Mother	76	85
Father	71	80
Mother's lawyer	73	82
Father's lawyer	62	70
Child or young person	5	6
ILR/DLR	89	97
Community Services Caseworker	86	93
Community Services Manager Casework	89	97
Community Services lawyer	90	98
Other family member	11	21
Other family member's lawyer	2	5
Support person	9	14
Interpreter	5	6

Note: Percentage totals exclude those matters for which there was no information on participants. Includes all conferences that were scheduled in either DRCs or the Legal Aid Pilot, including conferences that were cancelled prior to commencement and those that were terminated after they had commenced

Source: DAGJ Post-conference report data September 2010—February 2012 [computer file]

Experience in other jurisdictions has highlighted the importance of the attendance of representatives from the relevant child protection agency that are in a position to authorise any agreement and negotiate around a range of outcomes. Therefore, the high rate of attendance of Caseworkers, Managers Casework and Community Services legal representatives is important. In particular, the very

high attendance rate of Community Services legal representatives (99% in DRC and 98% in the Legal Aid Pilot) is an important improvement over the preliminary conferences. According to evidence provided to Wood (2008), the Community Services lawyer did not regularly attend preliminary conferences and as such, Community Services Caseworkers and Managers Casework were unable

**Table 11** Attendance of family members at the conference, by program and AVO status

	AVO between parties		No AVO between parties	
	n	%	n	%
<b>DRC</b>				
Mother	115	89	578	89
Father	78	60	411	63
Other family member	39	46	205	43
<b>Legal Aid Pilot</b>				
Mother	10	77	60	87
Father	10	77	54	78
Other family member	0	0	10	23

Note: Percentage totals exclude those matters for which there was no information on AVO status and participants. Includes all conferences that were scheduled in either DRCs or the Legal Aid Pilot, including conferences that were cancelled prior to commencement and those that were terminated after they had commenced  
Source: DAGJ Post-conference report data September 2010—February 2012 [computer file]

to reach an agreement or reconsider their positions on certain issues without seeking further legal advice outside of the conference.

The child or young person that is the subject of the care application is not required to attend ADR (although their legal representative is) but they are entitled to attend. Although uncommon (occurring in approximately one in 20 conferences across both programs), if the child or young person chooses to attend, sufficient notice needs to be provided to the Children's Registrar and the other parties involved so that any concerns about attendance can be discussed and addressed. Children's Registrars and mediators have discretion as to how the conference is conducted and can tailor the proceedings to facilitate the child or young person's participation, while also minimising their exposure to issues that may cause them harm or distress. When a child or young person chooses to attend the conference, conference convenors are encouraged to speak to them in the presence of their legal representative before the conference to outline how the conference will be conducted. This is to allow the child or young person to make an informed decision as to whether they wish to attend.

According to one Children's Registrar who had been involved in a number of conferences where the child had been present, the presence of the child may be beneficial if they are able to clearly articulate their point of view. However, the same Children's

Registrar also said they were often reluctant for the child or young person to participate because of the potential negative impact on their wellbeing. In their absence, the attendance and active participation of the child's legal representative is an important factor in ensuring the conference maintains its focus on the best interests of the child.

The median number of participants attending DRCs and Legal Aid Pilot conferences was eight (not including the Children's Registrar or mediator; see Table 12). One in 10 conferences in each program involved more than 10 participants. Some of the mediators and Children's Registrars suggested that while there are circumstances where participants outside of the core group of participants should attend (eg where there is a family placement or parents request a support person attend), the number of participants in attendance can become unmanageable. This issue can be exacerbated when the facilities are unable to cater for larger groups (see below). The potential impact on the conference of allowing other parties to attend needs to be carefully considered.

## Participating in the conference

An important principle for effective court-referred ADR is that parties need to have a clear

**Table 12** Number of participants that attended the conference (excluding Children’s Registrars and mediators), by program

	n	%
<b>DRC</b>		
Five or less	37	4
Six	126	15
Seven	185	22
Eight	203	24
Nine	145	17
Ten	69	8
More than ten	84	10
Median number of participants	8	-
<b>Legal Aid Pilot</b>		
Five or less	0	0
Six	14	16
Seven	14	16
Eight	27	31
Nine	13	15
Ten	9	10
More than ten	10	11
Median number of participants	8	-

Note: Percentage totals may not equal 100 due to rounding

Excludes 7 DRC and 8 Legal Aid Pilot matters for which no information was recorded

Includes all conferences that were scheduled in either DRCs or the Legal Aid Pilot, including conferences that were cancelled prior to commencement and those that were terminated after they had commenced

Source: DAGJ Post-conference report data September 2010—February 2012 [computer file]

understanding of what will be expected of them during the conference. In particular, they should be encouraged to listen, negotiate in good faith and show respect for the other parties. There are certain requirements in terms of the way that conference participants are expected to conduct themselves during proceedings. According to Practice Note 3, the parties attending a conference are required to act in good faith (ie be open and frank in all aspects of their participation in the DRC) and conduct themselves in a courteous, considerate and non-adversarial manner. Practice Note 3 also states that parties in attendance at a DRC (and Legal Aid Pilot) are required to clearly state their point of view, listen, be willing to discuss the views of other parties, consider the range of options available for resolving the issues that led to the application and attempt to

agree on an appropriate course of action that is in the best interests of the child.

Participants are reminded of the purpose of the conference and their obligations as a party at the commencement of each conference. Further, DAGJ and Legal Aid NSW have developed a number of information materials (pamphlets and a DVD) that are provided to families once they have been referred to ADR. The materials provide families with information about the purpose of ADR and explain how they and other parties are expected to behave at the conference.

It is possible to draw a number of conclusions about the conduct of the participants involved in the DRCs and Legal Aid Pilot based upon the conference observations, qualitative survey and interviews with

Children's Registrars, mediators, legal representatives, Community Services and parents and family members.

### *Parents and family members*

Parents and family members in attendance were actively engaged in most of the conferences that were observed, either through contributing to the discussion or listening attentively to what the other parties had to say. It was clear that some parents still preferred their lawyer to speak on their behalf, but this did not necessarily preclude them from being engaged in the process. This is an important finding given that one of the aims of both programs is to encourage the participation of families in the decision-making process. It was common for one of the parents involved in a conference to be more actively engaged than the other, especially where aspects of the conference did not directly involve one of the parents.

On occasions, Community Services or other legal representatives would attempt to provide words of encouragement, thank the parent for their contribution to the discussion and/or congratulate them for the progress they had made, especially towards the end of a conference. This appeared to be well received and helped to end the conference (irrespective of the outcome) on a positive note. The practice of providing feedback to parents should be encouraged where it is appropriate.

Parents or other family members (especially those identified as potential carers) who were not legally represented (8% of mothers and 20% of fathers in DRC; 5% of mothers and 15% of fathers in the Legal Aid Pilot), appeared to have some difficulty engaging in proceedings. It was often the parent's legal representative that encouraged them to speak or that encouraged other parties to ask their client for their opinion. For example, in one matter observed by the research team, the maternal grandmother and potential carer for the child was not legally represented. While other practitioners attempted to provide some guidance and to help explain key issues, her ability to participate in the conference was limited and she was required to seek further legal advice before a final agreement on placement and parental responsibility could be reached. This prevented a final agreement on the matter being reached at the conference.

Where parents were not fully engaged in proceedings, the Children's Registrars, mediator and other parties tried to include them in the discussion, with varying degrees of success. Given the personal, sensitive and potentially upsetting nature of the issues being discussed, some parents clearly felt uncomfortable speaking to a room full of professionals or would withdraw from the process. Parents and family members involved in the conferences often became upset, distressed or angry, irrespective of whether they appeared to support or oppose the proposed course of action. When this occurred, other parties were respectful and would offer support and encouragement to emotional parents.

There were opportunities for the parents and family members to contribute to the discussions and conferences were rarely dominated by just one participant (such as the parents, legal representatives or Community Services). Although it varied between matters, proceedings tended to be dominated by professionals. This may be because the parents themselves prefer to allow the legal representatives to speak until they feel comfortable with the process.

There were clear power imbalances present between the parties involved in many of the conferences that were observed (especially between parents and between parents and Community Services) and this appears to be an inevitable part of an ADR process that involves professionals and laypersons. Nevertheless, the impact of these power balances can be mitigated (at least in part) through effective conciliation or mediation and through the advocacy role of legal representatives (see below). For example, in a number of conferences observed by the research team, the conference convenors took great care in the seating arrangements so as to minimise the potential for conflict and domineering behaviour. In one conference observed by the team, the conference convenor placed the father, who they had been told was aggressive and physically abusive, in the seat next to them so they could manage his behaviour more closely.

### *Community services*

In addition to a high rate of attendance among Caseworkers, Managers Casework and Community Services legal representatives at both DRCs and

conferences held as part of the Legal Aid Pilot, the majority of Community Services representatives consulted as part of the evaluation reported that they were supportive of the use of ADR in child protection matters and committed to delivering better outcomes for children and young people

I would like to see DRCs keep going. I feel like they have worked in my cases and in one case assisted in placing the child with family (Caseworker personal communication 2012).

In the conferences that were observed, it appeared that the Community Services legal representative and to a lesser extent, the Manager Casework did most of the talking on behalf of Community Services. Children's Registrars and mediators reported that there had been improvement over time and that Caseworkers were becoming more actively involved in conferences. In the interests of building effective relationships with parents and families, it is important that Community Services Caseworkers (who have ongoing contact with the family) are encouraged to participate as much as possible.

Participants did not always appear willing to work together to come to a mutual agreement about the best course of action. The research team observed a number of conferences during which parents and Community Services seemed reluctant to alter their position and where they did, concessions were sometimes minor. Parents may be reluctant to reach agreement on certain issues because of a lack of insight or because they are unwilling to give up parental responsibilities. Stakeholders reported several reasons for Community Services being reluctant to shift from their position, including the fact that the majority of care applications were initiated by the Department (and were therefore seeking orders that they supported), Departmental policies on issues such as contact, an organisational culture that was risk averse and the legal framework in which they operate (particularly since the DRCs and Legal Aid Pilot take place within the Children's Court once a care application has been filed). Transforming the way Community Services approach ADR will require significant cultural change and will take time. However, stakeholders reported (especially as part of the second round of interviews) that they had detected a change in the way many Community Services staff approached the DRCs

and Legal Aid Pilot and spoke positively about their level of engagement in the conferences. This included a greater willingness to listen to other parties and be open to certain suggestions, such as agreeing to involve other parties (eg extended family) and recognise them as participants in proceedings.

### *Legal representatives*

The conference process in both programs is 'lawyer assisted'. In addition to providing legal representation for the parties involved in a care and protection matter, the participation of lawyers also helps to ensure that appropriate measures are put in place to safeguard the security of those participating (eg shuttle conferences). Lawyers also act as an advocate for parties (especially parents and children) who may be unable (or feel unable) to put forward their views and participate freely in the conference. This advocacy role is an important one and in the conferences observed as part of the evaluation, ensured that the views of all of the parties involved in proceedings were shared and given due consideration.

The children's legal representatives were active participants in the conferences observed as part of the evaluation and were strong advocates for ensuring that any agreements reached between the parents and Community Services represent the best outcome possible for the children involved. Most legal representatives were positive about the use of ADR in care and protection proceedings, although their views about the two programs and which model was better varied:

From a practitioner's perspective, participation in both programs has been [a] very positive and worthwhile exercise (legal representative personal communication 2012)

DRCs have greatly assisted the care and protection matters I have been involved in (legal representative personal communication 2012)

Some legal representatives appear to have some trouble moving away from an adversarial mindset and revert to familiar behaviours such as speaking on behalf (and sometimes over) their client and aggressively cross-examining other parties. However, some stakeholders argued that there were noticeable changes in their attitudes and behaviour. This suggests that as legal representatives become

**Table 13** Length of conference, by program

	DRC		Legal Aid Pilot	
	n	%	n	%
Less than 30 minutes	14	2	1	1
31–60 minutes	68	10	3	3
61–90 minutes	166	23	10	12
91–120 minutes	299	42	19	22
121–150 minutes	125	17	18	21
151–180 minutes	31	4	27	31
More than 180 minutes	12	2	8	9
Total conferences	715		86	
Median length	120	–	150	–

Note: Percentage totals may not equal 100 due to rounding

Excludes 133 DRC conferences and 3 Legal Aid Pilot conferences for which no information on the length of the conference was recorded

Limited to those conferences that commenced on scheduled date (ie includes those matters terminated after commencement)

Source: DAGJ Post-conference report data September 2010—February 2012 [computer file]

more familiar with the ADR process, their behaviour may change and become less adversarial.

Concerns were raised regarding the behaviour of some legal representatives during conferences around issues such as using teleconference facilities rather than attending conferences in person, sending an agent who is unfamiliar with the matter in their place, not adequately preparing for conferences by familiarising themselves with the file, leaving conferences early due to conflicting appointments, and regularly checking phones and emails during the conference. However, Children's Registrars and mediators reported that these practices have become less common over time.

In terms of addressing issues related to the behaviour of other parties at a conference, the Children's Registrars and mediators suggested that there is benefit in having an appropriate recourse for recalcitrant lawyers (eg through the Law Society) should they (the Children's Registrars and mediators) be unable to work with that party to change their behaviour (ie by counselling them or recommending alternative behaviours).

## Conference length

The length of time allocated to each conference

differs between the two programs. DRCs are scheduled to run for two hours and in the Legal Aid Pilot, three hours are allocated to each conference. DRCs are limited to two hours because of resourcing constraints on all agencies involved.

Data on the recorded length of conferences in both programs is presented in Table 13. Seventy-seven percent of DRCs ran for between one and two hours. Around three-quarters (74%) of conferences held as part of the Legal Aid Pilot took between 90 minutes and three hours to complete.

The results presented in Table 13 also show that almost one-quarter (23%) of DRCs and nine percent of Legal Aid Pilot conferences ran over the allocated time. This has important resource implications. The participation of Legal Aid lawyers in ADR is funded by Legal Aid for the scheduled length of the conference (2 hours for DRC and 3 hours for the Legal Aid Pilot). In the event that a conference runs overtime, lawyers are encouraged to apply for additional funding from Legal Aid. As such, a significant proportion of legal representatives involved in either program (but particularly the new model of DRC) will have reason to apply for additional funding from Legal Aid.

However, information provided to the AIC indicated that, during the first half of the evaluation period, applications for additional funding for the time

**Table 14** Satisfaction with the length of the conference, by program

	Too long		Too short		About the right length of time	
	n	%	n	%	n	%
<b>DRC</b>						
Parent and family members	51	5	48	5	885	90
Mother	25	5	22	5	408	90
Father	17	6	16	5	268	89
Other family member	9	4	10	4	209	92
Legal representatives	137	7	36	2	1,803	91
Parent's legal representative	38	5	16	2	765	93
Child or young person's legal representative	45	8	12	1	533	90
Community Services legal representative	51	10	7	1	455	89
Community Service staff	83	12	9	1	625	87
<b>Legal Aid Pilot</b>						
Parent and family members	9	7	4	3	109	89
Mother	2	4	1	2	45	94
Father	5	12	2	5	36	84
Other family member	2	6	1	3	28	78
Legal representatives	7	6	2	2	108	92
Parent's legal representative	3	6	2	4	45	90
Child or young person's legal representative	1	3	0	0	32	97
Community Services legal representative	3	9	0	0	31	91
Community Service staff	16	24	0	0	51	76

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

beyond the scheduled duration of the conferences had been rejected. It was suggested by some program staff involved in DRCs that without the additional funding, legal representatives would speed up the process (rather than exploring issues in greater depth) to finish within the allocated time or to leave the conference at end of the scheduled time, even where significant progress may be being made and parties close to reaching an agreement. In mid-2011, amendments were made to the Legal Aid grant structure so that it now makes specific reference to the provision of additional funding in 'exceptional circumstances' for legal representatives participating in a DRC that runs overtime.

A number of stakeholders involved in DRCs and in particular, Children's Registrars, suggested that two hours was often not enough time to go through all

the issues and provide everyone the opportunity to discuss the issues (which is fundamental to effective ADR), particularly when there were multiple parties or the matter was particularly complex. For example, in one conference observed by the AIC, two of the parties had submitted separate s 90 applications, both of which were being discussed. Although the parties did reach agreement, the conference ran over time. Further, participants often arrive late, particularly in the busier Children's Courts such as Parramatta, but still need to leave at the scheduled end time to attend other commitments. This was less of an issue in some regional areas, where Children's Registrars reported that other parties were generally willing and able to stay beyond the two hours.

Children's Registrars reported that in certain circumstances they were able to make an informed

assessment as to whether a matter was likely to run over the two hour time limit after looking at the court file and conducting the pre-conference checks. They suggested that in these instances, it would be useful if Magistrates had the option of scheduling a longer conference, based on submissions from the various parties. In some court locations, where the Children's Registrar is responsible for scheduling DRCs (at callover), Registrars reported being able to allocate longer than two hours to the conference by negotiating with the relevant parties. However, in most locations, it is the responsibility of the Magistrate to schedule the conference based on the availability of legal representatives and Community Services, and the Children's Registrars reported that it was difficult in many instances to encourage these other participants to stay beyond the allocated two hours once the conference had been scheduled.

There is a need to be able to schedule up to three hours for some conferences, based on an assessment of the complexity of the issues to be discussed and the parties involved. The Children's Court reported that there was capacity within existing resources to allow for extended conferences however, there are important resource and time implications for Legal Aid and Community Services. If these resourcing issues can be addressed, the standard length of DRCs should be increased to three hours and participants should be encouraged to prioritise the time allocated to conferences and schedule other appointments accordingly. If these resourcing issues cannot be addressed, then the default could remain two hours, with a decision as to whether three hours is required made at the time of listing the matter for a DRC. This would involve the parties making submissions as to whether a matter is complicated and requires additional time, which would then be determined by the Magistrate. Alternatively, this might require Magistrates deferring responsibility for scheduling conferences to Children's Registrars (where this does not already occur) who can assess whether three hours is required based on the information available in the Court file (ie during pre-conference preparations) and submissions from legal representatives and Community Services, and work with the other parties to schedule a conference accordingly.

These issues aside, the vast majority of the various parties involved in a DRC or the Legal Aid Pilot

reported the conferences as having run for about the right length of time (see Table 14). Of those who didn't, legal practitioners and Community Services staff appeared more likely to report that the conference was too long, while the views of parents and family members were more evenly balanced. Community Services Caseworkers and Managers Casework that were involved in the Legal Aid Pilot were the least likely to report a conference as having run for about the right length of time (76%), with nearly one-quarter indicating that they felt that the conference had taken too long (24%).

## Conference facilities

Conferences held as part of the new model of DRC take place in the relevant Children's Court building. The majority of conferences are held outside of the courtroom, although when other facilities are not available, a conference may take place inside the courtroom. The ADR Expert Working Party recognised the potential benefits of holding conferences outside of the courthouse (such as providing a less intimidating environment), but concluded that these benefits were outweighed by the risks and difficulties associated with holding conferences in an alternative location. A small number of stakeholders stated that they felt that conducting a DRC within the Children's Court building had a negative impact on the overall effectiveness of ADR proceedings and the willingness of parties to engage in an open and informal discussion, but this was not the dominant view. However, of greater concern was the size and standard of some of the facilities available in a number of Children's Courts, particularly in (but not limited to) regional areas. Several stakeholders suggested that these facilities were not suitable to host conferences involving a higher than average number of participants and when they do, the discomfort for participants creates an additional barrier to effective communication.

Further, there was limited access to AVL facilities in some locations (such as in the Campbelltown and Port Kembla Children's Courts), either because the facilities were not available or already were in use at the time the conference was taking place and there was limited availability of teleconference facilities

in certain locations (such as Campbelltown). While AVL and teleconference facilities are used as a last resort (because of the challenges associated with engaging participants in the conference), the problems associated with these facilities need to be addressed. It prevents the involvement of parties who cannot attend the conference in person and limits the capacity of the court to overcome barriers such as the presence of an AVO between parties or a participant being in custody.

Conferences held as part of the Legal Aid Pilot are conducted in the Legal Aid NSW head office in central Sydney. The vast majority of conferences have been held in the main boardroom (and adjacent room), which is large enough to accommodate conferences and allow parties to easily move into another space as required (ie for private sessions). Stakeholders involved in the Legal Aid Pilot considered that holding conferences away from the court building and providing amenities such as tea and coffee made the process feel less intimidating and more conducive to open communication.

## Reporting on conference outcomes

An important principle for effective court-referred ADR in care and protection matters is that any discussion that takes place during a conference needs to be covered by clear confidentiality protocols that are understood by all the parties in the room. At the same time, these confidentiality provisions should not constrain the ability to report back to the court on any agreement that has been reached.

There are strict legislative provisions in the form of clause 11 of the Children and Young Persons (Care and Protection) Regulation 2000 that protect the confidentiality of the information that is discussed at both DRCs and the Legal Aid Pilot. At the conclusion of a conference, the conference convenor will provide a brief report to the court indicating whether an agreement has been reached by the parties and if an agreement has not been reached, the report will identify the issues that remain in dispute (Practice Note 3 paragraph 15.5 and 21.1). The purpose of this reporting process is to enable the court to allocate adequate time for a hearing. The Children's

Registrar will make a note of any agreement that has been reached during the DRC on a Bench Sheet, which is held on the Court's file for that matter. Mediators complete a short report for the court using a pro forma developed for that purpose. Both Children's Registrars and mediators will seek the consent of the parties involved prior to reporting on any progress that has or has not been made. Where an agreement has been reached, the proposed orders will be outlined in a Minute of Care Order to the Court, prepared by one of the parties involved in the conference (with input from the other parties) and presented at the next mention date of the matter before the Children's Court.

Several issues were raised about the reports to the court and the Minute of Care Order. Some parties involved in the conferences felt that the confidentiality provisions prevented the court from being informed of any progress that had been made where agreement had not been reached. There was a perceived risk that, upon returning to court for a hearing after the conference, issues that were close to being resolved would be 'rehashed' and any good work made during the conference would be undone. These same stakeholders acknowledged the importance of confidentiality and of participants consenting to that information being reported to the court, and the need to find a balance between the two concerns. It may be useful for there to be more of a requirement for parties to discuss at the end of the conference what the court should be made aware of in relation to any progress that has been made and to reach a consensus on what information to provide to the court where an agreement has not been reached. While this occurs in most conferences, conferences that are running overtime may overlook this process (as was observed in a small number of conferences).

There have been occasions where it was reported to the Magistrate that the Minute of Care Order was different to the agreement reached during the conference, or that parties have changed their mind after the conference. Magistrates involved in the new model of DRC noted an increase in some locations in the number of Children's Registrars and legal representatives involved in a conference submitting a Minute of Care Order on the same day as the conference, to reduce the chances that parties would change their mind. Children's Registrars also

reported drawing the conference to a close (such that the bounds of confidentiality have ended) prior to the Minute of Care Order being signed by the parties and information on the progress of key issues being reported (with the consent of all parties) on the bench sheet, treating that aspect of the process as a directions hearing. This was designed to minimise the likelihood that other parties could subsequently dispute the agreement that had been reached and any progress made.

Magistrates involved in both programs reported that there had been a small number of cases where certain aspects of the care plan agreed during a conference were inappropriate. They suggested that parties involved in a conference should be made aware that even if parties agree to a course

of action, it still has to meet the court's standards. Magistrates should not be seen as 'rubber stamps' but as 'check and balances' (Magistrate personal communication 2011).

Overall, there is a need to clarify the terms of confidentiality and communicate these to all parties involved in both the DRCs and Legal Aid Pilot, to ensure that as much information is being reported to the court as possible without infringing on these confidentiality provisions. The confidentiality provisions in the Care Regulation are currently being reviewed and this may help to address these issues. There should also be a greater focus on ensuring that there is adequate time allocated at the end of every conference to reach agreement on what information should be reported to the court.



# Culturally appropriate decision-making processes

Another important principle for effective court-referred ADR in care and protection is the need to take into consideration the cultural background of families, deal sensitively with any cultural issues and ensure that the process is adapted to suit the needs of the family. This includes families that are Indigenous and families from other cultural and linguistically diverse communities.

## Families from culturally and linguistically diverse backgrounds

There may be practical barriers to effective communication between parties participating in a conference. For example, some family members may not speak English. Interpreters have been present in 29 DRCs and five conferences in the Legal Aid Pilot. In two matters involving an interpreter that was observed by the research team, the other parties involved were polite, respectful and patient, and were still able to engage the family members in proceedings (via the interpreter; eg Case Study 3). Further, education materials targeted at family members and parents that have been referred to ADR have been translated into eight community languages to assist their engagement in the proceedings.

## Indigenous families

Both DRCs and the Legal Aid Pilot deal with a significant proportion of matters involving Indigenous children and young people (21% and 27% respectively; see Figure 5). Both legal representatives (from Legal Aid and ALS) and Community Services reported that the two programs are more appropriate for Indigenous families than the previous model of preliminary conferences and Children's Court hearings. This is primarily because the two programs:

- provide the opportunity to involve extended family members and members of kinship groups;
- provide a less threatening and more informal environment in which to discuss issues relating to the family (including cultural considerations);
- were supported by the provision of cultural awareness training to conference convenors; and
- use Indigenous mediators (in the Legal Aid Pilot).

Stakeholders identified a range of techniques they used before and after the conference to ensure that conferences were run in a way that was suitable for Indigenous families. In particular, a number of stakeholders emphasised the importance of encouraging Indigenous families to invite extended family members and support persons to attend the conference as an important part of the pre-

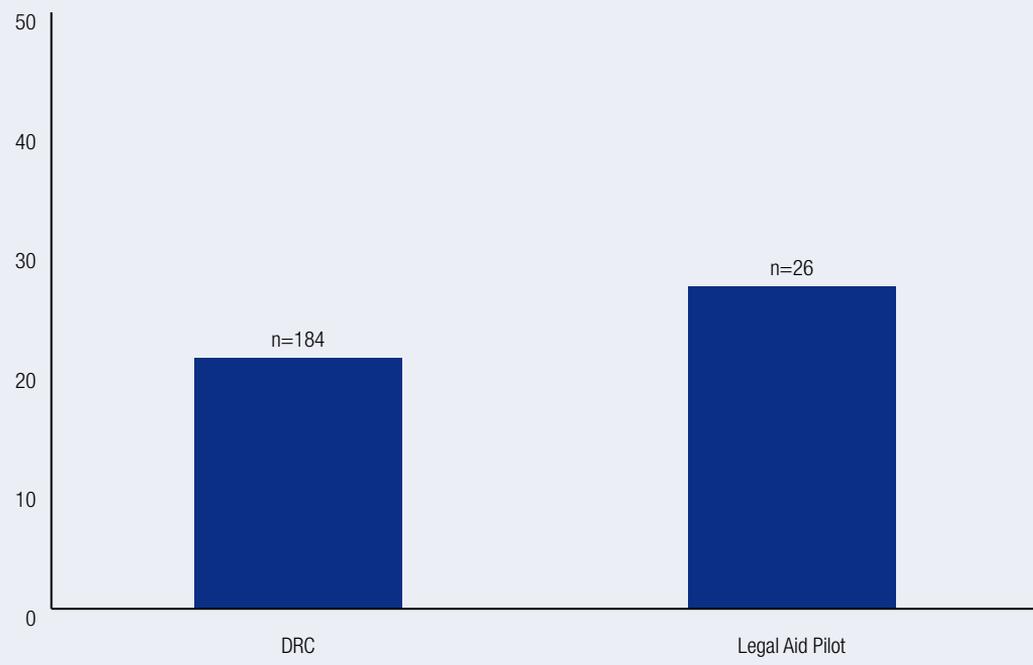
### Case study 3 (Legal Aid Pilot)

This matter involved a father whose teenage son had been removed from his care after he was accused of using inappropriate disciplinary techniques. The father wanted his son restored to his care, but Community Services were seeking long-term orders and were recommending placement with the godparents. The father was also seeking additional contact (in the event that his son was not restored to his care), which Community Services were also not supporting because the son had expressed a reluctance to see his father.

The father was Chinese and could not speak English so his participation in the conference was facilitated through an interpreter. The father was actively engaged in all of the discussions and spoke directly to the other parties through the interpreter. Further, the other conference participants and the mediator adapted their behaviour and the conference process to meet the needs of the father. The mediator slowed the proceedings to allow for the interpreter to translate and stopped participants from talking while the interpreter was translating. The other conference participants were respectful and polite towards the interpreter, spoke more slowly and used plain language.

At the end of the conference, there was no clear agreement between parties, although Community Services did say they would attempt to arrange a meeting or letter exchange between the father and his son. Despite the outcome, the father was happy with how the conference was run. He said that this was the first time he had been able to talk to Community Services and the independent legal representative (ILR) directly and give his side of the story.

**Figure 5** Matters involving Indigenous children or young people (%)



Source: DAGJ Post-conference report data September 2010—February 2012 [computer file]

conference preparation process. Allocating conference time to talk about the cultural needs of the children (identified by family members) and engaging the family in these discussions was also highlighted as an important element of conferences involving Indigenous families. Other techniques used by stakeholders to ensure the cultural relevance of conference proceedings included:

- encouraging Indigenous family members to explain the importance of cultural identity to the other parties at the table;
- ensuring that any agreements reached by parties satisfied the principles for the placement of Indigenous children (s 13 of the Care Act);
- identifying the family's 'mob' and cultural heritage prior to attending the conference;

**Table 15** Parents, family members and legal representatives who participated in alternative dispute resolution and agreed or strongly agreed that the conference had been conducted in a way that was suitable for their family/client, by program and Indigenous status

	Indigenous		Non-Indigenous	
	n	%	n	%
<b>DRC</b>				
Mother	53	91	226	86
Father	27	87	143	79
Other family member	18	90	118	84
Legal representative for the parent(s)	96	92	388	89
Legal representative for the child/young person	42	88	135	88
<b>Legal Aid Pilot</b>				
Mother	3	75	18	86
Father	2	100	13	59
Other family member	-	-	17	85
Legal representative for the parent(s)	8	89	33	87
Legal representative for the child/young person	-	-	8	73

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

- consulting with Indigenous Caseworkers prior to the conference to identify key concerns and services available to families; and
- providing extended family members with transport assistance so they can attend the conference.

The perception among stakeholders that DRCs and the Legal Aid Pilot are suitable for Indigenous families appears to be supported by the post-conference survey data. In the new version of the survey, legal representatives and family members were asked if the conference had been run in a way that was suitable for their family/client. The question around suitability could encompass a number of considerations, including the Indigenous status of the family. Disaggregating the survey responses into conferences involving Indigenous and non-Indigenous children demonstrates that the proportion of parents of Indigenous children, family members and their legal representatives who had reported that the conference had been run in a way that was suitable for their family/client was very high and similar to the proportion of non-Indigenous participants (see Table 15).

As mentioned previously, stakeholders identified the attendance of parents and extended family members

as an important feature of conferences involving Indigenous families. The post-conference report data indicates that there has been a high rate of attendance among family members, their lawyers and support persons at conferences involving Indigenous families (see Table 16). The attendance rates of family members in matters involving Indigenous families were similar to non-Indigenous matters and in some instances, they were slightly higher (eg fathers participated in 68 percent of DRCs involving at least 1 Indigenous child compared with 60 percent of conferences involving non-Indigenous children).

Further, findings from the analysis of the post-conference surveys completed by parents and family members show that Indigenous families involved in the DRCs were generally satisfied that all parties that should have been invited were invited to the conference (see Table 17). While the satisfaction rates on this item were lower for the Legal Aid Pilot, it is notable that there was no difference between Indigenous and non-Indigenous matters.

The high rate of attendance of Indigenous parents and family members at conferences and the high level of satisfaction among Indigenous families with

**Table 16** People who attended the conference, by program and Indigenous status

	Indigenous		Non-Indigenous	
	n	%	n	%
<b>DRC</b>				
Mother	160	88	589	88
Father	124	68	412	62
Mother's lawyer	157	86	573	86
Father's lawyer	111	61	381	57
Child or young person	4	2	30	4
Other family member	63	48	206	44
Other family member's lawyer	24	26	57	17
Support person	35	27	104	22
<b>Legal Aid Pilot</b>				
Mother	22	88	54	84
Father	20	80	51	80
Mother's lawyer	21	84	52	81
Father's lawyer	17	68	45	67
Other family member	4	29	7	18
Other family member's lawyer	0	0	2	6
Support person	1	6	8	17

Note: Percentage totals exclude those matters for which there was no information

Includes all conferences that were scheduled in either DRCs or the Legal Aid Pilot, including conferences that were cancelled prior to commencement and those that were terminated after they had commenced

Source: DAGJ Post-conference report data September 2010—February 2012 [computer file]

**Table 17** Parents and family members who agreed or strongly agreed that everyone who should have been invited to the conference had been, by Indigenous status

	Indigenous		Non- Indigenous	
	n	%	n	%
<b>DRC</b>				
Parents and family members	106	90	533	87
<b>Legal Aid Pilot</b>				
Parents and family members	7	70	45	74

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

the people who were invited to attend the conference is a positive finding. One of the aims of both programs is to increase the participation of families in decision-making processes involving the safety and wellbeing of Indigenous children. Involving Indigenous families in decisions that are made about their children can help to increase the confidence

Indigenous families have in the process and any decisions made during proceedings (Urbis 2011).

Further, stakeholders suggest that, by involving the extended family in the conference, matters referred to ADR are more likely to consider family placements and account for the cultural needs of the children (eg considering significant family or cultural events when

determining contact arrangements; eg Case Study 4). This view again appears to be supported by the post-conference survey data (see Table 18). Community Services and legal representatives were asked if they thought that the agreement reached by parties during the conference satisfied s 13 of the Care Act (the placement of Indigenous children; if applicable). Around nine out of 10 legal representatives (excluding those matters for which no information was recorded) reported that the agreement had satisfied the Act. There were similarly high rates of agreement amongst the Community Services representatives (94% of those involved in the DRCs and 100% of those involved in the Legal Aid Pilot).

Despite the suggestion that the two programs are more suitable for Indigenous families than the old model of preliminary conferences and traditional Children’s Court proceedings, stakeholders were able to identify several options that they suggested could further increase the cultural appropriateness of the DRCs and Legal Aid Pilot for Indigenous families:

- using a co-conciliation model in DRCs for Indigenous families, whereby the Children’s Registrar is assisted by a representative of the Indigenous community, such as an Elder (giving consideration to the necessary requirements in terms of relevant knowledge and expertise);
- inviting Elders to be in attendance at the conference to provide advice on cultural matters (but not as a co-conciliation model), which is essentially the model used for the Care Circle process;

- including an acknowledgement of the traditional owners of the land in matters involving Indigenous families at the beginning of conferences;
- providing cultural awareness training for all practitioners involved in the two programs;
- providing an Indigenous support worker who can provide advice on how the two programs operate and to liaise with parties prior to the conference;
- increasing resources for ALS to enable them to contribute to a higher proportion of matters involving Indigenous families; and
- seeking additional feedback from representatives of the Indigenous community and Indigenous groups in terms of the cultural appropriateness of DRC and Legal Aid Pilot processes.

Further (and in relation to DRC), it was suggested by a number of Community Services and legal representatives that conducting conferences away from the Children’s Court in a less threatening environment would improve the cultural appropriateness of DRCs for Indigenous families. One Community Services representative argued that if conferences were held in a less formal venue, it could ‘assist in alleviating the stress Indigenous people experience in relation to white law’ (Community Services Manager Casework personal communication 2012). Another Community Services representative suggested that Indigenous families may be reluctant to engage in proceedings located in the court due not only to their own past experiences but also the past experiences of Indigenous families more generally.

**Table 18** Community Services and legal representatives who agreed or strongly agreed that the agreement regarding the placement of the child/ren satisfied the Act with regards to the placement of Indigenous children, by program

	n	%
<b>DRC</b>		
Community Services	293	93
Legal representatives	141	88
<b>Legal Aid Pilot</b>		
Community Services	37	95
Legal representatives	17	77

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

## Case study 4 (DRC)

This matter involved a Torres Strait Islander mother whose child had been removed from her care due to ongoing alcohol and cannabis misuse issues. The mother had been a victim of sexual and physical abuse when she was a child and had serious mental health issues for which she was receiving counselling. In light of the positive steps the mother had taken to address her identified parenting deficiencies, Community Services were proposing to implement a 12 month restoration plan and increase contact from once to twice a week. However, the mother was seeking immediate restoration. Community Services were not supporting immediate restoration due to their concerns regarding the mother's reluctance to submit to urinalysis and her demonstrated inability to deal with the child's ongoing behavioural issues.

The conference proceedings focused on the cultural needs and development of the child. In particular, the Children's Registrar (who had extensive experience dealing with Indigenous matters) emphasised the importance of maintaining the child's connection to the Torres Strait Islander community, the importance of additional contact and for a culturally suitable placement in the interim. Community Services also acknowledged that the cultural development of the child was a primary concern for them and encouraged the mother to identify some relevant community events that she and the child could attend together.

While final agreement was not reached during the conference, a number of issues in dispute were narrowed, significant progress was made in relation to contact arrangements and the matter was listed for hearing. The mother appeared to be happy at the end of the conference and expressed her gratitude towards the Children's Registrar and Community Services for letting her 'tell her story straight'.

The Legal Aid Pilot includes Indigenous mediators who (where appropriate and available) convene conferences involving Indigenous families. While stakeholders perceive the inclusion of Indigenous mediators on the Legal Aid Pilot panel as contributing to the appropriateness of the process for Indigenous families, some issues have been identified in terms of the role of the Indigenous mediator. Mediators argued that the reason for including an Indigenous mediator in the conference was so they could bring their knowledge and expertise on cultural matters to proceedings. However, in accordance with the mediation model of ADR, they are not expected to perform an advisory role. This presents a challenge in terms of defining the role of Indigenous mediators and ensuring that they do not step outside this role. Legal Aid held additional training sessions (facilitated by an external Indigenous mediator) for the mediators, focusing on the role of Indigenous mediators in conferences, with

the aim of overcoming this issue. Interviews with stakeholders in the second stage of consultations indicated that this issue has not yet been resolved and that the precise role of Indigenous mediators in conferences is not clear.

The new model of DRC and Legal Aid Pilot represent an innovative approach for facilitating the participation of Indigenous families in decision-making processes concerning their children. The development and implementation of innovative processes can present a number of challenges, such as how best to involve and define the role of Indigenous mediators. Program staff involved in DRCs and the Legal Aid Pilot have demonstrated a commitment to addressing these issues throughout the evaluation period and this will go some way to ensuring that both programs continue to provide a more culturally appropriate alternative to traditional care proceedings.

# Consistency with good practice

The literature review highlighted 11 key principles for the implementation of a court-referred care and protection ADR program. These were identified from the good practice guides developed by NADRAC (2011) and Giovannucci and Largent (2009), as well as the various evaluations of programs similar to the new model of DRC and the Legal Aid Pilot operating in Australia and overseas. While these principles have helped guide the evaluation and are reported in the relevant sections of the report, findings from a comparison of the design and implementation of the DRCs and Legal Aid Pilot with these good practice principles are summarised in Table 19.

Overall, it can be concluded that the available evidence base has informed the development and implementation of the new model of DRC and the Legal Aid Pilot. A concerted effort has been made to ensure that both programs are consistent with good practice principles for court-referred ADR. Further, there are processes in place to ensure that there is continuous improvement in the delivery of ADR services and that implementation challenges are addressed.

**Table 19** Consistency with principles for the implementation of a court-based child welfare ADR program

Principle	Description	Implementation of the new model of DRC and the Legal Aid Pilot
1. Stakeholder involvement in planning processes	Key stakeholder groups should be provided with the opportunity to participate in planning processes and be represented on any steering committee.	<p>The development of both programs was led by the ADR Expert Working Party, an advisory committee comprising representatives from key agency groups, including Legal Aid, ADR Directorate of DAGJ, NSW Children's Court, Community Services, ALS and private practitioners.</p> <p>The ADR Expert Working Party provided an important vehicle through which to engage the relevant parties in the development and design of the two programs.</p>

**Table 19** (continued)

Principle	Description	Implementation of the new model of DRC and the Legal Aid Pilot
2. Stakeholder 'buy-in'	Stakeholder commitment to the program should be encouraged from the outset and throughout the life of the program.	<p>Stakeholder support for both programs was encouraged from the outset through the wide representation of different stakeholder groups on the ADR Expert Working Party. This has been sustained through the ADR Steering Committee, which comprises representatives from the various parties involved in DRCs and the Legal Aid Pilot and meets on a quarterly basis to monitor the implementation and oversee the operation of the two programs.</p> <p>Further, a number of information and briefing sessions were held with relevant parties (including Community Services) during the implementation stages of both programs and have been occurring on an ongoing basis. Information about the two programs has been provided to practitioners on an ongoing basis through pamphlets and DVDs. Regular training has also been provided to the parties involved in both programs (not limited to conference convenors).</p>
3. Program oversight	Programs should be supported by sufficient staffing resources and a program director or coordinator who oversees the implementation and management of the program.	Besides the ADR Steering Committee, both programs are overseen by a program manager who is supported by a small administrative team. In the Legal Aid Pilot, this administrative team includes a conference coordinator whose primary responsibility it is to schedule conferences, ensure the attendance of parties, brief participants on what they can expect on the day and what will be expected of them. In DRCs, the Senior Children's Registrar provides additional support and oversight to the Children's Registrars involved in the program, alongside the administrative support provided by a conference coordinator and other Children's Court staff.
4. Clear eligibility criteria	Clear eligibility criteria should be established from the outset of the program and reflect program resources. In particular, this criteria should consider the issues of consent, violence and power imbalances between parties.	<p>Eligibility criteria (or criteria that exclude certain matters from being referred to ADR) do not exist. However:</p> <ul style="list-style-type: none"> <li>parties are not required to consent in order for a matter to be referred to ADR;</li> <li>matters cannot be referred to ADR where a party's attendance at, or participation in, the conference constitutes a breach of an AVO, unless arrangements can be made for a shuttle or telephone conference; and</li> <li>matters may involve parents where there is a history of domestic violence or parents that are aggressive towards other parties involved in proceedings.</li> </ul> <p>There was little support among stakeholders for more restrictive eligibility criteria in either program. There appears to be consensus as to which matters are not suited to ADR (eg where the matter involves non-accidental injury or a parent is intoxicated).</p>
5. Appropriate timing of referrals	Referrals should be made as early as possible but should also allow time for all the parties to form an opinion and respond to any reports.	The timing of referrals to both programs is at the discretion of the Children's Registrar or Magistrate who has responsibility for the matter. Although Practice Note 3 states that conferences should 'as far as practicable be held as early as possible in order to facilitate the early resolution of a care application' (paragraph 11.1), the analysis of post-conference reports completed by conference convenors indicate that the majority of matters are being referred late in the care and protection proceedings, after a care plan has been completed.

**Table 19** (continued)

Principle	Description	Implementation of the new model of DRC and the Legal Aid Pilot
6. Trained and competent conference convenors	Conference convenors should have experience in ADR processes, have excellent communication skills and be culturally sensitive. Conference convenors should be supported by ongoing and intensive training.	There has been a significant commitment to and investment in training for conference convenors. Children's Registrars and mediators were all trained in ADR prior to their involvement in either program. Mediators have been provided with additional training on the care and protection jurisdiction. The development of conference convenors has also been encouraged through informal education measures (see Table 5). Further, mediators have extensive ADR experience and sit on the Legal Aid Family Dispute Resolution Service panel. Similarly, Children's Registrars have legal expertise and knowledge of the care and protection jurisdiction that they draw on this to perform their role.
7. Attendance of important parties	All of the important parties in a matter should attend the conference and the child protection workers should be in a position to authorise any agreement and negotiate around a range of outcomes.	<p>According to Practice Note 3, it is mandatory for the following parties to attend a conference:</p> <ul style="list-style-type: none"> <li>• the parent(s);</li> <li>• Community Services Caseworker and Manager Casework;</li> <li>• ILR/DLR for the child/ren; and</li> <li>• the legal representative for Community Services.</li> </ul> <p>Parent(s) are encouraged to have legal representation, although this is not mandatory. Analysis of the post-conference reports suggests that attendance rates for these parties at scheduled conferences are very high and reports from those involved suggest that this has improved markedly from the previous model of preliminary conferences.</p>
8. Clear expectations of participants	Parties should be prepared to attend a conference and have a clear understanding of what will be expected of them during the conference. In particular, they should be encouraged to listen, negotiate in good faith and show respect for the other parties.	<p>Prior to commencing a conference, conference convenors outline the behavioural guidelines that all participants are expected to abide by. These guidelines require all parties to be (at a minimum) respectful and calm and to listen to the other parties. The conference convenor has the right to stop a conference if the behaviour of any party is inappropriate. Further, prior to their attendance at a conference, family members and parents are provided with information outlining appropriate behaviour and the roles and responsibilities of various parties.</p>
9. Confidentiality of proceedings	Any discussions and notes taken during a conference should be covered by clear confidentiality protocols that are understood by all the parties in the room. Any agreement reached during the conference should not be confidential to allow reporting to the court.	<p>There are strict legislative provisions in place that protect the confidentiality of conference discussions. At the beginning of every conference, the conference convenor outlines the confidentiality protocols all parties are expected to abide by. Participants in a Legal Aid Pilot conference are also asked to sign a confidentiality agreement.</p> <p>While the discussions held during a conference are confidential, any agreement reached is not. Agreement reached during a conference is communicated to the Children's Court through either a post-conference report completed by the mediator (for the Legal Aid Pilot) or through a Bench Sheet, which is completed by the Children's Registrar and then placed on the court file (for DRCs). The purpose of the post-conference report is to assist the court schedule an appropriate amount of time for the hearing (if one is required). In the event that an agreement is reached between parties, a legal representative present during the proceedings will draft a Minute of Care Order that will be submitted to the court.</p>

**Table 19** (continued)

Principle	Description	Implementation of the new model of DRC and the Legal Aid Pilot
10. Cultural appropriateness	The ethnicity and cultural needs of the families should be dealt with sensitively by the conference convenor and the processes adapted to suit the needs of the family.	Two of the mediators involved in the Legal Aid Pilot are Indigenous and (where possible) all Indigenous cases are convened by at least one Indigenous mediator. Children's Registrars and mediators have received cultural sensitivity training so they are equipped to handle Indigenous matters. Some of the Children's Registrars involved in the DRCs have extensive experience working with Indigenous families. ALS has an ongoing role in both programs. However, due to their own resourcing issues, ALS have only been able to participate in a limited number of conferences. Interpreters are available and have been used on a small number of occasions for non-English speaking participants. Where an interpreter has been involved, parties have adapted their behaviour accordingly.
11. Sustainability	Clear data collection protocols should be established during the early program development and implementation stages to facilitate ongoing evaluation of the program.	During the implementation stages of both programs, clear record keeping processes were developed and implemented. Information collected on a regular basis includes the number of matters that have proceeded to ADR, the demographic information about the families who participated in a conference and the outcome of the conference. Further, from its inception, participants in both programs have been asked to complete a survey at the end of the proceedings to assess their level of satisfaction with both process and outcome.



# Reaching agreement on key issues relevant to the care application

The purpose of both DRCs and the Legal Aid Pilot is to provide the parties with an opportunity to agree on the action that should be taken in the best interests of the child. Where parties are unable to reach an agreement on the action that should be taken, the parties are encouraged to identify the areas of agreement and any issues that remain in dispute. If agreement can be reached, or the issues in dispute narrowed, DRCs and the Legal Aid Pilot can help to limit the scope and length of the court hearing.

The evaluation therefore aimed to determine the extent to which issues in dispute are narrowed or resolved through a matter being referred to ADR. The Children's Registrar and mediator record information on the issues that are discussed at a conference and whether these issues are resolved in their post-conference report. The findings from an analysis of the data collected in these reports, based on an extract of data provided to the AIC for conferences held up until February 2012, are presented in this section of the report. Until June 2011 (when a uniform report template was implemented) the mediators and Children's Registrars were using different post-conference reports. While every attempt has been made to merge the two earlier versions of the report into a single, consistent version, this may have some impact on the way information about the issues

being discussed and the results of the conference were recorded during this initial period. Therefore, some care is required in interpreting these findings, particularly in terms of drawing direct comparisons between DRCs and the Legal Aid Pilot.

A range of issues may be discussed during a conference (see Table 20), the most common being:

- parental responsibility (79% of DRCs and 75% of conferences held as part of the Legal Aid Pilot);
- whether there is a realistic possibility of restoration (79% and 83%); and
- contact (79% and 90%).

These findings are consistent with the feedback from practitioners involved in the conferences. In terms of contact, there is evidence from the post-conference report that specific issues relating to contact, such as the amount of time that the child would spend with different people and supervision arrangements, were more frequently discussed as part of conferences held in the Legal Aid Pilot. This is also consistent with the feedback from practitioners, who reported that a significant amount of time in conferences held as part of the Legal Aid Pilot was dedicated to contact issues and arrangements.

The post-conference reports also record information on the aggregate outcome from the conference in terms of whether all of the issues in dispute at the

**Table 20** Information recorded about the matter that may have been discussed at the conference, by program

	n	%
<b>DRC</b>		
Parental responsibility	653	79
To whom parental responsibility will be allocated	565	78
Whether parental responsibility will be sole or shared	298	47
Length of parental responsibility	366	57
Realistic possibility of restoration	588	79
Alternative placement of children if restoration not agreed or pursued	362	55
Contact	651	79
Amount of time children should spend with parent	553	76
Amount of time children should spend with siblings	216	35
Amount of time children should spend with other people	152	26
Whether contact needs to be supervised	322	50
Who should supervise contact	247	40
Length of the order for supervision of contact	145	25
Characteristics impacting on parenting capacity	738	89
Establishment	21	5
Total conferences	825	100
<b>Legal Aid Pilot</b>		
Parental responsibility	65	75
To whom parental responsibility will be allocated	61	90
Whether parental responsibility will be sole or shared	54	82
Length of parental responsibility	51	82
Realistic possibility of restoration	59	83
Alternative placement of children if restoration not agreed or pursued	57	81
Contact	78	90
Amount of time children should spend with parent	70	95
Amount of time children should spend with siblings	25	44
Amount of time children should spend with other people	36	58
Whether contact needs to be supervised	61	88
Who should supervise contact	45	79
Length of the order for supervision of contact	30	61
Characteristics impacting on parenting capacity	56	64
Establishment	n/a	n/a
Total conferences	87	100

Note: Limited to those conferences that were finalised (ie proceeded and not terminated after commencement)

Percentage totals exclude those matters for which there was no information

Source: DAGJ Post-conference report data September 2010—February 2012 [computer file]

**Table 21** Outcomes for all conferences, by program

	n	%
<b>DRC</b>		
All of the issues resolved	257	33
Issues in dispute narrowed	360	47
None of the issues resolved	154	20
Total	771	100
<b>Legal Aid Pilot</b>		
All of the issues resolved	21	28
Issues in dispute narrowed	40	54
None of the issues resolved	13	18
Total	74	100

Note: Excludes 54 DRC and 13 Legal Aid Pilot conferences that proceeded but for which no outcome was recorded

Limited to those conferences that were finalised (ie proceeded and not terminated after commencement)

Source: DAGJ Post-conference report data September 2010—February 2012 [computer file]

**Table 22** Outcomes for all conferences, by program and Indigenous status

	Indigenous		Non- Indigenous	
	n	%	n	%
<b>DRC</b>				
All of the issues resolved	52	30	205	34
Issues in dispute narrowed	95	55	265	44
None of the issues resolved	26	15	128	21
Total	173		598	
<b>Legal Aid Pilot</b>				
All of the issues resolved	3	15	18	33
Issues in dispute narrowed	16	80	24	44
None of the issues resolved	1	5	12	22
Total	20		54	

Note: Excludes 54 DRC and 13 Legal Aid Pilot conferences that proceeded but for which no outcome was recorded

Limited to those conferences that were finalised (ie proceeded and not terminated after commencement)

Percentages may not total 100 due to rounding

Source: DAGJ Post-conference report data September 2010—February 2012 [computer file]

time of the matter being referred were resolved, whether the issues in dispute have been narrowed, or whether none of the issues have been resolved. Although this is a reasonably blunt instrument for measuring the outcomes from a conference, it does provide a relatively simple and straightforward indicator of the level of progress that has been made.

A limitation of the post-conference reports is that they only record the outcomes that have been achieved by the end of the conference. In some of these matters (particularly those in which the issues in dispute had been narrowed), some of the issues that had not been resolved by the end of the conference may have been resolved in the period following the conference, due (at least in part) to

the discussion that took place at the conference. This could not be captured in the post-conference reports.

As shown in Table 21, 33 percent of DRCs and 28 percent of conferences held as part of the Legal Aid Pilot resulted in all of the issues being resolved. A further 47 percent of DRCs and 54 percent of Legal Aid Pilot conferences resulted in the issues in dispute being narrowed. This means that 80 percent of DRCs and 82 percent of Legal Aid Pilot conferences resulted in the issues in dispute being narrowed or resolved. This has the potential to reduce the scope and length of a hearing, should one be required, and is an important outcome. However, this means that across both programs, one in five conferences ended with none of the issues being resolved (ie limited progress being made towards resolution).

Disaggregating these results by the Indigenous status of the families shows that the resolution rates for Indigenous families were slightly higher than for non-Indigenous families (see Table 22). Eighty-five percent of Indigenous matters referred to DRC and 95 percent of Indigenous matters referred to the Legal Aid Pilot resulted in the issues being narrowed or resolved.

It is possible to further examine these outcomes according to the type of application that was filed

with the Children’s Court and referred to ADR (see Table 23). The majority of applications referred to both programs were new applications initiating care proceedings; therefore, some caution needs to be taken in comparing the outcomes of these applications, given the relatively small number of applications for the rescission or variation of orders (s 90 applications), especially for the Legal Aid Pilot. Nevertheless, it appears that there were no discernible differences between the two types of application.

More important than the relationship between the type of application and conference outcomes is the relationship between the timing of referral and the outcomes from a conference (see Table 24). In the DRC, 72 percent of conferences that were held prior to establishment resulted in the issues being resolved or narrowed, 79 percent of conferences that were held after establishment but prior to a care plan being completed resulted in the issues being resolved or narrowed and 83 percent of conferences that were held after establishment and after a care plan had been completed resulted in the issues being resolved or narrowed. In the Legal Aid Pilot, 82 percent of conferences that were held after establishment but prior to a care plan being completed resulted in the issues being resolved

**Table 23** Outcomes for all conferences, by program and type of care application

	New application		Section 90 application	
	n	%	n	%
<b>DRC</b>				
All of the issues resolved	227	35	29	28
Issues in dispute narrowed	309	47	46	44
None of the issues resolved	120	18	29	28
Total	656		104	
<b>Legal Aid Pilot</b>				
All of the issues resolved	19	29	1	13
Issues in dispute narrowed	36	55	4	50
None of the issues resolved	10	15	3	38
Total	65		8	

Note: Excludes 18 DRC and 9 Legal Aid Pilot conferences for which the timing of referral was not stated and a further 47 DRC and 5 Legal Aid Pilot conferences for which no outcome was recorded

Percentages may not total 100 due to rounding

Limited to those conferences that were finalised (ie proceeded and not terminated after commencement)

Source: DAGJ Post-conference report data September 2010—February 2012 [computer file]

**Table 24** Outcomes recorded for conferences, by program and timing of referral (new applications only)

	All of the issues resolved		Issues in dispute narrowed		None of the issues resolved		Total	
	n	%	n	%	n	%	n	%
<b>DRC</b>								
Prior to establishment	17	32	21	40	15	28	53	
After establishment but prior to a care plan being completed	36	26	72	53	29	21	137	
After establishment and after a care plan has been completed	174	37	216	46	76	16	466	
<b>Legal Aid Pilot</b>								
After establishment but prior to a care plan being completed	15	29	27	53	9	18	51	
After establishment and after a care plan has been completed	4	29	9	64	1	7	14	

Note: New applications only. Excludes 18 DRC and 9 Legal Aid Pilot conferences for which the timing of referral was not stated and a further 47 DRC and 5 Legal Aid Pilot conferences for which no outcome was recorded

Limited to those conferences that were finalised (ie proceeded and not terminated after commencement)

Percentage totals may not equal 100 due to rounding

Source: DAGJ Post-conference report data September 2010—February 2012 [computer file]

### Case study 5 (Legal Aid Pilot)

In this matter, the mother had pending criminal charges and a substance abuse problem, which was a major contributing factor to her 18 month old child being removed from her care. The father was in custody awaiting sentence on related charges, but was participating in the conference through a telephone call with his legal representatives (to provide instructions). The mother was not seeking the restoration of her child. Prior to the matter being referred to ADR, the maternal grandparents had been identified and assessed as a suitable placement.

Community Services and the ILR were generally supportive of the proposal to place the child with the maternal grandparents, on the condition that the mother would not stay at the house overnight. There was considerable discussion about shared parental responsibility—in particular, what it meant in practice for responsibility to be shared between the Minister and the maternal grandparents. The maternal grandmother was in attendance but was not legally represented and had a number of questions about the placement and contact. Once all parties understood and agreed to the proposed course of action, the discussion moved to contact arrangements. In particular, the number of contact visits and supervision arrangements were discussed in depth. The maternal grandmother was able to speak directly to Community Services about the support and assistance that might be available to her in caring for the child and in supervising contact with the mother.

In this instance, it appeared that there was a viable course of action identified prior to the commencement of proceedings that was supported by all parties involved. Therefore, the focus of the conference was on the practicalities of the proposed arrangements. The parties were able to resolve the majority of key issues relevant to final orders (placement with the grandparents, the number of contact visits with the mother and supervision of contact, shared parental responsibility for the first 12 months) and the legal representative for Community Services agreed to draft the Minute of Care Order stating that there had been 'substantial agreement on the majority of issues'. Contact with the father and the supervision of this contact were the only issues that were not resolved at the conference. The conference ended on a positive note with Community Services and the ILR praising the mother for having made significant progress in addressing her drug problem and for taking positive steps to have her child restored to her care in the future (through a s 90 application).

or narrowed and 93 percent of conferences that were held after establishment and after a care plan had been completed resulted in the issues being resolved or narrowed (note the small numbers for this second group). These results suggest (acknowledging that for some of the referral stages, the sample size is comparatively small) that the effectiveness of ADR in resolving or narrowing the issues in dispute is not related to the point during proceedings when matter is referred to ADR.

Table 25 outlines the findings from an analysis of outcomes for specific issues that are discussed during a conference. The percentages in the Table relate to the proportion of conferences that resulted in that particular issue being resolved and are calculated based on the total number of conferences where that issue was raised and discussed by the parties (and for which the result is known).

For DRCs, conferences appear to have had the most success in resolving issues relating to parental responsibility (37%) and contact (40%). Of the 20 DRCs that dealt with establishment, only two resulted in the issue being resolved. In the Legal Aid Pilot, contact (26%) was more likely to have been resolved than other issues. There is a range of factors that are likely to contribute to the likelihood that an issue will be resolved, including how far apart the views of parties are to begin with

and whether they are willing to consider other options, as well as the steps that need to be undertaken after the conference has been completed (such as the need for carers to be assessed prior to parental responsibility and contact being resolved).

The finding that contact disputes are resolved through the use of ADR in 40 percent of DRCs and 26 percent of conferences in the Legal Aid Pilot in which contact was discussed is important in the context of the Wood (2008) recommendations regarding contact. It highlights the need for an appropriate review mechanism for resolving contact disputes when ADR is unsuccessful and is discussed in more detail in the final section of this report.

## The contribution of alternative dispute resolution to care orders and care plans

DRCs and the Legal Aid Pilot also aim to assist in the formulation of final or interim orders that may be made on the basis of consent. If the issues that were in dispute when a matter was referred to ADR are able to be resolved during a conference, then

**Table 25** Issues resolved at the conference, by program

	n	%
<b>DRC</b>		
Parental responsibility	242	37
Realistic possibility of restoration	153	26
Alternative placement of children if restoration not agreed or pursued	86	24
Contact	263	40
Establishment	2	10
<b>Legal Aid Pilot</b>		
Parental responsibility	13	20
Realistic possibility of restoration	8	14
Alternative placement of children if restoration not agreed or pursued	8	14
Contact	20	26

Note: Percentages calculated based on the total number of conferences at which each issue was raised and discussed

Percentage totals exclude those conferences for which the resolution of the issue is unknown

Source: DAGJ Post-conference report data September 2010—February 2012 [computer file]

agreement can be reached on appropriate care orders. Similarly, resolving these issues and discussing the action that should be taken in the best interest of the child can help to inform the development of a care plan or, as is most often the case, review, amend and agree on a proposed care plan.

Observations of the conference process and interviews with key stakeholders highlighted several factors that appear to influence the likelihood that a matter will settle during a conference, including:

- the willingness of the parties to consider a range of options, not only those that are put forth by the parties at the commencement of the conference;
- the distance between the positions of parties at the commencement of the conference;
- the extent to which all of the parties involved in the conference are willing and able to compromise or make concessions on their original position; and

- whether new options are identified that have not been considered by one or more parties and require further investigation before agreement can be reached. This is a particular issue when a new potential family placement option is identified.

Findings from the analysis of recorded results from the conference (in terms of whether orders were agreed) are reported in Table 26. Given that a conference may have more than one result recorded, the highest recorded result is reported for each completed matter (ie final orders and care plan agreed constitutes the highest possible result, followed by final orders agreed and care plan to be amended and so on). As with the data on outcomes, caution needs to be taken in interpreting the results and drawing any comparisons between the two programs due to the different reporting mechanisms, reflected in the low numbers for the Legal Aid Pilot. As with conference outcomes, these findings are also limited to an assessment of whether final orders

**Table 26** Highest recorded result from conference, by program

	n	%
<b>DRC</b>		
Final orders and care plan agreed	135	18
Final orders agreed and care plan to be amended	138	18
Section 38 care plan agreed	8	1
Matter not settled—parties agree on next steps	223	30
Matter not settled—further ADR discussed	94	13
Matter not settled—hearing required	150	20
Total	748	
<b>Legal Aid Pilot</b>		
Final orders and care plan agreed	26	33
Final orders agreed and care plan to be amended	3	4
Section 38 care plan agreed	0	0
Matter not settled—parties agree on next steps	12	15
Matter not settled—further ADR discussed	9	11
Matter not settled—hearing required	30	38
Total	80	

Note: Percentages may not total 100 due to rounding

Limited to those conferences that were finalised (ie proceeded and not terminated after commencement)

Excludes those conferences (77 in DRC, 7 in Legal Aid Pilot) for which no result was recorded

Source: DAGJ Post-conference report data September 2010—February 2012 [computer file]

## Case study 6 (DRC)

In this matter, the mother was seeking the restoration of her children who had been removed from her and placed under the joint care of the father and paternal grandparents. The mother's relationship with the paternal grandparents had broken down, which was particularly problematic as the paternal grandparents were responsible for supervising the mother's contact with her children. In light of this, the mother was asking Community Services to supervise the contact meetings and to give her more contact (including unsupervised time) with the children.

Community Services were not supporting restoration or additional contact due to the mother's perceived lack of insight into her parenting deficiencies. In particular, the mother's continued defence of her ex-boyfriend who had been accused of physically abusing her youngest child was a point of concern. Further, there was some question as to whether the mother was actually separated from her ex-boyfriend. The father claimed that he had seen recent photos of them together on her Facebook page.

During the conference, it was apparent that the Caseworker and Manager Casework were reluctant to engage with the mother. In particular, they were evasive when asked specific questions about what the mother could do to address the concerns of Community Services. When the mother addressed the Caseworker directly and asked her what she would have to do to 'get her kids back', the Manager Casework responded with 'nothing in the short term, and in the long term, demonstrate risk protective skills'. The mother was clearly confused by the response and when the ILR and Children's Registrar asked the Manager Casework to clarify and expand on what she meant, the Manager Casework recommended the mother engage in counselling services. The mother was visibly distressed by these responses and expressed frustration at the lack of perceived guidance provided to her by the Caseworker and Manager Casework.

Despite this issue, significant progress was made in this matter, particularly in relation to the contact arrangements. Community Services agreed to supervise and change the venue of contact meetings. However, the mother was not willing to agree on restoration, so it was agreed that the matter would have to go to a hearing.

were agreed by the end of the conference. There may have been some matters that did not result in agreement being reached during the conference where agreement was reached in the period following the conference (and prior to hearing) because of the discussions that took place. This could not be captured in the post-conference reports.

Thirty-seven percent of matters referred to DRC and the Legal Aid Pilot resulted in final orders being agreed at the conference and a care plan either being agreed or supported with further amendments. The proportion of conferences that resulted in final orders being agreed was higher than the proportion for which all of the issues were resolved, because it was possible for care orders to be agreed without all of the issues being resolved at the conference. Anecdotal reports from Magistrates involved in both programs suggest that, in most cases, the court will subsequently make the orders that are agreed through ADR. Therefore, it would appear that conferences result in an agreement to final orders in around one-third of matters.

Disaggregating the post-conference data by the Indigenous status of children suggests that there were few differences between conferences for Indigenous and non-Indigenous families. Among the conferences held as part of DRCs, 36 percent of conferences involving Indigenous children and

36 percent of conferences involving non-Indigenous children resulted in final orders being agreed at the conference and a care plan either being agreed or supported with further amendments. In the Legal Aid Pilot, 29 percent of conferences involving Indigenous children and 39 percent of conferences involving non-Indigenous children resulted in final orders being agreed.

Similar results were found when the data were divided between matters where there was an AVO present between parties and those where there was not. In DRCs, 37 percent of conferences in which an AVO was present between the parties and 36 percent of conferences in which an AVO was not present between the parties resulted in final orders being agreed at the conference and a care plan either being agreed or supported with further amendments. In the Legal Aid Pilot, 41 percent of conferences where an AVO was present between the parties and 37 percent of conferences where an AVO was not present between the parties resulted in final orders being agreed.

The majority of matters did not reach a final agreement on the day of the conference. Sixty-three percent of matters referred to a DRC and 64 percent of matters referred to the Legal Aid Pilot were not settled (ie final orders agreed) at the time of the conference. This was consistent with the observations

of the research team, which suggested that for the majority of matters, there was no final agreement reached. In many of these observed matters, at least some progress had been made within the conferences in terms of moving closer to agreement or resolving some of the issues in dispute (eg Case Study 6).

The results presented in Table 26 should not be interpreted as suggesting that the ADR is ineffective in assisting parties to reach an agreement on final orders. Settlement rates are a reasonably blunt instrument for measuring the outcomes of conferences. The impact that DRCs and the Legal Aid Pilot are having on case resolution cannot only

be measured by the number of final orders that are agreed upon (or not agreed upon) during the conference. The parties may still agree on the next steps to be taken in the matter, which may speed up the resolution process (eg Case Study 7). Even when final orders are not agreed, a conference may progress a matter towards case resolution by narrowing the issues in dispute and a significant proportion of DRCs and conferences held as part of the Legal Aid Pilot have resulted in the issues in dispute being narrowed or resolved. Further, parties may reach agreement after the conference but prior to a hearing as a result of the progress made during conferences.

### Case study 7 (Legal Aid Pilot)

In this matter, four children had been removed from the care of the parents. The matter had been referred to ADR post establishment and the primary concern for the conference was to resolve issues relating to restoration and the placement of the children. Both the mother and father attended the conference, although the father was not legally represented. The lack of legal representation, the power imbalance between the mother and father (where there was suspected emotional and physical abuse) and the father's position on the original care application (which he disputed) presented significant barriers to the conference.

At the beginning of the conference, little progress was being made and the parties (parents, ILR and Community Services) appeared unwilling to move from their positions. Following lengthy private sessions the parties reconvened and appeared more willing to work together and as a result, progress was made on a number of issues. Parties (in particular the mother) were closer to reaching agreement on restoration and there was agreement on the next steps to determine what needed to be done to finalise placement and contact. There was agreement to assess whether the maternal grandparents were a suitable placement or, in the event that the children were restored to the parents, could provide respite care. Towards the end of the conference, parties appeared willing to consider a range of alternative options and the parents were more likely to consider taking steps such as relationship counselling and undertaking a physical and mental health assessment (in the case of the mother).

By the end of the conference, there was progress in narrowing the issues in dispute and an agreement was reached to seek an adjournment at the next mention to enable more time to follow up on the agreed course of action. Post-conference interviews with Community Services suggested that, despite the progress that had been made with the mother, the unwillingness of the father to accept that the application to initiate care proceedings was justified would limit the impact of the conference in terms of reducing the length of the hearing. A post-conference interview with the mother suggested that she was generally pleased with the conference and the progress that had been made and with being given the opportunity to speak directly with the Community Services Caseworker.

# Participant satisfaction with the conference process and outcomes

An important focus of the evaluation was the impact of ADR on the participants involved in conferences. In particular, the evaluation aimed to determine the extent to which participants were satisfied with the conference process and outcomes. This includes the parents and family members of children who were subject to a care application, as well as the legal representatives and Community Services staff who have participated in DRCs and the Legal Aid Pilot.

The findings from the analysis of an extract of data collected through the participant surveys that were distributed at the completion of each conference to assess the satisfaction of families, legal representatives and Community Services with the process and outcome of the conference are presented in this section of the report. The questionnaire asked participants about their feelings prior to, during and after the conference. The results presented in this section are from the new version of the survey. For clarity, the results are limited to the proportion of participants who agreed or strongly agreed with each question. Tables with all response items and the number of response items are included in *Appendix A*. The results of the appended surveys (ie the new and old versions of the surveys appended across consistent questions) are provided in *Appendix B*. These appendixes should be considered in interpreting the results from this section of the report. Caution should be shown

when interpreting the results that are based on small sample sizes.

It is important to acknowledge the limitations of the participant survey, particularly in terms of obtaining a broad range of views that are representative of all participants. The survey was voluntary and while the Children's Registrars and mediators encourage participants to complete the survey for the evaluation, some participants chose not to. Reasons for this include fatigue (particularly when conferences have run over the allocated time), the literacy skills of participants and whether participants wanted to leave the conference immediately after its conclusion. The experience of having observed the survey process during a number of conferences suggests that some parents were less likely to complete the survey when they were unhappy or upset by the outcome. It is therefore possible that the results overestimate the level of satisfaction among all participants, particularly parents and family members. Nevertheless, a significant number of participants completed the survey and by combining the results with the findings from the observations and the brief interviews with participants post-conference, it is possible to draw conclusions about overall levels of satisfaction with the process.

Another consideration in the interpretation of the survey results is that many of the professionals

involved in the conferences were involved in a large number of conferences during the evaluation period. This means that many participants completed multiple surveys over this period and that the number of surveys completed by participants (professionals only) also varied. While unique survey participants could not be identified from the completed surveys (to protect confidentiality), the potential for one participant to have a disproportionate impact on the overall survey response (particularly in the Legal Aid Pilot) should be considered when interpreting the results.

The evaluation also aims to determine the extent to which both programs have led to an increased level of satisfaction among all parties with the decision-making process and outcomes, compared with other methods of decision making in care and protection matters (ie preliminary conferences). Since it is not possible to retrospectively survey the parties involved in care and protection proceedings prior to the introduction of ADR, this assessment is based primarily on the qualitative interviews and

survey of professionals who have had experience in Children’s Court hearings and the previous version of preliminary conferences, as well as the brief interviews following the conferences observed by the research team with parents and family members that have had prior contact with the Children’s Court.

## Parents and family members

The results from an analysis of the responses by parents and family members to a number of questions in the post-conference survey are presented in this section. The survey questions have been divided into three sections—items measuring perceptions and attitudes towards ADR prior to attending the conference, items measuring satisfaction with the processes involved in the conference and items measuring satisfaction with the outcomes of the conference. Based upon the

**Table 27** Parents and family members who participated in alternative dispute resolution and agreed or strongly agreed with the following statements (before the conference), by program

	Mothers		Fathers		Other family members	
	n	%	n	%	n	%
<b>DRC</b>						
I understood why the conference was going to be held	328	96	224	97	170	96
I understood what was going to happen at the conference	297	87	203	88	149	85
I was worried about my safety at the conference	37	11	26	11	13	7
I was worried I wouldn't be listened to at the conference	94	28	69	30	28	16
I felt prepared for the conference	247	73	172	75	133	75
I was worried about the Community Services Caseworkers being at the conference	90	27	48	21	32	18
<b>Legal Aid Pilot</b>						
I understood why the mediation was going to be held	24	96	23	92	22	92
I understood what was going to happen at the mediation	21	81	22	88	19	83
I was worried about my safety at the mediation	2	7	4	16	2	8
I was worried I wouldn't be listened to at the mediation	11	41	5	22	6	25
I felt prepared for the mediation	18	67	18	72	15	71
I was worried about the Community Services Caseworkers being at the mediation	12	44	5	20	5	22

Note: The number of total respondents for each question varies due to missing data

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

results presented in these Tables, it is possible to draw a number of conclusions about the perceptions of parents and family members towards the conference process and outcomes, as well as their overall satisfaction with ADR.

Key findings from an analysis of responses by parents and family members about their feelings before the conference are described in Table 27.

- Parents and family members involved in both programs approached the conferences with an understanding of why the conference was being held and what was going to happen at the conference. This may in part be attributed to the pre-conference preparation in both programs and the promotional material produced by DAGJ and Legal Aid NSW.
- However, the proportion of parents and family members who said they felt prepared for ADR was lower (between 73 and 75% for DRCs, 67 and 72% for the Legal Aid Pilot). There may be scope for the conference convenors and parents' legal representatives to invest additional time in working with parents to help prepare them for the conference.
- Approximately one in 10 participants involved in ADR (mothers, fathers and other family members) were worried about their safety before the conference was held. While few in number, it does highlight the need to address issues of violence prior to and during proceedings, particularly where these issues are identified prior to the conference taking place.
- Between 22 and 41 percent of mothers and fathers involved in ADR reported being concerned that other parties would not listen to them during the conference.

Key findings from an analysis of responses by parents and family members about their satisfaction with the processes involved in the conference are described in Table 28.

- There appears to be a high level of satisfaction with the conference process. Between 80 and 91 percent of parents and family members felt they had been given an opportunity to tell their side of the story. A similar proportion of respondents believed that other parties had listened to what they had to say.

- There appears to be a high level of satisfaction with the perceived procedural fairness of conferences, with approximately nine out of 10 parents and family members believing the Children's Registrar/mediator had treated them fairly.
- Although between 22 and 41 percent of mothers and fathers involved in ADR reported being concerned that other parties would not listen to them during the conference (see above), the proportion of participants who felt that they had not been listened to after they had participated in the conference was much lower (less than 10% of parents and family members).
- Fewer parents and family members felt that the other participants cared about what they had to say, ranging from 52 percent (fathers in the Legal Aid Pilot) to 77 percent (mothers in a DRC).
- Between 54 and 70 percent of parents and family members involved in the two programs felt that Community Services had given them a fair go and approximately seven out of 10 parents and family members (other than fathers in the Legal Aid Pilot) involved in either program said that Community Services were willing to work with them.
- Approximately three-quarters of parents and family members who participated in a DRC said they had been able to contribute to the end result. Similar results were found in the Legal Aid Pilot, although satisfaction rates were lower among fathers (54% agreed or strongly agreed with the statement). The finding that a high proportion of parents and family members contributed to the conference agreement is a positive finding considering that both programs aim to provide families with an opportunity to contribute to decisions that affect their child/ren.

Key findings from an analysis of responses from parents and family members about their satisfaction with the outcomes of the conference are described in Table 29.

- Approximately eight out of 10 parents and family members who participated in ADR believed that the conference had been useful, although this was slightly lower for mothers involved in the Legal Aid Pilot (7 out of 10).

**Table 28** Parents and family members who participated in ADR and agreed or strongly agreed with the following statements (conference process), by program

	Mothers		Fathers		Other family members	
	n	%	n	%	n	%
<b>DRC</b>						
Everyone who should have been at the conference was invited	300	89	206	88	148	84
I understood what was going on	311	94	209	94	156	95
I felt safe during the conference	322	97	214	96	158	96
I was able to tell my side of the story	278	84	193	88	138	85
Other people at the conference listened to me	279	85	189	84	134	82
The other people at the conference cared about what I had to say	249	77	160	73	123	76
The Children's Registrar treated me fairly	311	96	210	94	153	94
The conference was run in a way that suited me and my family	285	87	179	81	137	85
The other participants cared about the safety and wellbeing of the children	295	91	183	84	130	83
I had enough support at the conference	293	90	192	88	138	86
Community Services gave me a fair go	200	62	150	70	113	72
Community Services were willing to work with me at the conference	211	65	150	69	117	74
I was able to contribute to the end result	227	70	161	76	119	76
<b>Legal Aid Pilot</b>						
Everyone who should have been at the mediation was invited	21	84	17	74	14	64
I understood what was going on	23	88	20	87	22	92
I felt safe during the mediation	25	93	20	80	23	96
I was able to tell my side of the story	21	84	20	80	21	91
Other people at the mediation listened to me	21	88	20	80	19	86
The other people at the mediation cared about what I had to say	19	73	13	52	15	65
The mediator treated me fairly	23	85	21	84	22	96
The mediation was run in a way that suited me and my family	22	85	15	63	18	82
The other participants cared about the safety and wellbeing of the children	22	85	18	72	20	87
I had enough support at the mediation	23	88	22	92	18	90
Community Services gave me a fair go	15	60	13	54	16	76
Community Services were willing to work with me at the conference	18	72	14	58	15	75
I was able to contribute to the end result	18	69	13	54	18	78

Note: The number of total respondents for each question varies due to missing data

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

- The proportion of parents and family members who said the agreed plan could be implemented ranged from 48 percent (fathers involved in the Legal Aid Pilot) to 80 percent (other family members involved in the Legal Aid Pilot).
- The level of satisfaction with the conference process and outcomes appears to be relatively consistent across both DRCs and the Legal Aid Pilot.
- While the satisfaction rates of fathers with the process in the Legal Aid Pilot were consistently lower than other family members, this trend was not apparent in their level of satisfaction with the outcomes from the conference.
- The level of satisfaction with the outcomes of the conference (in terms of whether a good outcome was reached for the children) was lower than the level of satisfaction with the process itself (see above). This is not surprising, given the types of outcomes that are reached as part of care and protection matters (ie around issues such as restoration, parental responsibility and contact).

The fact that satisfaction with the process remained high despite there being a significant number of parents and family members that were not satisfied with the outcome (eg Case Study 8) reflects positively upon DRCs and the Legal Aid Pilot. They have achieved a high rate of satisfaction with the conference process, which reflects the high standard of ADR being delivered through both programs and the commitment of the parties involved to genuine ADR.

The brief interviews with the parents and family members involved in the conferences observed by the research team appear to confirm these results. Parents spoke positively about the conference helping them to understand the process and decisions being made:

Parents caught up in the care system are in the dark about what they need to do to get their kids back. This [DRC] makes it clear (mother).

...if someone doesn't understand something then it can be cleared up. It can be sorted out (father).

**Table 29** Parents and family members who participated in alternative dispute resolution and agreed or strongly agreed with the following statements (conference outcomes), by program

	Mothers		Fathers		Other family members	
	n	%	n	%	n	%
<b>DRC</b>						
I was happy with how the conference was run	268	83	185	86	143	88
I better understand the concerns about the children	257	79	185	85	121	79
A good outcome was reached for the children	183	58	121	57	92	59
The agreed plan can be put in place	216	69	150	71	100	65
The conference was useful	255	80	179	83	133	84
I am happy with the outcome from the conference	196	62	150	70	104	67
The conference will help resolve conflict between me and my family	204	65	128	60	89	59
<b>Legal Aid Pilot</b>						
I was happy with how the mediation was run	21	81	18	72	21	91
I better understand the concerns about the children	18	67	17	71	16	76
A good outcome was reached for the children	13	50	12	50	16	73
The agreed plan can be put in place	17	65	11	48	16	80
The mediation was useful	18	69	18	78	19	90
I am happy with the outcome from the mediation	13	54	13	54	16	73
The mediation will help resolve conflict between me and my family	12	50	14	61	13	62

Note: The number of total respondents to each question varies due to missing data

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

I didn't understand much of it so it was good when she [the Children's Registrar] revised it in different words (mother).

A number of parents noted that this was the first time they felt that they had been given an opportunity to speak to the other parties directly and to express their point of view. Some parents who were disappointed or even angry about the outcome of the conference expressed appreciation for the opportunity to speak and be heard.

This is the first chance where I felt that I was actually able to have my say (mother).

A number of the parents were able to compare their experience in ADR with prior experience in Children's Court:

I get nervous around people with authority. I get my things mixed up and they make their decision based on that (mother, describing why she preferred the conference over court).

...much better to be able to discuss things without feeling intimidated by the Magistrate...

More formal and relaxed. It's more beneficial than a Magistrate sitting up there and solicitors talking (father).

A father who participated in a conference as part of the Legal Aid Pilot expressed a preference for mediation as there was less pressure on him to say the right thing.

The post conference survey data from the DRCs were subjected to further analysis to determine which factors had the greatest impact on parents'

overall satisfaction with the outcomes from a conference. Five scales were generated based on the questions in the post-conference survey. These were:

- understanding of what was going to happen at the conference;
- apprehension about participating in the conference;
- satisfaction with the conference process;
- perceptions of Community Services; and
- overall satisfaction with the outcomes from a conference.

The questions that were included in each of these scales are described in *Appendix C*, along with relevant statistics from an assessment of the reliability of the scales for the surveys of both mothers and fathers. These scales were generated based on theoretical assumptions about the relationship between different items in the survey, which were confirmed by assessing the correlation between items.

The results from the regression model for mothers (ordinary least squares multiple regression where the dependent variable was overall satisfaction with outcome) are displayed in Table 30. The final model included the other four scales as explanatory variables.

Hierarchical regression was employed to test the effects of certain predictors independent of the influence of others. In the first model, which included understanding of what was going to happen at the

## Case study 8 (DRC)

The parents involved in this case had had their child removed due to their ongoing substance misuse and mental health issues. The mother and father wanted different outcomes from the conference; the mother was seeking restoration but the father wanted the child to be placed with his aunt. The ILR and Community Services were supportive of this placement. Although Community Services were sympathetic towards both parents, they were unwilling to consider the issue of restoration. Further, the Caseworker and Manager Casework recommended to the mother that she consent to the proposed placement so that the child would not become more attached to the foster carers.

Although visibly distressed at a number of different points in the proceedings, both parents were able to make a significant contribution to the discussion and appeared comfortable doing so. However, at the end of the conference the issue of parental responsibility had not been resolved and it was unclear if the mother was going to challenge or support the proposed placement.

Although the mother was disappointed by the outcome of the conference, she was happy with how the conference was run. In particular, she thought the Children's Registrar '...was unreal. She talked to me like I was a human being and that my thoughts were valid'. Further, the mother acknowledged that although no agreement was reached between parties, she did get more information on the 'little details' which she found helpful. Similarly, the father said that after the conference, he now understood more about the concerns that Community Services had in relation to his parenting capacity.

**Table 30** Regression model predicting mothers' satisfaction with outcomes from conference

	B	Std error	Beta	t	p
Understanding of what was going to happen at the conference	0.030	0.071	0.019	0.417	0.677
Apprehension about participating in the conference	0.004	0.036	0.005	0.119	0.906
Satisfaction with the conference process	0.608	0.088	0.366	6.905	0.000
Perception of whether Community Services gave them a fair go	0.360	0.034	0.472	10.440	0.000
Constant	-0.236	0.337		-0.701	0.484
R2	0.556				

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table 31** Regression model predicting fathers' satisfaction with outcomes from conference

	B	Std error	Beta	t	p
Understanding of what was going to happen at the conference	0.094	0.070	0.066	1.356	0.177
Apprehension about participation in the conference	0.048	0.041	0.058	1.174	0.242
Satisfaction with the conference process	0.262	0.103	0.190	2.545	0.012
Perception of whether Community Services gave them a fair go	0.448	0.050	0.626	9.012	0.000
Constant	0.521	0.398		1.308	0.192
R2	0.610				

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

conference and apprehension about participating in the conference, both of these variables were found to be significant predictors of overall satisfaction with outcomes. However, following the addition of satisfaction with the conference process, neither variable remained significant.

In the final model comprising all four scales as explanatory variables, satisfaction with the conference process ( $t=6.905$ ,  $p<.001$ ) and perceptions of Community Services ( $t=10.440$ ,  $p<.001$ ) both significantly predicted higher levels of overall satisfaction with the outcome among mothers. Neither apprehension about participating in a conference or understanding of what was going to happen at the conference was significant.

The results from an analysis of survey data for fathers produced a similar result (see Table 31). Neither understanding of what was going to happen at the conference or apprehension about participating in a conference was a significant predictor of overall satisfaction with outcomes, once satisfaction with the conference process was added to the model. However, in the final model, perceptions of Community Services ( $t=9.012$ ,  $p<.001$ ) was the

strongest significant predictor of overall satisfaction with the outcomes from the conference controlling for other variables. Satisfaction with the conference process ( $t=2.545$ ,  $p<.05$ ) was also associated with higher levels of satisfaction with the outcome (but was weakened with the addition of perceptions of Community Services).

What these models demonstrate is that, while satisfaction with the conference process appeared to remain generally high despite parents not always being satisfied with the outcomes from the conference, parents reporting a higher level of satisfaction with how the conference was run were more likely to report being satisfied with the outcomes delivered by a conference. Further, these results also show that a parent's perception of whether Community Services gave them a fair go and were willing to work with them was related to their satisfaction with the conference outcomes, especially among fathers. In fact, these results suggest that satisfaction with Community Services during the conference was the strongest predictor of satisfaction with conference outcomes. Given that the level of satisfaction among parents and family

members with the performance of Community Services was lower than any other aspect of the process, these results suggest that satisfaction with the conference outcomes could be improved if Community Services were perceived by parents as more willing to work with them during the process (this issue is discussed in detail in the next section of this report).

## Legal representatives

The results from an analysis of the responses from legal representatives to a number of questions within the post-conference survey are presented in this section. This includes lawyers for the parent, for the child or young person and for Community Services. The survey questions have once again been divided into three sections; items measuring perceptions and attitudes towards ADR prior to attending the conference, items measuring satisfaction with the processes involved in the conference and items measuring satisfaction with the outcomes of the conference.

Key findings from an analysis of responses from legal representatives about their feelings before the conference are described in Table 32.

- Approximately seven percent of legal representatives involved in either program were worried about the safety of their client(s) prior to attending the conference. This supports the finding that there is a need to address issues of violence prior to and during proceedings.
- Between 77 and 87 percent of legal representatives involved in DRCs thought the conference would be useful for their client, which was slightly higher than the proportion of legal representatives who thought the conference would assist with the resolution of the matter (71 to 81%). Similar results were found for the Legal Aid Pilot.

Key findings from an analysis of responses from legal representatives about their satisfaction with the processes involved in the conference are described in Table 33.

- There was a high level of satisfaction among the legal representatives with the processes involved in the conference. Nearly all of the legal representatives felt that their clients had been given an opportunity to tell their side of the story and between 73 and 96 percent reported that the other parties had listened to what their client had to say.

**Table 32** Legal representatives who participated in alternative dispute resolution and agreed or strongly agreed with the following statements (before the conference), by program

	Parent's lawyer		Child or young person's lawyer		Community Services lawyer	
	n	%	n	%	n	%
<b>DRC</b>						
I was worried about the safety of my client at the conference	38	7	12	5	27	7
I thought the conference would be useful to my client	484	83	354	87	317	77
I thought the conference would assist with the resolution of this matter	437	75	338	81	293	71
<b>Legal Aid Pilot</b>						
I was worried about the safety of my client at the conference	2	4	2	10	3	10
I thought the mediation would be useful for my client	43	86	24	75	21	70
I thought the mediation would assist with the resolution of this matter	38	78	18	58	21	70

Note: The number of total respondents to each question varies due to missing data

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table 33** Legal representatives who participated in alternative dispute resolution and agreed or strongly agreed with the following statements (conference process), by program

	Parent's lawyer		Child or young person's lawyer		Community Services lawyer	
	n	%	n	%	n	%
<b>DRC</b>						
The Children's Registrar treated my client fairly	553	97	240	89	394	95
The Children's Registrar gave my client an opportunity to tell their side of the story	547	97	182	82	392	95
Other people at the conference listened to my client	511	90	192	86	366	88
The Children's Registrar acted impartially	571	98	422	98	390	94
I was happy with how the conference was run	552	96	419	97	373	90
I was able to contribute to the end result	466	84	138	70	353	88
<b>Legal Aid Pilot</b>						
The mediator treated my client fairly	48	98	13	81	27	90
The mediator gave my client the opportunity to tell their side of the story (if in attendance)	48	98	11	79	31	100
Other people at the mediation listened to what my client had to say	47	96	11	73	28	90
The mediator acted impartially	49	98	29	97	28	93
I was happy with how the mediation was run	46	92	25	86	22	76
My client was able to contribute to the end result	36	73	8	73	23	74

Note: The number of total respondents to each question varies due to missing data

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

- There was a high level of satisfaction among legal representatives with the perceived procedural fairness of conferences. Between 93 and 98 percent of legal representatives believed the Children's Registrar or mediator behaved impartially and a similar proportion thought the Children's Registrar or mediator had and treated their client fairly.
- Approximately nine out of 10 legal representatives involved in the DRCs were satisfied with how the conference was run overall. The rate of satisfaction on this item was slightly lower for the Legal Aid Pilot (approximately 8 out of 10).

Key findings from an analysis of responses from legal representatives about their satisfaction with the outcomes of the conference are described in Table 34.

- Between 82 and 87 percent of legal representatives involved in the DRCs felt that the conference had been useful, which was slightly higher than the proportion of legal representatives who thought the conference would be useful

before it started (see above). Between 74 and 93 percent of legal representatives involved in the Legal Aid Pilot felt that the conference had been useful, which was also higher than the proportion of legal representatives who thought the conference would be useful before it started (ranging from 70 to 86%).

- The level of satisfaction with the specific outcomes from the conferences, such as parental responsibility, care plans and permanency planning is lower than the level of satisfaction with the conference process and varies between the different categories of lawyer.
- The level of satisfaction about specific outcomes is slightly lower among the legal representatives for parents than for the child or young person's lawyers and for the Community Services lawyer. This is consistent with the feedback from interviews, which suggests that while there is some scope to negotiate, there is often limited movement away from the position put forward by Community Services.

**Table 34** Legal representatives who participated in alternative dispute resolution and agreed or strongly agreed with the following statements (conference outcomes), by program

	Parent's lawyer		Child or young person's lawyer		Community Services lawyer	
	n	%	n	%	n	%
<b>DRC</b>						
The mediation was useful	492	87	375	89	334	82
I am satisfied with the progress made with regard to proposed orders	405	75	325	79	265	71
This conference will lead to a better outcome for my client	371	69	324	79	240	64
Overall I am happy with the outcome from the conference	449	80	379	87	306	78
The best possible outcome was reached with regard to parental responsibility	230	60	169	66	169	62
The best possible outcome was reached with regards to establishment	99	42	74	50	70	45
The best possible outcome was reached with regards to placement	202	58	148	65	146	60
The best possible outcome was reached with regard to contact	222	60	165	64	167	63
The best possible outcome was reached with regard to the care plan	212	61	158	65	157	62
The best possible outcome was reached with regard to permanency planning	216	61	164	66	150	59
<b>Legal Aid Pilot</b>						
The mediation was useful	43	86	27	93	23	74
I am satisfied with the progress made with regard to proposed orders	28	64	22	71	17	61
This mediation will lead to a better outcome for my client	31	63	19	63	12	40
Overall I am happy with the outcome from the mediation	33	67	24	77	20	67
The best possible outcome was reached with regards to allocation of parental responsibility	22	54	15	60	15	68
The best possible outcome was reached with regards to placement	22	55	16	64	16	73
The best possible outcome was reached with regards to contact	21	54	14	58	14	64
The best possible outcome was reached with regards to the care plan	18	47	12	57	13	59
The best possible outcome was reached with regards to permanency planning	18	49	14	64	14	64

Note: The number of total respondents to each question varies due to missing data

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

# Community Services Caseworkers and Managers Casework

The results from an analysis of responses from Caseworkers and Managers Casework to a number of questions within the post-conference survey are presented in this section. The survey questions have once again been divided into three sections; items measuring perceptions and attitudes towards ADR prior to attending the conference, items measuring satisfaction with the processes involved in the conference and items measuring satisfaction with the outcomes of the conference.

Key findings from an analysis of responses from Community Services Caseworkers and Managers Casework about their feelings before the conference are described in Table 35.

- Six percent of Community Services Caseworkers and Managers Casework who attended a DRC and seven percent of those who attended a Legal Aid Pilot conference were worried about their safety prior to the conference. Although this represents only a small proportion of respondents, it still highlights the need to address issues of violence prior to and during proceedings.

- The proportion of Community Services Caseworkers and Managers Casework who attended a DRC and thought the conference would be useful (71%) was higher than the proportion of representatives who thought it would assist with the resolution of the matter (62%).
- Almost all of the Community Services Caseworkers and Managers Casework who were involved in ADR were familiar with the matter prior to their attendance (96% in DRCs and 97% in the Legal Aid Pilot).

Key findings from an analysis of responses from Community Services Caseworkers and Managers Casework about their satisfaction with the processes involved in the conference are described in Table 36.

- Among Caseworkers and Managers Casework, there appears to be a very high level of satisfaction with most aspects of the way the conferences were being run, including the extent that they were given an opportunity to explain their professional opinion (97% in the Legal Aid Pilot and 94% in DRCs) and other people listened to what they had to say (91% in DRCs and 94% in the Legal Aid Pilot).

**Table 35** Community Services Caseworkers and Managers Casework who participated in alternative dispute resolution and agreed or strongly agreed with the following statements (before the conference), by program

	n	%
<b>DRC</b>		
I was worried about my safety at the conference	39	6
I thought the conference would be useful	491	71
I thought the conference would assist with the resolution of this matter	431	62
I knew what to expect heading into the conference	578	82
I was familiar with this case before the conference	671	96
<b>Legal Aid Pilot</b>		
I was worried about my safety at the mediation	5	7
I thought the mediation would be useful	40	56
I thought the mediation would assist with the resolution of this matter	40	56
I knew what to expect heading into the mediation	63	88
I was familiar with this case before the mediation	70	97

Note: The number of total respondents for each question varies due to missing data

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table 36** Community Services Caseworkers and Managers Casework who participated in alternative dispute resolution and agreed or strongly agreed with the following statements (conference process), by program

	n	%
<b>DRC</b>		
I felt safe during the conference	663	95
I was given an opportunity to give my professional opinion	656	94
Other people at the conference listened to me	634	91
The Children's Registrar behaved impartially	682	97
The family seemed willing to work with Community Services to resolve matter	471	68
I was happy with how the conference was run	672	96
I was able to contribute to the end result	593	87
The previous work I had done with the family was taken into consideration	508	76
<b>Legal Aid Pilot</b>		
I felt safe during the mediation	71	97
I was given an opportunity to give my professional opinion	70	97
Other people at the mediation listened to me	67	94
The mediator behaved impartially	62	85
The family seemed willing to work with Community Services to resolve matter	41	61
I was happy with how the mediation was run	57	77
I was able to contribute to the end result	53	79
The previous work I had done with the family was taken into consideration	48	74

Note: The number of total respondents for each question varies due to missing data

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

- The proportion of Community Services Caseworkers and Managers Casework who felt that the conference convenor acted impartially and who were happy with how the conference was run was lower in the Legal Aid Pilot than in the DRCs (although still high overall). This is consistent with the concerns raised by a small number of Community Services staff about the role of the mediators as a neutral party.
- Sixty-eight percent of Community Services Caseworkers and Managers Casework in DRCs and 61 percent in the Legal Aid Pilot agreed or strongly agreed that the family seemed willing to work with them.
- Between 76 and 84 percent of Caseworkers and Managers Casework involved in ADR felt that the conference had been useful, which was substantially higher than the proportion who thought the conference would be useful before it started (56 to 71%).
- As with the legal representatives, the level of satisfaction with the specific outcomes from the conferences, such as parental responsibility, care plans and permanency planning is lower than the level of satisfaction with the conference process (see above). This is consistent with the results from the analysis of conference outcomes and resolution rates.

Key findings from an analysis of responses from Community Services Caseworkers and Managers Casework about their satisfaction with the outcomes of the conference are described in Table 37.

- Community Services staff appear more satisfied with the outcome from the conference overall (71% in the Legal Aid Pilot and 77% in DRCs) than with specific outcomes.

**Table 37** Community Services Caseworkers and Managers Casework who participated in a conference and agreed or strongly agreed with the following statements (conference outcomes), by program

	n	%
<b>DRC</b>		
The conference was useful	567	84
I am satisfied with the progress made with regard to proposed orders	441	72
Overall I am happy with the outcome from the conference	499	77
The best possible outcome was reached with regard to parental responsibility	278	61
The best possible outcome was reached with regard to establishment	128	41
The best possible outcome was reached with regard to placement	223	58
The best possible outcome was reached with regard to contact	278	63
The best possible outcome was reached with regard to the care plan	247	59
The best possible outcome was reached with regard to permanency planning	224	56
<b>Legal Aid Pilot</b>		
The mediation was useful	53	76
I am satisfied with the progress made with regards to proposed orders	38	60
This mediation will help improve the relationship between Community Services and the family	32	51
Overall I am happy with the outcome from the mediation	49	71
The best possible outcome was reached with regard to parental responsibility	32	53
The best possible outcome was reached with regard to placement	27	52
The best possible outcome was reached with regard to contact	30	53
The best possible outcome was reached with regard to the care plan	25	45
The best possible outcome was reached with regard to permanency planning	29	53

Note: The number of total respondents for each question varies due to missing data

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

## Summary

The post-conference survey was undertaken to assess the level of satisfaction among participants with DRCs and the Legal Aid Pilot conference process and outcomes. The results of the post-conference survey show that parents and family members had a good understanding of the purpose of the conference and reported a high level of satisfaction with the conference process. Similarly, legal representatives and Community Services staff reported high levels of satisfaction with the conference process. The majority felt the conference was useful and the process was fair. Although the majority of DRC and Legal Aid Pilot participants were satisfied with the conference process, fewer were satisfied with the outcome of the conference.

However, this is not entirely surprising given the types of outcomes that are reached in child protection matters to ensure the safety and wellbeing of the child. The comparatively low rates of satisfaction among parents with Community Services suggests that Community Services could do more to improve the perception among families that they are willing to work with them, which would in turn help to improve satisfaction with conference outcomes. Overall, the findings from the post-conference survey reflect positively on DRCs and the Legal Aid Pilot and the high standard of ADR that has been delivered.



# Improving the relationship between families and Community Services

The evaluation also examined the impact of ADR on the relationship between families involved in care proceedings and Community Services. The emphasis on collaborative processes in the two programs aims to improve the working relationships between families and Community Services. ADR aims to enhance communication between the parties, particularly Community Services and the parents of children or young people subject to the care application. Referring care matters to ADR aims to lead to a better ongoing relationship between Community Services Caseworkers or Managers Casework and the parents or families of the child or young person.

The AIC made a number of recommendations to improve the participant surveys and collect data relevant to the evaluation questions in a format suitable for analysis. These included additional questions for family members and Community Services about whether they believe the conference will help to improve the relationship between the family and Community Services. Table 38 presents the results from an analysis of responses by parents, family members and Community Services to questions about their relationships with one another.

The old version of the survey asked parents and family members whether they felt differently about Community Services after the conferences. Between one-fifth and one-third of respondents across the

two programs (noting the comparatively small number of responses in Legal Aid Pilot) reported that they felt better about Community Services. The majority of respondents reported feeling no different towards Community Services.

The relevant question in the new survey is more forward focused. The proportion of parents who felt the relationship would improve ranged from 52 percent (fathers in Legal Aid Pilot conferences) to 59 percent (fathers in DRCs). The only exception was mothers involved in the Legal Aid Pilot (37%), although this is based on a comparatively small number of surveys. Community Services Caseworkers and Managers Casework were also asked whether they felt their relationship with the family would improve. Fifty-one percent of Community Services staff who participated in a Legal Aid Pilot conference agreed that the relationship would improve, as did 55 percent of respondents involved in conferences as part of DRCs. Although agreement rates among legal representatives involved in either program varied between the type of lawyer, legal representatives for the parents were most likely to believe that the relationship would improve (65% in the Legal Aid Pilot and 68% in DRCs).

These results are positive, as they suggest that participation in ADR is perceived by participants as contributing to a more positive relationship between

**Table 38** Participants who participated in alternative dispute resolution and agreed or strongly agreed with the following statements

	I feel better about Community Services after the conference		The relationship between the family and Community Services will be better after the conference	
	n	%	n	%
<b>DRC</b>				
Mother	42	28	177	56
Father	25	26	125	59
Other	14	22	86	55
Community Services	-	-	352	55
Lawyer—parent(s)	-	-	372	68
Lawyer—child/young person	-	-	273	67
Lawyer—Community Services	-	-	239	63
<b>Legal Aid Pilot</b>				
Mother	7	30	10	37
Father	7	35	13	52
Other	2	20	14	61
Community Services	-	-	32	51
Lawyer—parent(s)	-	-	30	65
Lawyer—child/young person	-	-	15	48
Lawyer—Community Services	-	-	12	46

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

Community Services and families in approximately half of the conferences held during the evaluation period. While it is not possible to determine the actual impact on the relationship, these findings suggest that there is a potential for the relationship between parents and Community Services to improve in a significant number of matters. Given that many parents have a difficult relationship with Community Services, particularly where there is a long history of contact with the Department, encouraging the parties to work together more effectively is an important outcome from the introduction of ADR in care and protection proceedings.

Findings presented in the previous section of this report demonstrated that satisfaction with Community Services during the conference was the strongest predictor of satisfaction with conference outcomes and that satisfaction with Community Services was lower among parents than for most other aspects of the conference process. These

results suggest that if parents perceived Community Services as more willing to work with them during the process, they would be more likely to be satisfied with conference outcomes. This includes the extent to which parents and family members feel that the relationship with Community Services would improve, which was one of the questions included in the measure of satisfaction with conference outcomes.

The findings from the post-conference survey data were supported by the observations (Case Study 9) and interviews with parents and family members. Interviews with parents after the conferences revealed that some parents felt more positively towards Community Services after the conference.

They were saying no [to restoration], now they're saying maybe. That's huge (mother).

I've always had a wall up when it comes to DoCS [Community Services] which made me reluctant to talk to them. I didn't know I was their client too (mother).

## Case study 9 (DRC)

In this matter, the mother and father (separated) were both seeking the restoration of their child who had been removed from their care and placed with the maternal grandparents. Community Services were supporting restoration of the child to the mother on the condition that she continue treatment for alcohol misuse and consent to frequent blood tests. Restoration to the father was not being considered by Community Services, mainly because he was an American citizen and his Australian visa status was unclear. This was the second conference where the mother had participated in relation to this matter.

As the conference proceeded, it became apparent that the mother had accused the father of sexually assaulting her while the child was in the room, although she had not filed a complaint with the police or applied for an AVO. The fact that the mother had not applied for an AVO against the father concerned Community Services and the ILR as it made them question the mother's ability to protect her child. The mother, Community Services and ILR had a lengthy private discussion so they could talk about the alleged assault. At the end of the conference, the mother agreed to file an AVO against the father.

At a number of points in the proceedings, the Caseworker told the mother that they were there to help her as well as the child and would provide her with assistance and support where they could. The mother appeared to be surprised by the offer and thanked them a number of times. In return, the mother promised to remain in constant contact with Community Services. At the end of the conference, it was decided that nothing could be settled until the mother filed additional materials in relation to the alleged assault and the father's visa issues were resolved. However, despite this outcome, the mother was happy and expressed hope that her relationship with Community Services would improve as a result of the conference.

However, a conference may also have a negative impact on the relationship between families and Community Services. For example, there was obvious tension and sometimes conflict between parents and Community Services in a small number of the conferences that were observed.

It's worse. I despise [Community Services] now (mother).

The observations, stakeholder consultations and family interviews suggest that the attitude and behaviour of Community Services and the family towards each other during the conference can have an impact on their future relationship. For example, the research team observed a small number of conferences where the perceived unwillingness of Community Services to acknowledge the progress made by the family and/or move away from the care plan (where one had been developed) caused the family to become frustrated or upset. Similarly, Children's Registrars and mediators reported that Community Services should be encouraged to explain the reasons for their position on key issues in dispute, as this can help parents to understand the position of Community Services and the reasons for the application initiating care proceedings. They also reported that there were occasions when Community Services was reluctant to describe these reasons.

These results suggest that there is considerable variation in terms of the apparent impact of ADR on the relationship between parents and Community Services and that this is probably influenced by a range of factors (not just whether a matter is referred

to ADR). For example, a number of stakeholders expressed the view that the relationship between Community Services and parents would improve because parental involvement in the decision-making process helped them to have a better understanding of the Department's concerns and what they had to do to address them. But there were examples where the parent interpreted the Department's position as being overly critical of them, even where there was strong evidence to support the Department's position. According to legal representatives and Community Services staff involved in the two programs, some parents lack the insight to understand (especially where there are substance abuse issues) the actions taken by the Department and this limits the potential for there to be significant positive progress in terms of improving the relationship between the parties.

Overall, it would appear that the views of parents and Community Services towards one another varies considerably between matters. As well as being influenced by what happens at the conference, it was also influenced by previous contact between the two parties. Further, while parents have been happy about the chance to talk and be heard during the conference, there appears to be much less satisfaction with the Community Services position and perceived unwillingness to negotiate with families and this is likely to have an impact on how parents feel towards Community Services beyond the conference (and care proceedings more broadly).

## Case study 10 (DRC)

This matter involved a mother who was seeking the restoration of her newborn. The mother's two other children were also in care and had herself been in care when she was a child. Importantly, the baby's Caseworker was the same Caseworker who had been assigned to the mother when she was in care. Community Services were not supporting restoration because the mother's living arrangements were unstable and she had missed a number of contact visits. The mother blamed her non-attendance on a medical condition (epilepsy) which she said made remembering dates and times difficult. Community Services were seeking long-term placement orders and wanted to reduce the number of contacts the mother had with the baby to four times a year only.

The mother conceded on restoration early in the proceedings but requested that the weekly contact visits continue. When Community Services were unsupportive of this, the mother asked for monthly contact and proposed that her youth support worker (who also attended the conference) supervise the visits. While sympathetic towards the mother, Community Services were not willing to change the contact arrangements from those outlined in the amended care plan because, in their view, the mother had not addressed the concerns raised by Community Services in terms of her ability to adhere to the proposed contact arrangements. In light of this, it was agreed among the parties that no issues would be resolved in the conference and the matter would have to go to a hearing.

Although disappointed with the outcome of the conference, the mother was happy that she had been given an opportunity to tell her side of the story. However, she was angry and disappointed with the perceived reluctance on the part of Community Services to 'meet me halfway' and said she felt like her relationship with them had gone 'backwards'. In particular she believed Community Services had been dismissive of her experiences from when she was in care and the concerns she raised in relation to the removal of her children. Further, the mother was clearly distressed that her child's Caseworker was the same Caseworker she had been assigned when she was placed in care. She indicated that she had a tense relationship with the Caseworker and was reluctant to engage with her.



# Impact of dispute resolution conferences and the Legal Aid Pilot on the Children's Court

This section of the report describes the findings from a quantitative assessment of the impact of DRCs and the Legal Aid Pilot on the Children's Court. A focus of the outcome evaluation has been to determine the extent to which the use of ADR to provide parties with an opportunity to reach agreement on the child's future leads to time and cost savings for the Children's Court, Community Services and Legal Aid. Specifically, this component of the evaluation aimed to determine whether the use of ADR has:

- reduced the overall time to finalisation for care and protection proceedings within the NSW Children's Court;
- reduced the number of court appearance events required to finalise care and protection proceedings;
- reduced the number and proportion of matters that were scheduled for hearing, proceeded to a hearing, or had hearing dates that were allocated but were subsequently vacated;
- reduced the length of hearing time, for those matters that did progress to a hearing;
- increased the number and proportion of matters resolved on the basis of consent; and
- reduced the costs associated with care and protection proceedings for the NSW Children's Court, Community Services and Legal Aid.

An original aim of the evaluation was to assess the impact of ADR in terms of reducing the number of appeals and applications under s 90 of the Care Act. However, it was determined early in the process that this would not be possible in the timeframe available for the current evaluation and that this would need to be examined as part of a longer term evaluation of the impact of ADR.

## Review of court file data

Answering these questions required the collection and analysis of data relating to matters that had been referred to ADR during the evaluation period and a matched group of matters that had not been referred to ADR. The lack of data in the care and protection jurisdiction of the NSW Children's Court was highlighted by Wood (2008: 459), who stated that during the Inquiry

[o]btaining accurate data in relation to proceedings in the care jurisdiction has proven to be a challenge. Neither the Children's Court, nor Attorney General's, keeps detailed or reliable statistics in relation to care proceedings.

It was confirmed early in the evaluation that the data required to address these questions was not available in a format that could be extracted for

analysis. Therefore, it was decided that additional data would be needed to be collected from Children's Court files.

The AIC developed a comprehensive framework that helped guide the data collection process. Divided into four sections (application, court appearance, parents and children), this framework included variables relating to the:

- type of care application submitted;
- orders that were sought as part of the application for care proceedings;
- number of court appearances associated with the care application;
- outcomes of court appearances associated with the care application;
- court orders (eg parental responsibility);
- characteristics of the parents and children involved in the matter (eg sex, age, Indigenous status); and
- factors that contribute to the level of complexity of matters (eg presence of parental violence, substance use etc).

This information was extracted from hardcopy court files, including daily and master care benchsheets, forms filed with the Children's Court, affidavits and care plans. The classification framework developed by the AIC also set out clear guidelines and a coding scheme for recording the information in a consistent format, suitable for analysis by the AIC. DAGJ staff and Children's Registrars were responsible for extracting the relevant information from court files in accordance with this framework and entering the information in forms provided by the AIC. For the purpose of the evaluation, four evaluation sites were selected: Parramatta, Broadmeadow, Albury and Wagga Wagga (Riverina) Children's Courts for assessing the impact of DRCs and the Bidura Children's Court for assessing the impact of the Legal Aid Pilot.

Once this framework was developed, it was necessary to identify an appropriate comparison group, comprising matters that had not been referred to either a DRC or the Legal Aid Pilot. The expansion of DRCs across New South Wales posed a particular challenge, as it meant that there were no Children's Court locations where ADR

processes were not operating. Further, it was not possible to easily identify those matters that had not been referred to either program since the introduction of ADR. However, even if identification were possible, there were concerns that identifying matters for the comparison group in this way would be inappropriate as matters may not have been referred because there was something about them that made them unsuitable for a DRC or the Legal Aid Pilot.

A decision was therefore made to select the comparison group from those matters that had progressed through the care and protection jurisdiction in the relevant Children's Courts prior to the introduction of the Legal Aid Pilot and new model of DRC. The comparison group comprised those matters that were finalised (ie final orders have been made) prior to the introduction of the new models of ADR (before July 2010 to prevent any potential overlap). To ensure that the sample would be large enough to enable analysis to be undertaken using the data collected, the aim was to collect data from a total of 100 matters from Parramatta, Broadmeadow and Riverina, and a further 100 matters from Bidura. However, the level of data collection required and resource constraints meant that this target was revised down to 100 children in each group (remembering that a matter could involve multiple children). Matters were selected by counting back from the last matter finalised prior to the cut-off date until the target number in each court location had been reached. DAGJ staff and Children's Registrars entered the data into the forms supplied and sent the completed forms to the AIC to be entered into the court file database.

Once the data had been extracted for the comparison group, an equivalent number of matters were selected from those matters that had been referred to DRCs and the Legal Aid Pilot during the evaluation period. This involved linking the post conference report data collected by Children's Registrars and mediators for matters that were referred to a conference, with the care register for finalised matters in each court, using the case ID and surname of the family involved to match matters. This ensured that only finalised matters were selected. For the Riverina region and Bidura Children's Court, the total number of matters that had proceeded to conference was not large enough

to warrant limiting the selection to a matched group of matters (on variables besides court location). In Parramatta and Broadmeadow, matters that had been referred to a DRC were matched with the comparison group on court location, the Indigenous status of the children (exact match) and the number of children involved (close match). Within these parameters, matters were randomly selected from the total population of matters referred to conference. Given that some court files were not accessible (eg because the matter was being appealed), it was necessary to supply a list of matters that could be selected if a matter from the primary list could not be used. Once again, DAGJ staff and Children's Registrars entered the data into the forms supplied and sent the completed forms to the AIC to be entered into the court file database.

The total number of matters from each Children's Court included in the court file review is presented in Table 39. There were a total of 70 matters in the intervention group (post-DRCs) and 69 matters in the comparison group (pre-DRCs) for the Parramatta, Broadmeadow and Riverina (Albury and Wagga Wagga) Children's Courts, and 59 matters in the intervention group and 62 matters in the comparison group for the Bidura Children's Court. Matters for which the application initiating care proceedings had been withdrawn or dismissed and matters requiring fewer than four court appearance events and/or less than 30 days to finalise were excluded from the comparison group because they would not have been referred to ADR. Matters requiring more than

365 days to finalise were also excluded because intervention group matters that took longer than 12 months could not have been finalised by date of extraction (and were therefore not eligible for selection).

The rest of this section of the report describes the findings from an analysis of key indicators of the impact of ADR on the NSW Children's Court. Tests of significance were used to determine whether the differences observed are the result of actual differences between the intervention and comparison groups. The value of a statistical test (the  $p$  value, which varies between 0 and 1) indicates the probability that the observed differences between two groups are due to chance or error. Conventionally, the maximum probability level for determining a significant difference between two groups is set at  $p=0.05$  (Argyrous 2005). If the value of a statistical test is more than 0.05, there is a greater than five percent chance that the difference between two groups is due to error or chance rather than a real difference. The closer the value gets to 1, the greater the probability that the result is due to error.

An important factor that influences the outcome of these tests is the sample size of the two groups being compared. The smaller the sample, the greater the observed difference (effect size) needs to be in order for a statistical test to produce a significant result ( $p<0.05$ ). This is because the smaller the sample size, the wider the confidence intervals that describe the range of values between which the estimated value could fall, taking into

**Table 39** Matters included in court file review

	ADR		Non-ADR	
	n	%	n	%
Parramatta Children's Court	40	57	38	55
Broadmeadow Children's Court	15	21	16	23
Albury and Wagga Wagga Children's Courts	15	21	15	22
Parramatta, Broadmeadow, Albury and Wagga Wagga Children's Courts	70	100	69	100
Bidura Children's Court	59	100	62	100

Notes: Excludes applications that were dismissed or withdrawn, matters requiring fewer than 4 court appearance events and matters requiring less than 30 or more than 365 days to finalise

Source: AIC Court File Review Database [computer file]

account the possibility of error. At the conventional level of statistical testing ( $p < 0.05$ ), there is 95 percent confidence that the actual value will fall between the upper and lower bounded confidence interval. Where the total sample size is smaller, estimates are subject to greater levels of error and the relevant confidence intervals are therefore usually larger.

The sample size used for this evaluation is sufficient to enable statistical tests of significance to be conducted. However, the sample size requires that observed differences between the two groups need to be relatively large in order to be able to conclude that the difference reflects an actual difference between those matters that were referred to ADR and those that were not. For each indicator, both the observed results and  $p$  value are reported. Results are not automatically dismissed if the  $p$  value is greater than 0.05. If the result approaches this cut off score and the weight of other evidence (quantitative and qualitative) suggests that there was a difference, then this finding has been highlighted.

Similarly, where the sample size was small and the mean was susceptible to outliers, or where tests showed that the data was skewed and not normally distributed, the median has been reported (Argyrous 2005). Where the medians of two populations have been compared to determine whether there was a statistically significant difference, appropriate non-parametric tests have been used.

Finally and as has already been emphasised throughout this report, direct comparisons between the results for the Parramatta, Broadmeadow and Riverina Children's Courts and the Bidura Children's Court are not made. While there was a consistent data collection framework and coding scheme for all courts, feedback from the staff responsible for the data extraction from court files suggests that there were some differences in the way information was recorded between the Parramatta, Broadmeadow and Riverina Children's Courts, and the Bidura Children's Court. This does not impact on any of the results in terms of any observed differences between the intervention and comparison group for each court location. However, these differences in recording practices prevent direct comparisons being made between the court locations used to assess the impact of DRCs and the Bidura Children's Court.

## Characteristics of matters and the families involved

The first step in the analysis was to compare the intervention and comparison groups for the Parramatta, Broadmeadow and Riverina Children's Courts, and the Bidura Children's Court. The purpose of this was to identify any differences between the two groups that may influence the results and that need to be considered in interpreting the results from a comparison between the groups.

Table 40 describes the key characteristics of the care applications included in the court file review, including the applicant, the application type, whether the application was preceded by an Emergency Care and Protection Order, and the grounds for the application.

- Community Services was the applicant in between 90 and 100 percent of all applications in the Parramatta, Broadmeadow, Riverina and Bidura Children's Courts intervention and comparison groups.
- New applications were more common than s 90 applications (rescission or variations), accounting for between 75 and 90 percent of all applications in each Children's Court.
- The proportion of matters preceded by an Emergency Care and Protection Order was low in each Children's Court and in both intervention groups. The highest proportion of matters preceded by an Emergency Care and Protection Order was in the Parramatta, Broadmeadow and Riverina comparison group (14%).
- The grounds for the application to initiate care proceedings were relatively consistent across the intervention and comparison groups. The two most commonly recorded reasons for an application being filed were that the child's physical, psychological or educational needs were not being met, or because the child has or may suffer developmental impairment or psychological harm. The proportion of applications that listed 'the child has or may be physically or sexually abused' was lower in the Bidura Children's Court than the Parramatta, Broadmeadow and Riverina Children's Courts, although this was consistent across both the intervention and comparison groups.

**Table 40** Key characteristics of care applications

	Parramatta, Broadmeadow and Riverina				Bidura			
	ADR		Non-ADR		ADR		Non-ADR	
	n	%	n	%	n	%	n	%
<b>Applicant</b>								
Department of Family and Community Services	63	90	69	100	56	97	59	95
Parent or family member	7	10	0	0	2	3	3	5
<b>Application type</b>								
New application	61	87	62	90	44	75	51	82
Rescission application	7	10	6	9	13	22	11	18
Not recorded	2	3	1	1	2	3	0	0
<b>Emergency care and protection order</b>								
Applications preceded by emergency care and protection order	3	4	10	14	3	5	4	6
<b>Grounds for application<sup>a</sup></b>								
No parent due to death or incapacity	3	4	8	12	5	8	7	11
Parents have difficulty caring for child	7	10	9	13	3	5	4	6
Child has or may be physically or sexually abused	40	57	40	58	18	31	15	24
Child's physical, psychological or educational needs not being met	52	74	57	83	39	66	45	73
Child has or may suffer developmental impairment or psychological harm	55	79	47	68	32	54	34	55
Child under 14 who shows sexually abusive behaviour	0	0	1	1	0	0	1	2
Child is subject to care order from another jurisdiction that is being neglected	0	0	0	0	0	0	0	0
Total matters	70		69		59		62	

a: Matters could be assigned multiple grounds for application, therefore percentage totals do not equal 100

Note: Percentages may not total 100 due to rounding

Source: AIC Court File Review Database [computer file]

Bivariate analysis comparing the results for both ADR and non-ADR matters using Chi-square tests, which test for a relationship between two categorical variables (Fitzgerald & Cox 2002), demonstrated that there were no statistically significant differences between the two groups in terms of the characteristics of care applications.

The characteristics of parents involved in each matter, including (but not limited to) the age, Indigenous status, factors impacting on parenting capacity and relationship status for both mothers

and fathers involved in care applications are presented in Table 41.

- Mothers were involved in 95 to 97 percent of all matters included in the court file review. Fathers were involved in 71 to 89 percent of all matters.
- The proportion of matters that involved a mother or father who identify as Indigenous ranged from 11 to 33 percent of all matters. The proportion was higher in the comparison group in the Bidura Children's Courts for both mothers and fathers, although this difference was not significant.

**Table 41** Key characteristics of parents involved in care applications

	Parramatta, Broadmeadow and Riverina				Bidura			
	ADR		Non-ADR		ADR		Non-ADR	
	n	%	n	%	n	%	n	%
<b>Mothers</b>								
Involved in the care application	67	96	67	97	56	95	60	97
<b>Indigenous status</b>								
Mother identified as Indigenous	19	28	13	19	14	25	21	35
<b>Age of youngest mother</b>								
Aged under 17	2	3	3	5	4	7	2	3
Aged 18–25	17	28	16	26	17	30	16	28
Aged 26–34	24	40	17	28	18	32	19	33
Aged 35 years and above	17	28	25	41	17	30	21	36
<b>Factors impacting on parenting capacity<sup>a</sup></b>								
Alcohol/drug issues or participation in treatment program	46	69	44	66	42	75	52	87
Mental health issues or participation in treatment program	29	43	33	49	31	55	32	53
Physical and/or intellectual disability	5	7	10	15	2	4	6	10
Currently or previously incarcerated	5	7	7	10	9	16	9	15
Previous contact with community services	28	42	32	48	13	23	28	47 <sup>b</sup>
Allegations of abuse	44	66	44	66	11	20	31	52 <sup>b</sup>
<b>Fathers</b>								
Involved in the care application	62	89	53	77	51	86	44	71 <sup>b</sup>
<b>Indigenous status</b>								
One or more fathers identified as Indigenous	11	18	6	11	8	16	14	32
<b>Age of youngest father</b>								
Aged under 17	1	2	2	4	2	4	0	0
Aged 18–25	9	18	8	18	5	10	6	15
Aged 26–34	17	33	14	31	16	31	18	44
Aged 35 years and above	24	47	21	47	28	55	17	41
<b>Factors impacting on parenting capacity<sup>a</sup></b>								
Alcohol/drug issues or participation in treatment program	26	42	30	57	36	71	33	75
Mental health issues or participation in treatment program	12	19	16	30	13	25	8	18
Physical and/or intellectual disability	5	8	7	13	2	4	3	7
Currently or previously incarcerated	18	29	11	21	18	35	17	39
Previous contact with community services	21	34	18	34	5	10	11	25 <sup>b</sup>
Allegations of abuse	23	37	30	56 <sup>b</sup>	6	12	15	34 <sup>b</sup>
<b>Relationship between parents</b>								
Applications where family violence was an issue	41	59	32	46	20	34	23	37
Applications involving AVO	18	26	20	29	13	22	9	15
Parents living together	17	24	15	22	10	17	10	16
Total matters	70		68		59		62	

a: There could be multiple factors impacting on parenting capacity, therefore percentage totals do not equal 100

b: Difference between intervention and comparison group statistically significant ( $p < 0.05$ )

Note: Excludes one matter that was missing parent data. Each matter could involve more than one mother or father

Source: AIC Court File Review Database [computer file]

- For mothers involved in care applications, the most common issues reported as impacting on parenting capacity were alcohol, substance use or mental health issues. In addition to these issues, fathers involved in care applications were currently or had previously been incarcerated in between 21 and 39 percent of matters.
- The proportion of matters in which an allegation of abuse had been made against the father or mother varied between 12 and 66 percent of matters, and was consistently higher in the Parramatta, Broadmeadow and Riverina Children's Courts (both intervention and comparison groups).
- The proportion of matters in which parents had previous contact with Community Services varied between 10 and 48 percent of matters.
- Family violence was recorded as an issue in between 34 and 59 percent of all matters and this was higher among matters in the Parramatta, Broadmeadow and Riverina Children's Courts.
- An AVO was present in between 15 and 29 percent of matters.
- Parents were living together at the time of the application in between 16 and 24 percent of matters.

Bivariate analyses comparing the intervention and comparison groups across these characteristics revealed a number of differences between the two groups.

- Mothers in the comparison group for the Bidura Children's Court were significantly more likely to have had previous contact with Community Services and allegations of abuse made against them than mothers involved in matters referred to the Legal Aid Pilot.
- Fathers were significantly less likely to be involved in care applications in the comparison group for the Bidura Children's Court than for matters referred to the Legal Aid Pilot.
- Fathers in the comparison group for the Bidura Children's Court were significantly more likely to have had previous contact with Community Services and allegations of abuse made against them than fathers involved in matters referred to the Legal Aid Pilot.

- Fathers in the comparison group for the Parramatta, Broadmeadow and Riverina Children's Courts were significantly more likely to have had allegations of abuse made against them than fathers involved in matters referred to a DRC.

These results suggest that there may have been a reluctance to refer matters to ADR where there was an allegation of abuse made against a parent, particularly fathers. They also suggest that there may have been reluctance in the Bidura Children's Courts to refer matters to the Legal Aid Pilot where there was previous contact between the parents and Community Services.

The characteristics of children involved in each matter, including the number of children involved, the age of children, Indigenous status and identified issues present among one or more child are presented in Table 42.

- The proportion of matters involving more than one child ranged from 20 to 44 percent.
- The mean number of children was higher for matters in the Parramatta, Broadmeadow and Riverina Children's Courts, but consistent across the intervention and comparison groups.
- The proportion of matters involving a child under the age of two ranged from 49 to 61 percent and the proportion of matters involving a child aged 12 years and older ranged from 10 to 16 percent.
- The proportion of matters involving at least one child who identified as Indigenous varied between 24 and 39 percent. While the proportion was higher in the comparison group for the Bidura Children's Court, this difference was not statistically significant.
- The proportion of matters involving one or more children with identified issues was consistently higher for matters in the Parramatta, Broadmeadow and Riverina Children's Court than in the Bidura Children's Court, although this is most likely due to differences in the way this information was recorded in the Children's Court files. In Parramatta, Broadmeadow and Riverina Children's Court, the issues most commonly identified were issues with physical health, behaviour and schooling, along with previous contact with Community Services.

Bivariate analyses comparing the intervention and comparison groups revealed that the only statistically significant difference was in the proportion of matters in the Parramatta, Broadmeadow and Riverina Children's Courts that involved at least one child who had previous contact with Community Services (42% in the comparison group compared with 21% in the intervention group).

were matched on the basis of a small number of criteria, the intervention and comparison groups for the Parramatta, Broadmeadow, Riverina and Bidura Children's Courts were relatively well matched, with few significant differences between them. The need to account for the differences between the two groups, where they exist, has been incorporated into the analysis.

Overall, these results show that, despite the fact that only the Parramatta and Broadmeadow matters

**Table 42** Key characteristics of children involved in care applications

	Parramatta, Broadmeadow and Riverina				Bidura			
	ADR		Non-ADR		ADR		Non-ADR	
	n	%	n	%	n	%	n	%
<b>Number of children</b>								
One	39	56	46	67	47	80	47	76
Two	19	27	14	20	5	8	14	23
Three or more	12	17	9	13	7	12	1	2
Mean number	2.3		2.5		1.8		1.5	
<b>Age of children<sup>a</sup></b>								
Unborn at time of application	2	3	1	1	3	5	3	5
Under 2 years	35	50	38	55	29	49	38	61
2–5 years	20	29	18	26	13	22	15	24
5–12 years	35	50	21	30	14	24	11	18
12 years and over	7	10	11	16	9	15	6	10
Mean age in years (excludes unborn children)	5.2		5.2		4.7		3.2	
<b>Indigenous status</b>								
One or more children identified as Indigenous	17	24	21	30	14	24	24	39
<b>Identified issues (present among one or more child)<sup>a</sup></b>								
Alcohol/drug issues	1	1	2	3	1	2	10	16
Mental health issues	5	7	8	12	3	5	2	3
Cognitive capacity issues	6	9	13	19	3	5	1	2
Physical health issues	16	23	22	32	3	5	10	16
Behavioural issues	17	24	22	32	9	15	5	8
Schooling issues	16	23	18	26	2	3	4	6
Previous contact with community services	15	21	29	42 <sup>a</sup>	1	2	5	8
Total matters	70	100	69	100	59	100	62	100

a: Each matter could involve 1 or more children, therefore percentages do not total 100

Source: AIC Court File Review Database [computer file]

## Time taken to finalise matters

The referral of a matter to ADR aims to provide an opportunity for the parties to resolve the issues in dispute and if this can occur, reduce the length of time taken to finalise matters in the Children’s Court. There are time standards within the NSW Children’s Court, recognising the importance that care proceedings be finalised with minimum delay. Accordingly, the court aims to finalise 90 percent of care matters within nine months of an application being filed and 100 percent of care matters within 12 months of commencement (Practice Note 5: paragraph 4.1).

The length of time from the date a care application was made until final orders had been made was calculated for each matter included in the court file review. Results from the analysis of time to finalisation comparing the intervention and comparison groups are presented in Table 43. The median number of days required to finalise matters in the Parramatta, Broadmeadow and Riverina Children’s Court was 166 days for matters in the intervention group and 189 days for matters in the comparison group. The median number of days to finalisation was consistently lower in matters referred to a DRC in the Parramatta, Broadmeadow and Riverina Children’s Court, although this difference was not statistically significant (overall or for individual courts).

**Table 43** Median number of days from application date to finalisation of matter

	ADR		Non-ADR		p
	Median	25th–75th percentile	Median	25th–75th percentile	
Parramatta Children’s Court	151.5	109–231.5	169	101–239	0.76
Broadmeadow Children’s Court	201	133–247	218.5	185.5–280.5	0.36
Albury and Wagga Wagga Children’s Courts	175	146–245	189	70–225	0.39
Parramatta, Broadmeadow, Albury and Wagga Wagga Children’s Courts	166	127–233	189	108–239	0.88
Bidura Children’s Court	179	121–230	218	139–290	0.08

Note: For consistency, time to finalisation was treated as a count variable and *p* values were calculated using Wilcoxon–Mann–Whitney test comparing intervention and comparison groups. Where the sample size permitted and tests for normality demonstrated that the number of days to finalisation was normally distributed, two sample *t* tests were also conducted. There was no difference in the outcome

Excludes applications that were dismissed or withdrawn, matters requiring fewer than 4 court appearance events and matters requiring less than 30 or more than 365 days to finalise

Source: AIC Court File Review Database [computer file]

**Table 44** Median number of days from application date to placement hearing

	ADR		Non-ADR		p
	Median	25th–75th percentile	Median	25th–75th percentile	
Parramatta, Broadmeadow, Albury and Wagga Wagga Children’s Courts	230	150–269	217.5	162–266.5	0.70
Bidura Children’s Court	185	147–230	254	219–291	0.00

Note: For consistency, time to finalisation was treated as a count variable and *p* values were calculated using Wilcoxon–Mann–Whitney test comparing intervention and comparison group. Where the sample size permitted and tests for normality demonstrated that the number of days to finalisation was normally distributed, two sample *t* tests were also conducted. There was no difference in the outcome

Limited to those matters for which there was a hearing resulting in final orders

Excludes applications that were dismissed or withdrawn, matters requiring fewer than 4 court appearance events and matters requiring less than 30 or more than 365 days to finalise

Source: AIC Court File Review Database [computer file]

The median number of days required to finalise matters in the Bidura Children's Court was 179 days for matters in the intervention group and 218 days for matters in the comparison group, and this difference was also not statistically significant (but was near to the cut off score of 0.05). Further analysis examined the length of time from the date a care application was filed until the commencement of a placement hearing (if one took place). The results, presented in Table 44, demonstrate that the median number of days until the start date for a placement hearing was lower for matters referred to the Legal Aid Pilot than matters in the comparison group for the Bidura Children's Court and this difference was statistically significant.

Overall, these results would appear to suggest that matters referred to the Legal Aid Pilot required fewer days to finalise than matters finalised in the Bidura Children's Court prior to the introduction of ADR. This may be due to the matter having been referred to ADR, or due to changes in the way the Magistrates in the Bidura Children's Court deal with matters. For example, the reduction in the number of days required to finalise matters coincided with the appointment of a new Children's Court Magistrate. There may have also been a concerted effort to reduce the length of time required to finalise matters, particularly as the median number of days prior to the introduction of ADR was 30 days higher than in the other court locations (include in the court file review), coinciding with the wider reforms introduced in response to the Inquiry.

There are a number of factors that can influence how long a matter takes to finalise in the Children's Court within the care and protection jurisdiction, besides whether a matter was referred to ADR. This includes the characteristics of the matter, as well as other factors such as the extent to which the parties involved in the application complete the necessary actions required to progress the matter (eg complete assessments, obtain affidavits), the availability of legal practitioners to attend scheduled court appearance events and the capacity of each court to process all of the matters that come before it. To assess whether the observed differences in time to finalisation between the intervention and comparison group are due to differences in the characteristics of the matters selected for the case file review, bivariate analyses compared the time to finalisation between

matters where certain characteristics were present with those matters where they were not. The results from this analysis are presented in Table 45. These results show that the only statistically significant difference in the median number of days to finalisation was between matters involving multiple children and those that did not. This was consistent across the Parramatta, Broadmeadow and Riverina Children's Courts and the Bidura Children's Courts, and suggests that matters involving more than one child take longer to finalise.

A regression model was then developed to determine the relative contribution of different variables to the overall time to finalisation for matters in both the intervention and comparison group. Separate models were developed for the Parramatta, Broadmeadow and Riverina Children's Court and for the Bidura Children's Court. The dependant variable was the number of days to finalisation. In addition to a variable for participation in ADR, explanatory variables relating to the number of children (multiple children or not), other variables for which the observed difference was close to significant and variables for which the intervention and comparison group were significantly different (eg allegations of abuse) were included in the models. A number of difference models were specified (hierarchical regression). None of these models were significant, meaning that a model with one or more explanatory variables was no better at predicting the time to finalisation than a model with no explanatory variables. This is due to the relatively small sample size, but also suggests that there was not a strong relationship between the characteristics of care matters and the time taken to finalise matters.

## Number of court appearances required to finalise a matter

Related to the length of time required to finalise matters, the number of court appearance events in both the intervention and comparison groups was also compared. The first step compared the total proportion of matters that required more than 10 court appearance events for both the intervention and comparison group (see Table 46). Thirty-three

**Table 45** Median number of days from application date to finalisation of matter, by matter characteristics

	Present		Not present	
	Median	25th–75th percentile	Median	25th–75th percentile
<b>Parramatta, Broadmeadow, Albury and Wagga Children’s Courts</b>				
Multiple children	218	152–247	151	105–224 <sup>a</sup>
One or more children identified as Indigenous	185	152–257	195	120–257
Father involved in care application	189	121–243	160	111–219.5
Applications where family violence was an issue	201	121–243	163	116–230
Applications involving AVOs	188	129–238	164	112–239
Child/ren placed with family at time of application	191	133–227	180.5	110–243
Family placement sought	196	127–233	172	116–245
Child placed with family member as per final order	192.5	105–238.5	174	119–239
Allegations of abuse (mother)	174	120–238	217	108–246
Allegations of abuse (father)	189	149–243	159.5	104–233
Mother had prior contact with Community Services	183	136–247	190.5	121.5–282
Father had prior contact with Community Services	194	141–250	174	108–235.5
<b>Bidura Children’s Court</b>				
Multiple children	257	169–300	179.5	108–238 <sup>a</sup>
One or more children identified as Indigenous	216	127–266	174	116–227
Father involved in care application	186	125–256	183	128–301
Applications where family violence was an issue	195	134–283	182	121–254
Applications involving AVOs	229.5	140–257	181	121–276
Child/ren placed with family at time of application	181.5	101–295.5	189	132–256
Family placement sought	180.5	105–248	203	147–281
Child placed with family member as per final order	180.5	105–254	203	147–276
Allegations of abuse (mother)	195.5	108–257	183	126–269
Allegations of abuse (father)	195	155–283	185	123.5–255.5
Mother had prior contact with Community Services	178.5	120–246	189	112–233
Father had prior contact with Community Services	172	108.5–231	195	127–276

a: Statistically significant ( $p < 0.05$ )

Source: AIC Court File Review Database [computer file]

percent of matters in the Parramatta, Broadmeadow and Riverina Children’s Courts that were referred to a DRC (the intervention group) required more than 10 court appearances, compared with 25 percent of matters that were finalised prior to the introduction of ADR. This means that the majority of matters were finalised in fewer than 10 court appearance events.

In the Bidura Children’s Court, 37 percent of matters that were referred to the Legal Aid Pilot required more than 10 court appearances between the initial application being filed until final orders were made, compared with 52 percent of matters dealt with prior to the introduction of the ADR. While it suggests that matters referred to the Legal Aid Pilot were less likely

**Table 46** Number of court appearance events taken to finalise matters

	ADR		Non-ADR		p
	n	%	n	%	
<b>Parramatta, Broadmeadow, Albury and Wagga Wagga Children's Courts</b>					
5 or less	15	21	14	20	
6 to 10	32	46	38	55	
11 to 15	19	27	16	23	
16 or more	4	6	1	1	
More than 10 appearances	23	33	17	25	0.29
<b>Bidura Children's Court</b>					
5 or less	4	7	7	11	
6 to 10	33	56	23	37	
11 to 15	11	19	21	34	
16 or more	11	19	9	18	
More than 10 appearances	22	37	32	52	0.11

Note: *p* values calculated using Chi-square test comparing intervention and comparison group

Excludes applications that were dismissed or withdrawn, matters requiring fewer than 4 court appearance events and matters requiring less than 30 or more than 365 days to finalise

Source: AIC Court File Review Database [computer file]

**Table 47** Median number of court appearance events taken to finalise matter

	ADR		Non-ADR		p
	n	%	n	%	
	Median	25th–75th percentile	Median	25th–75th percentile	
Parramatta Children's Court	8	5–11	8.5	6–11	0.95
Broadmeadow Children's Court	9	6–11	7	6–8.5	0.13
Albury and Wagga Wagga Children's Courts	7	6–11	7	5–11	0.46
Parramatta, Broadmeadow, Albury and Wagga Wagga Children's Courts	8	6–11	7	6–10	0.43
Bidura Children's Court	9	8–14	11	7–14	0.46

Note: *p* values calculated using Wilcoxon-Mann-Whitney test comparing intervention and comparison group

Excludes applications that were dismissed or withdrawn, matters requiring fewer than 4 court appearance events and matters requiring less than 30 or more than 365 days to finalise

Source: AIC Court File Review Database [computer file]

to require more than 10 court appearance events than those matters that were dealt with before ADR was introduced, this difference was not statistically significant.

The second stage compared the median number of court appearance events for the intervention and comparison groups (see Table 47). The median number of court appearance events for matters in

the Parramatta, Broadmeadow and Riverina Children's Courts that were referred to a DRC was eight, compared with seven court appearance events for matters in the same courts finalised prior to the introduction of DRCs. In the Bidura Children's Court, the median number of court appearance events for those matters that were referred to the Legal Aid Pilot was nine, compared with 11 court

appearance events in the comparison group. These differences were not statistically nor substantively significant. These results show that there was little difference in the median number of court appearance events between the intervention and comparison groups.

## Matters involving hearings

An important objective of the use of ADR in care and protection proceedings is to increase the proportion of matters that are resolved on the basis of consent and reduce the number of hearings required to finalise care applications (ie resolve disputes and make final orders). This has important implications, not only in terms of the cost to the Children’s Court, Legal Aid and Community Services, but also in terms of the impact on parents and children involved in care applications.

Two measures of the proportion of matters that involved a hearing were developed. The first involved identifying all matters that required at least one hearing throughout the entire court process. This

includes both establishment hearings and placement hearings. For the intervention group, the matter may have been referred to ADR before or after a hearing that was not a placement hearing. Therefore, the second measure involved identifying those matters that involved a placement hearing. Hearings were identified as a placement hearing based on when they occurred (as the last or near to last court appearance event for that matter), whether the adjournment reason listed for the hearing court appearance event was final orders, or whether final orders were made on the date of the hearing or shortly after (eg at the next court appearance event).

The results of a comparison between the intervention and comparison groups in terms of the proportion of matters that involved hearings are presented in Table 48. These results show that the proportion of matters in the Parramatta, Broadmeadow and Riverina Children’s Court that were referred to a DRC and involved at least one hearing (24%) was lower than matters in the same court locations finalised prior to the introduction of ADR (39%) and this difference was approaching statistical significance ( $p=0.06$ ). Similarly, the proportion of matters in the Parramatta, Broadmeadow and Riverina Children’s

**Table 48** Matters that involved a hearing

	ADR		Non-ADR		p
	n	%	n	%	
<b>Matters that involved at least one hearing</b>					
Parramatta Children’s Court	7	18	10	26	0.35
Broadmeadow Children’s Court	4	27	8	50	0.18
Albury and Wagga Wagga Children’s Courts	6	40	9	60	0.27
Parramatta, Broadmeadow, Albury and Wagga Wagga Children’s Courts	17	24	27	39	0.06
Bidura Children’s Court	25	42	24	39	0.68
<b>Matters that involved a placement hearing</b>					
Parramatta Children’s Court	6	15	10	26	0.22
Broadmeadow Children’s Court	4	27	7	44	0.32
Albury and Wagga Wagga Children’s Courts	5	33	7	47	0.46
Parramatta, Broadmeadow, Albury and Wagga Wagga Children’s Courts	15	21	24	35	0.08
Bidura Children’s Court	23	39	21	34	0.56

Note: *p* values calculated using Chi-square test comparing intervention and comparison group

Excludes applications that were dismissed or withdrawn, matters requiring fewer than four court appearance events and matters requiring less than 30 or more than 365 days to finalise

Source: AIC Court File Review Database [computer file]

**Table 49** Matters that involved a placement hearing, by characteristics of the matter

	Present		Not present	
	n	%	n	%
<b>Parramatta, Broadmeadow, Albury and Wagga Wagga Children's Courts</b>				
Multiple children	19	35	20	24
One or more children identified as Indigenous	13	34	26	26
Father involved in care application	34	30	5	21
Applications where family violence was an issue	20	27	19	29
Applications involving AVOs	11	29	28	28
Child/ren placed with family at time of application	9	20	30	32
Family placement sought	16	23	23	33
Child placed with family member as per final order	16	22	23	34
Allegations of abuse (mother)	28	32	11	22
Allegations of abuse (father)	20	38	19	22
Mother had prior contact with Community Services	20	33	19	24
Father had prior contact with Community Services	15	39	24	24
<b>Bidura Children's Court</b>				
Multiple children <sup>a</sup>	16	59	28	30
One or more children identified as Indigenous	13	34	31	37
Father involved in care application	37	39	7	27
Applications where family violence was an issue	20	47	24	31
Applications involving AVOs <sup>a</sup>	14	64	30	30
Child/ren placed with family at time of application	10	25	34	42
Family placement sought	24	34	20	39
Child placed with family member as per final order	23	33	21	41
Allegations of abuse (mother)	13	31	31	39
Allegations of abuse (father)	9	43	35	35
Mother had prior contact with Community Services	15	37	29	36
Father had prior contact with Community Services	6	38	38	36

a: Statistically significant ( $p < 0.05$ )

Source: AIC Court File Review Database [computer file]

Court that were referred to a DRC and involved a placement hearing (21%) was also lower than matters in the same court locations finalised prior to the introduction of ADR (35%). Once again, this result also came close to statistical significance ( $p=0.08$ ). The proportion of matters that involved at least one hearing and the proportion that involved a placement hearing were consistently lower for each individual court location. Both results suggest that

matters that were referred to a DRC were less likely to require a hearing as part of the court process than matters that were finalised prior to the introduction of ADR, which suggests that the introduction of DRCs has contributed to a reduction in the number of hearings required for care and protection matters.

The results for the Bidura Children's Court were not as positive. The proportion of matters in the Bidura Children's Court that were referred to the Legal Aid

Pilot and required at least one hearing (42%) was about the same as for those matters finalised before the Pilot was introduced (39%). The proportion of matters that involved a placement hearing was also similar across both groups (39% in the intervention group and 34% in the comparison group). Therefore, while matters referred to ADR took less time to finalise, they were no less likely to require a hearing.

Bivariate analysis was undertaken to assess whether the observed differences between the intervention and comparison group in the proportion of matters that involved a placement hearing are due to differences in the characteristics of the matters selected for the case file review. The results from this analysis are presented in Table 49. These results show that the only statistically significant difference in the proportion of matters that involved a hearing was between matters involving multiple children, matters involving an AVO between the parties and matters where these characteristics were not present. This result was limited to the Bidura Children's Court and suggests that matters involving more than one child or that involved an AVO between parties were more likely to involve a placement hearing.

A logistic regression model was then developed to determine the relative contribution of different variables to the likelihood that a matter would involve a placement hearing. Separate models were developed for the Parramatta, Broadmeadow and Riverina Children's Court, and for the Bidura Children's Court. The dependant variable was whether the matter involved a placement hearing. In addition to a variable for participation in ADR, explanatory variables relating to the number of children (multiple children or not) and presence of an AVO between parties, other variables for which the observed difference was close to significant and variables for which the intervention and comparison group were significantly different (eg allegations of abuse) were included in the models. A number of difference models were specified (hierarchical regression). As with time to finalisation, none of these models were significant, meaning that a model with one or more explanatory variables was no better at predicting the likelihood that a matter would involve a hearing than a model with no explanatory variables. This is due to the relatively small sample size, but also suggests that there was not a strong

relationship between the characteristics of care matters and the likelihood that a matter would involve a placement hearing.

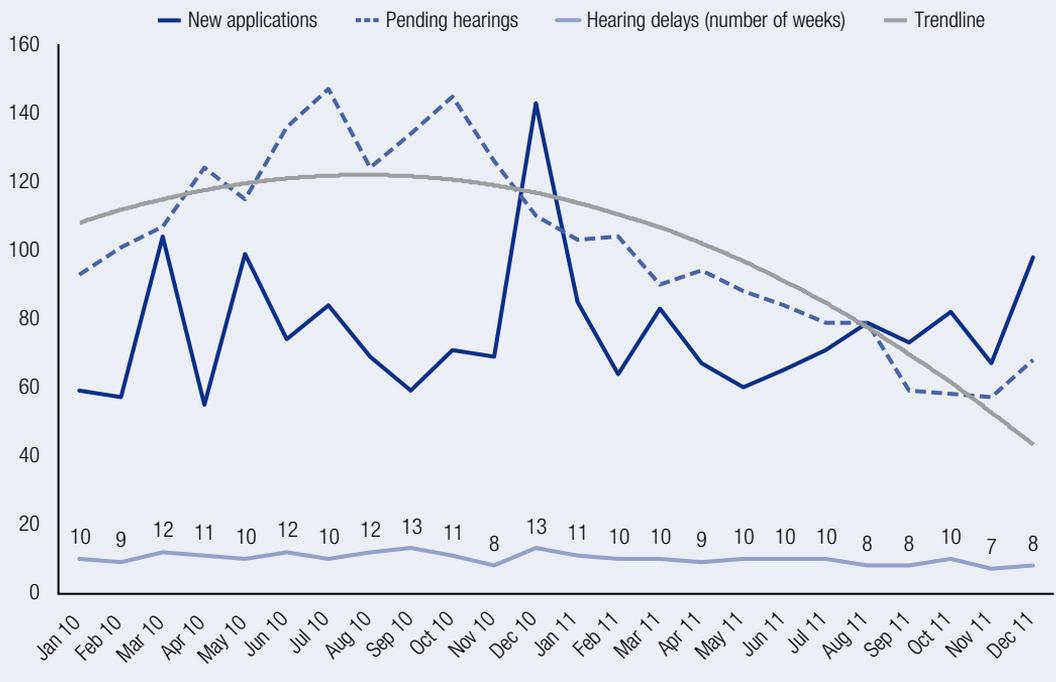
Other data supports the finding that the introduction of DRCs has contributed to a reduction in the number of hearings required for care and protection matters. For example, data supplied by the NSW Children's Court on the total number of new applications, pending hearings and hearing delays in the Parramatta Children's Court indicates that, overall, there has been significant and steady decline in pending care hearings at Parramatta relative to new applications per month since late 2010 (see Figure 6).

Other factors may have contributed to this result. The decline may be due (at least in part) to the introduction of ADR, but may also be due in part to other important changes introduced during this time. For example, in response to one of the recommendations made by Wood (2008), a trial of a formal 'docket system' was introduced in the care and protection jurisdiction at the Parramatta Children's Court in February 2011. In short, this involves the allocation of the same judicial officer for each matter for the duration of proceedings (from the first return date to the final hearing). This aims to ensure that the judicial officer is familiar with and understands the relevant issues in a matter throughout the process, which Legal Aid suggested would improve judicial management and reduce adversarial behaviour (Wood 2008). This may also, in turn, increase the likelihood that a matter would be resolved on the basis of consent. Nevertheless, taken as a whole, these results suggest that the introduction of DRCs appears to have contributed to a reduction in the proportion of matters that result in a hearing.

## Hearing length

Another important aim of the use of ADR in care and protection proceedings is to narrow the scope and length of hearings where agreement cannot be reached at a conference and a hearing is still required. The length of each hearing (in minutes) is recorded on the master tape history sheet maintained by the Children's Court. This information was supplied as part of the data collection process

**Figure 6** Care applications filed, pending care hearings and hearing delay in the Parramatta Children's Court (n)



Note: Total number of new applications and pending hearings based on number of applications for individual children (ie not matters). Trendline denotes pending hearings

Source: NSW Children's Court [Computer file]

for the court file review. The length of part-hearing hearings was added together. Interpreting the information on hearing length requires careful consideration. While the aim may be to reduce the length of hearings, short hearings (defined in this evaluation as lasting less than 60 minutes) are not desirable, since they suggest that the parties could have resolved the matter without the matter proceeding to a hearing (and incur a significant cost to the parties involved).

The average length of hearings (in minutes) for matters that involved a hearing and where the length of those hearings was recorded is presented in Table 50. These results need to be interpreted with some caution, given the relatively small number of hearings and the potential influence of outliers (ie really short or really long hearings) on the average length. Nevertheless, these results suggest that the average length of placement hearings for matters in the Parramatta, Broadmeadow and Riverina Children's Court was lower for the intervention group (225

minutes) than the comparison group (256 minutes). The length of hearings for matters in the Bidura Children's Court was higher for the intervention group (122 minutes) than the comparison group (95 minutes). Neither difference was statistically significant.

The total length of all hearings for each matter was also calculated by adding the length of each hearing together. These results show that the total length of hearings for matters in the Parramatta, Broadmeadow and Riverina Children's Court was higher for those matters that were referred to a DRC (and required a hearing; 273 minutes) than those matters finalised in the same court location prior to the introduction of DRCs (229 minutes). A similar result was found for matters in the Bidura Children's Court (133 minutes in the intervention group and 103 minutes in the comparison group). Once again, these results were not statistically significant. Overall, these results suggest that ADR had limited impact on the length of hearings for those matters that involved at least one hearing.

**Table 50** Average length of hearings (minutes)

	ADR				Non-ADR			
	Hearings (n)	Minutes	Min	Max	Hearings (n)	Minutes	Min	Max
<b>Placement hearings only</b>								
Parramatta Children's Court	5	186	45	311	5	198.2	16	610
Broadmeadow Children's Court	4	285	60	480	4	330	120	540
Albury and Wagga Wagga Children's Courts	5	216	30	420	4	221	15	420
Parramatta, Broadmeadow, Albury and Wagga Wagga Children's Courts	14	225	30	480	13	256	15	610
Bidura Children's Court	22	122	4	508	19	95	5	505
<b>All hearings</b>								
Parramatta Children's Court	6	218	90	311	5	198	16	610
Broadmeadow Children's Court	4	330	60	480	5	288	60	540
Albury and Wagga Wagga Children's Courts	6	290	30	660	5	201	15	420
Parramatta, Broadmeadow, Albury and Wagga Wagga Children's Courts	16	273	30	660	15	229	15	610
Bidura Children's Court	24	133	4	508	22	103	5	505

Note: The recorded length of part-heard hearings was added to determine the total duration of a completed hearing. Excludes matters for which the length of the hearing was not recorded

Excludes applications that were dismissed or withdrawn, matters requiring fewer than 4 court appearance events and matters requiring less than 30 or more than 365 days to finalise

Source: AIC Court File Review Database [computer file]

**Table 51** Matters that resulted in a short hearing

	Parramatta, Broadmeadow and Riverina				Bidura			
	ADR		Non-ADR		ADR		Non-ADR	
	n	%	n	%	n	%	n	%
<b>Hearings lasting less than 30 minutes</b>								
Any hearing	1	6	2	7	14	56	13	54
Placement hearings only	0	0	2	8	8	35	9	43
<b>Hearings lasting less than 60 minutes</b>								
Any hearing	3	18	4	15	21	84	15	63
Placement hearings only	2	13	4	17	12	52	11	52

Note: Percentages calculated based on the total number of matters that resulted in a hearing for which the length of time was specified. The length of part-heard hearings was added together

Excludes applications that were dismissed or withdrawn, matters requiring fewer than 4 court appearance events and matters requiring less than 30 or more than 365 days to finalise

Source: AIC Court File Review Database [computer file]

The proportion of matters in each group that had a hearing that lasted less than 30 minutes and less than 60 minutes (short hearings) is presented in Table 51. Percentages have been calculated based on the total number of matters that resulted in a hearing for which the length of time was specified. These results show that the proportion of matters that had a short hearing was significantly lower in the Parramatta, Broadmeadow and Riverina Children's Courts than in the Bidura Children's Court (for both the intervention and comparison groups). In the Parramatta, Broadmeadow and Riverina Children's Courts, 13 percent of matters in the intervention group with at least one hearing had a hearing that lasted less than 60 minutes, compared with 15 percent of matters in the comparison group. In the Bidura Children's Court, 84 percent of matters in the intervention group with at least one hearing had a hearing that lasted less than 60 minutes, compared with 63 percent of matters in the comparison group ( $p=0.09$ ).

The higher proportion of short hearings (lasting less than 60 minutes) in the intervention group may be an unintended outcome of the Legal Aid Pilot, whereby the referral of a matter to ADR has increased the likelihood that parties will be closer to reaching an outcome and therefore more likely to resolve a matter at the commencement of a hearing. It may also be due to the greater proportion of matters in the comparison group involving parents with allegations of abuse and prior contact with Community Services, which may be more likely to be contested and therefore take longer to resolve at a hearing.

## Hearings that do not proceed

When a hearing is required, whether it is an establishment hearing or placement hearing, a suitable start date for the hearing will be determined based on the availability of the parties involved and the requirement to complete any necessary preparation. The length of the hearing will also be determined based on the outstanding issues in dispute and a number of days will be set aside for the hearing. The matter will then be adjourned to the scheduled start date of the hearing.

Between the date of the adjournment and the hearing taking place, a matter can be resolved by the parties on the basis of consent, in which case the hearing will not proceed. Alternatively, the hearing may commence but the matter may be resolved and agreement on final orders reached in the initial stages of the hearing. In either scenario, some or all scheduled hearing dates will be vacated and the Children's Court resources allocated to that hearing may or may not be allocated to other court business. While minimising the need for a contested hearing is a positive outcome in terms of reducing the potential impact on families and their relationship with Community Services, it can incur significant costs to the Children's Court (and potentially other parties) and represents an inefficient use of resources.

As well as reducing the proportion of matters that involve a hearing and the length of these hearings, ADR aims to minimise the extent to which allocated hearing dates are vacated. Information on allocated hearing dates (and whether they were subsequently vacated) was extracted from the daily care bench sheets in each court file. It was found that this information was not recorded consistently for all matters and may not be a reliable measure of whether a hearing was scheduled but did not proceed. Therefore, alternative measures of hearings that did not proceed were calculated; specifically, matters that had an adjournment where the adjournment reason was listed as being a hearing, but where a hearing did not subsequently take place.

The results from a comparison between the intervention and comparison groups across key indicators are presented in Table 52. For the Parramatta, Broadmeadow and Riverina Children's Courts, these results show that:

- the proportion of matters that were adjourned for a hearing on at least one occasion but then never proceeded to a hearing was the same in both the intervention (25%) and comparison group (24%);
- the proportion of matters that had an adjournment for a hearing but did not have a hearing that took place after the first date on which the matter was adjourned for hearing was the same across the intervention and comparison groups (38% and 35% respectively);

- the proportion of matters that had an adjournment for a hearing but did not have a hearing that took place after the last date on which the matter was adjourned for hearing was similar for both the intervention and comparison groups (50% and 59% respectively);
- the proportion of matters that were adjourned for hearing on at least one occasion was significantly lower for matters referred to a DRC than for matters in the comparison group, which is consistent with the finding that matters referred to a DRC were less likely to require a hearing; and
- while information on matters that had vacated hearing dates were not available for the

comparison group, the results for the intervention group shows that 29 percent of matters had allocated hearing dates specified, 40 percent of matters (with allocated hearing dates) had allocated hearing dates that were vacated and one-quarter of matters that did proceed had actual hearing dates that did not coincide with the allocated hearing dates.

For the Bidura Children’s Court, the results in Table 52 show that:

- the proportion of matters that were adjourned for a hearing on at least one occasion but then never proceeded to a hearing was similar in both the intervention (17%) and comparison group (23%);

**Table 52 Matters with a hearing that did not proceed**

	ADR		Non-ADR		p
	n	%	n	%	
<b>Parramatta, Broadmeadow, Albury and Wagga Wagga Children’s Courts</b>					
<b>Matters adjourned for hearing that did not proceed</b>					
Adjourned for hearing on at least one occasion but never proceeded to hearing	4	25	7	24	0.95
Hearing did not take place after first date of adjournment for hearing	6	38	10	35	0.84
Hearing did not take place after last date of adjournment for hearing	8	50	17	59	0.58
Matter adjourned for hearing on at least one occasion	16	23	29	42	0.02
<b>Vacated hearings</b>					
Matters with allocated hearing dates specified	20	29	n/a	n/a	
Matters with allocated hearing dates that were vacated	8	40	n/a	n/a	
<b>Allocated hearing end dates did not coincide with actual hearing end date</b>	<b>3</b>	<b>25</b>	<b>n/a</b>	<b>n/a</b>	
<b>Bidura Children’s Court</b>					
<b>Matters adjourned for hearing that did not proceed</b>					
Adjourned for hearing on at least one occasion but never proceeded to hearing	5	17	7	23	0.56
Hearing did not take place after first date of adjournment for hearing	7	24	8	27	0.82
Hearing did not take place after last date of adjournment for hearing	11	38	14	47	0.50
Matter adjourned for hearing on at least one occasion	29	49	30	48	0.93
<b>Vacated hearings</b>					
Matters with allocated hearing dates specified	27	46	19	31	0.09
Matters with allocated hearing dates that were vacated	9	33	6	32	0.90
Allocated hearing end dates did not coincide with actual hearing end date (for allocated hearings that proceeded only)	7	39	9	69	0.10

Note: p values calculated using Chi-square test comparing intervention and comparison group

Excludes applications that were dismissed or withdrawn, matters requiring fewer than 4 court appearance events and matters requiring less than 30 or more than 365 days to finalise

Source: AIC Court File Review Database [computer file]

- the proportion of matters that had an adjournment for a hearing but did not have a hearing that took place after the first date on which the matter was adjourned for hearing was the same across the intervention and comparison groups (24% and 27% respectively);
- the proportion of matters that had an adjournment for a hearing but did not have a hearing that took place after the last date on which the matter was adjourned for hearing was similar for both the intervention and comparison groups (38% and 47% respectively);
- the proportion of matters that were adjourned for hearing on at least one occasion was the same for matters referred to the Legal Aid Pilot (49%) and for matters in the comparison group (48%), which is consistent with the finding that matters referred to the Legal Aid Pilot were no less likely to require a hearing;
- matters in the intervention group were more likely to have allocated hearing dates (46% compared with 31% in the comparison group);
- the proportion of matters with vacated hearing dates was the same in the intervention (33%) and comparison group (32%); and
- the proportion of matters that had allocated hearing dates and proceeded to hearing but that had actual hearing dates that did not coincide with the allocated hearing dates was substantially lower in the intervention group (39%) than in the comparison group (69%), although the difference was not statistically significant due to the small sample sizes.

Taken as a whole, these results suggest that there was no difference between those matters that were referred to ADR and those matters that were finalised prior to the introduction of ADR in the prevalence of scheduled hearings that did not proceed.

## Matters resolved on the basis of consent

Another important aim of referring matters to ADR is to increase the proportion of matters that are resolved on the basis of consent. Resolving a matter on the basis of consent aims to reduce the length of

time taken to process a matter through the Children's Court and reduces the need for a hearing, which reduces the burden (financial or otherwise) on all of the parties involved in proceedings. This section of the report has already demonstrated that there have been mixed results in terms of the impact of ADR on these other indicators. This next section examines the extent to which ADR has contributed to an increase (or not) in the proportion of matters resolved on the basis of consent. A matter was deemed to have been resolved on the basis of consent if it was finalised without a placement hearing or, where a hearing did take place, the hearing was completed in less than 60 minutes.

The results from a comparison between the intervention and comparison groups in terms of the proportion of matters that were resolved on the basis of consent are presented in Table 53. Eighty-one percent of matters in the Parramatta, Broadmeadow and Riverina Children's Courts that were referred to a DRC were resolved on the basis of consent, compared with 71 percent of matters in the comparison group. While this result was not statistically significant, it is consistent with the earlier finding that the proportion of matters that involved a hearing was lower in the intervention group. In the Bidura Children's Court, the proportion of matters that were referred to the Legal Aid Pilot and were resolved on the basis of consent (81%) was about the same as for the comparison group (84%). These results show that a high proportion of matters in the care and protection jurisdiction are resolved on the basis of consent, which in itself is a positive result.

## Other outcomes from referring matters to alternative dispute resolution

In addition to assessing the impact of DRCs and the Legal Aid Pilot on the Children's Court, the analysis of data extracted from Children's Court data also examined the impact of ADR on other important outcomes from care proceedings. Specifically, this involved an assessment of the impact of ADR on the extent to which parents agreed with care plans

developed through care proceedings and the extent to which ADR influenced contact outcomes and family placements. The results from this analysis are presented in Table 54.

In the Parramatta, Broadmeadow and Riverina Children’s Court, a comparison between those matters that were referred to a DRC and those matters finalised prior to the introduction of ADR showed that:

- the proportion of mothers and fathers in the intervention group who agreed with the care plan (29% and 26% respectively) was the same as the comparison group (33% and 26%);
- the proportion of matters that resulted in contact with the child/ren increasing was the same in both groups (23% in the intervention group and 25% in the comparison group);

**Table 53** Matters that were resolved on the basis of consent

	ADR		Non-ADR		p
	n	%	n	%	
Parramatta Children’s Court	35	88	30	79	0.31
Broadmeadow Children’s Court	11	73	9	56	0.32
Albury and Wagga Wagga Children’s Courts	11	73	10	67	0.69
Parramatta, Broadmeadow, Albury and Wagga Wagga Children’s Courts	57	81	49	71	0.15
Bidura Children’s Court	48	81	52	84	0.72

Note: Matters were deemed to have been resolved on the basis of consent if they were finalised without a placement hearing or, where a hearing did take place, it was completed in less than 60 minutes

p values calculated using Chi-square test comparing intervention and comparison group

Excludes applications that were dismissed or withdrawn, matters requiring fewer than 4 court appearance events and matters requiring less than 30 or more than 365 days to finalise

Source: AIC Court File Review Database [computer file]

**Table 54** Outcomes from care applications

	Parramatta, Broadmeadow and Riverina				Bidura			
	ADR		Non-ADR		ADR		Non-ADR	
	n	%	n	%	n	%	n	%
<b>Agreement with care plans</b>								
Mother disagreed with care plan	20	29	23	33	23	39	27	44
Father(s) disagreed with care plan	18	26	18	26	21	36	19	31
<b>Contact outcomes</b>								
Contact with child increased	16	23	17	25	11	19	11	18
<b>Family placements</b>								
Child/ren placed with family at time of application	29	41	16	23 <sup>a</sup>	21	36	19	31
Family placement sought	39	56	30	43	38	64	32	52
Child placed with family member as per final order	40	57	32	46	38	64	32	52
Child placed with family member as per final order (where sought)	37	95	28	93	38	100	31	97
Total matters	70	100	69	100	59	100	62	100

a: Difference between intervention and comparison group statistically significant (p<0.05)

Source: AIC Court File Review Database [computer file]

- the proportion of matters for which the child/ren were placed with the family at the time of the application was significantly higher for the intervention group (41%) than the comparison group (23%);
- the proportion of matters in which a family placement was sought (56% compared with 43%) and in which the child/ren was placed with the family (57% compared with 46%) was slightly higher in the intervention group, although this difference was not statistically significant; and
- the proportion of matters where a family placement was sought and that resulted in the child/ren being placed with the family was very high in both groups (95% and 93%).

Very similar results were observed in the Bidura Children's Court. A comparison between those matters that were referred to the Legal Aid Pilot and those matters finalised prior to the introduction of ADR showed that:

- the proportion of mothers and fathers in the intervention group who agreed with the care plan (39% and 36% respectively) was the same as the comparison group (44% and 31%);
- the proportion of matters that resulted in contact with the child/ren increasing was the same in both groups (19% in the intervention group and 18% in the comparison group);
- the proportion of matters where the child/ren were placed with the family at the time of the application was similar for the intervention group (36%) and the comparison group (31%);
- the proportion of matters where a family placement was sought (64% compared with 52%) and where the child/ren was placed with the family (64% compared with 52%) was slightly higher in the intervention group, although this difference was not statistically significant; and
- the proportion of matters for which a family placement was sought and that resulted in the child/ren being placed with the family was very high in both groups (100% and 97%).

## Cost-savings analysis for court file matters

The final component of the outcome evaluation involved a cost-savings analysis to determine

whether the increased time and therefore cost associated with the implementation of ADR across New South Wales has been offset by a reduction in the total time and cost associated with court hearings. A cost-savings analysis involves an assessment of the costs to and savings realised by a program's funding body, in this case the Children's Court, Legal Aid and Community Services (AIC 2003). The analysis is focused on the costs to the funding body and the savings are expressed as dollars. The purpose of this type of analysis is to determine whether a program 'pays for itself' and is justified in financial terms, rather than assessed solely on the basis of the services provided and other benefits that are realised for participants (AIC 2003).

This involved comparing the staffing costs (including salary on-costs) associated with matters referred to the DRCs and Legal Aid Pilot with those matters in the comparison group. The analysis was restricted to the cost associated with conferences held as part of DRCs and the Legal Aid Pilot and hearings (for the intervention group) and preliminary conferences and hearings (for the comparison group). While there are additional costs associated with care and protection matters, the direct intended benefit in terms of financial savings from the introduction of ADR is a reduction in the cost associated with court hearings, due either to a reduction in the proportion of matters that involve a hearing or, where a hearing does take place, reducing the length of those hearings.

To determine the cost associated with each matter included in the court file review, it was necessary to determine the total length of time for conferences, conference preparation and hearings. The length of time required for conferences and conference preparation was drawn from the post-conference reports and the length of court hearings was extracted from the court file review. Where there were multiple conferences or hearings, the length of individual conferences and hearings was added together. The length of each conference and hearing was rounded up to the nearest hour. While acknowledging that a hearing that is completed in a shorter time period than it has been scheduled to take has cost implications for the parties involved (especially in terms of their capacity to reallocate resources to other matters), this analysis is focused on the actual time taken for the hearing.

For the intervention group, this required linking the two datasets together using the case ID. Unfortunately, not all of the case IDs in the court file review could be matched with corresponding records in the post-conference data, due either to the case ID not being recorded in the post-conference report or being recorded incorrectly. As a result, 89 percent (n=62) of matters referred to a DRC were able to be matched across the two datasets, while 83 percent (n=49) matters referred to the Legal Aid Pilot could be matched across the two datasets. The remainder were excluded from the analysis.

Once the length of time required for each conference, conference preparation and hearing was determined, the staffing costs for the various parties involved in the matters could be determined. This required the Children's Court, Legal Aid and Community Services supplying the hourly rates or lump sum payments paid to the staff involved in care proceedings. These costs excluded GST but (for hourly rates) included salary on-costs. Other costs, such as for administrative staff not directly involved in the conferences and training provided to practitioners, were not included in the analysis because they could not be allocated to the matters included in the court file review. However, they still need to be considered in interpreting the results.

- There are several assumptions that underpin the cost-savings analysis, particularly as they relate to the allocation of costs to the preliminary conferences:
- Based on advice from the Children's Court, each preliminary conference was estimated to have run for an hour and required an hour of preparation time.
- A preliminary conference was deemed to have taken place on every occasion that a matter was adjourned and the adjournment reason for that court appearance event was 'adjourned for a preliminary conference'.
- The costing models assume that each DRC was attended by a legal representative for the mother, father, child/ren and Community Services, a Community Services Manager Casework and Caseworker, and the Children's Registrar.
- The costing models assume that each conference

held as part of the Legal Aid Pilot was attended by a legal representative for the mother, father, child/ren and Community Services, a Community Services Manager Casework and Caseworker, and the mediator (one mediator only given that this is the current mode of operation).

- The costing models assume that all parties who attended a DRC also attended the preliminary conference. While it is acknowledged that not all parties attended these conferences, the model assumes that the preliminary conferences were run as they were intended.
- The costing models assume that each court hearing involves the Children's Court Magistrate, two clerks, a legal representative for the mother, father, child/ren and Community Services, and a Community Services Manager Casework and Caseworker.
- Some of the models include the lump sum payments made to Legal Aid lawyers (for both the conference and hearing preparation time), which are not specific to DRCs or the Legal Aid Pilot but are paid to lawyers for their preparation for conferences and hearings (including preparation for ADR).
- The allocation of in-house lawyers versus external practitioners for Community Services was based on information supplied by Community Services on the proportion of matters that involved an in-house lawyer (none in the Riverina Children's Courts, 70% of matters in the Parramatta Children's Court, 30% of matters in the Broadmeadow Children's Court and 50% of matters in the Bidura Children's Court).

Three models were developed to assess whether there were any cost savings associated with the implementation of the DRCs and Legal Aid Pilot:

- Model 1—includes the conference and hearing time for all parties involved in proceedings and the cost associated with the convenor's preparation time (noting that mediators are paid a lump sum for their involvement in the Legal Aid Pilot).
- Model 2—includes the conference and hearing time for all parties involved in proceedings, the cost associated with the convenor's preparation time (conference) and the lump sum payments made to Legal Aid lawyers (for both the conference and hearing preparation time).

- Model 3—includes the conference and hearing time for all parties involved in proceedings, the cost associated with the preparation time for all parties involved in the conference (based on the equivalent length of time taken by the conference convenor) and the lump sum payments made to Legal Aid lawyers (for both the conference and hearing preparation time).

Model 3 is probably the most reliable estimate of the average cost per matter (and therefore average difference between the intervention and comparison group), because it accounts for a greater range of costs incurred by the various parties involved in proceedings. However, it may also overestimate the direct cost associated with conferences (both DRCs and the Legal Aid Pilot conferences, and the preliminary conferences).

The results for each model are presented in Table 55. These results show that the average cost for each matter in the Parramatta, Broadmeadow and Riverina Children’s Courts ranged from \$2,771 to \$7,585 in the intervention group and from \$2,547 to \$7,334 in the comparison group, depending on the model that was used. The difference between the average cost of each matter therefore ranged from \$155 to \$314 (which represents a difference of between 2 and 13%), with matters referred to DRCs consistently more expensive on average, irrespective of the costing model used.

In the Bidura Children’s Court, the average cost for each matter ranged from \$3,185 to \$8,119 in the intervention group and from \$2,539 to \$7,494 in the comparison group, depending on the model that was used. The difference between the average cost of each matter therefore ranged from \$625 to \$680 (which represents a difference of between 8 and 25%), with matters referred to the Legal Aid Pilot also consistently more expensive on average, irrespective of the costing model used.

These results show that the increased average cost per matter associated with DRCs (compared with preliminary conferences) was offset (in part) by a reduction in the average cost of hearings for each matter. This was due to a reduction in the total number and proportion of matters that involved a hearing. In other words, while the average cost per matter for DRCs was consistently higher than for the old model of preliminary conferences, the average

cost of hearings per matter in the Parramatta, Broadmeadow and Riverina Children’s Courts was consistently higher for the comparison group.

For the Bidura Children’s Court, the proportion of matters that involved a hearing did not decline. The increased average cost per matter associated with Legal Aid Pilot conferences (compared with preliminary conferences) was therefore not offset by a reduction in the average cost per matter associated with hearings (which was actually marginally higher for the intervention group).

When considered alongside the other outcomes identified in this report, these results also suggest that, while there are no direct savings to the Children’s Court, Legal Aid and Community Services from the introduction of ADR, the relatively small proportional increase in the average cost of matters (particularly when Model 3 was used) delivers a range of positive benefits to the parties involved. While these benefits are more difficult to measure in dollar terms, they are no less valuable, and suggest that the program is relatively cost efficient in delivering a range of benefits to the parents and families involved in care proceedings. Given that the new model of DRC has only been in operation for 12 months and the Legal Aid Pilot for 18 months, a future evaluation should be undertaken to assess whether there are longer term savings to court partners associated with the use of ADR in the care and protection jurisdiction.

## Cost–savings analysis for Legal Aid grants

The second stage of the cost–savings analysis involved comparing the total value of grants paid to practitioners representing clients involved in care and protection matters in the period during the operation of DRCs and the Legal Aid Pilot, to an equivalent period prior to the introduction of the two programs. This stage of the analysis was not restricted to the matters included in the court file review. Instead, the total value of grants paid was calculated for all clients involved in matters that were finalised in two equivalent six month periods before and after the two new ADR programs were introduced in the Parramatta, Broadmeadow, Albury, Wagga Wagga and Bidura Children’s Courts. The purpose of this analysis was to determine the average cost per

**Table 55** Cost savings comparison, by Children's Court location (\$ average per matter, excluding GST)

	Intervention				Comparison				Difference (% difference)		
	n	Hearing cost	Conference cost	Lawyer preparation cost	Total	n	Hearing cost	Conference cost		Lawyer preparation cost	Total
<b>Model 1—Conference and hearing time and convenor preparation time</b>											
Parramatta, Broadmeadow, Albury and Wagga Wagga Children's Courts	62	1,064	1,706	–	2,771	69	1,340	1,117	–	2,457	314(13)
Bidura Children's Court	49	1,095	2,091	–	3,185	62	865	1,673	–	2,539	646(25)
<b>Model 2—Conference and hearing time, convenor preparation time (conference), lump sum Legal Aid payments (conference and hearing)</b>											
Parramatta, Broadmeadow, Albury and Wagga Wagga Children's Courts	62	1,251	1,706	4,231	7,188	69	1,662	1,117	4,254	7,033	155(2)
Bidura Children's Court	49	1,432	2,091	4,200	7,723	62	1,170	1,673	4,200	7,043	680(10)
<b>Model 3—Conference and hearing time, all parties preparation time (conference), lump sum Legal Aid payments (conference and hearing)</b>											
Parramatta, Broadmeadow, Albury and Wagga Wagga Children's Courts	62	1,251	2,104	4,231	7,585	69	1,662	1,418	4,254	7,334	251(3)
Bidura Children's Court	49	1,432	2,487	4,200	8,119	62	1,170	2,124	4,200	7,494	625(8)

Source: AIC Court File Review Database [computer file]

client incurred by Legal Aid and to determine whether there had been any savings in these costs resulting from the two new ADR programs.

Legal Aid provided an extract of data on the claims made by legal practitioners involved in care matters that met the following criteria:

- Group 1—all care matters that were initiated and finalised in Parramatta, Broadmeadow, Albury and Wagga Wagga Children’s Courts and were finalised between 1 July 2010 and 31 December 2010 (the pre-intervention period), and between 1 July 2011 and 31 December 2011 (the intervention period).
- Group 2—all care matters that were initiated and finalised in Bidura Children’s Court and were finalised between 1 January 2010 and 30 June 2010 (the pre-intervention period), and between 1 January 2011 and 30 June 2011 (the intervention period).

The extract contained data on all grants paid for each client represented by both in-house and external practitioners during the relevant periods. The specific type of grant paid, including whether it was a fee or disbursement and the work item for which the grant was paid, was determined. Fees associated with conferences (ie DRCs or mediation) and court time were calculated. It was also possible to identify the role of the client in each matter, including whether they were the applicant, defendant, an interested party or the child. Other clients (eg clients involved in appeals) were excluded from the analysis. Some clients were involved in more than one matter (ie they appeared in both periods) and where this occurred, each appearance was counted as a unique client.

Matters were considered finalised and included in the extract on the basis that the practitioner had notified Legal Aid that the matter had been finalised. As a result, there were a smaller number of clients included in the extracts for the second and more recent data collection period for both groups. This may be due to the delay in practitioners notifying Legal Aid that the matter had been finalised or in submitting their claims. To account for a potential lag effect, the cost–savings analysis compared the average grant paid for each client involved in care and protection matters.

To ensure that the cost–savings analysis reflected the full costs incurred by Legal Aid, the conference costs for clients involved in matters referred to the Legal Aid Pilot included the fees paid to mediators. These fees were allocated to one client involved in each conference (the child). Therefore, the average conference fees for each client involved in matters in the Bidura Children’s Court during the intervention period were substantially higher than the for clients in the Parramatta, Broadmeadow, Albury and Wagga Wagga Children’s Courts.

The total average value of grants paid for each client was calculated, as well as the total fee and disbursements paid, the fees associated with court time and for the intervention period, the fees associated with DRCs or the Legal Aid Pilot. For the intervention period, clients were separated into those who were involved in a conference and those who were not (based on whether a conference grant had been claimed and paid). Clients involved in matters for which there were no fees paid at all or for which there were no fees for court time (ie the client did not participate in a Children’s Court appearance) were excluded from the analysis because they were assumed to have been withdrawn or dismissed (and would not have been eligible for referral to ADR). The results of the final analysis of grants paid to practitioners representing clients involved in care and protection matters are presented in Table 56.

These results show that the average total grant paid for each client in the Parramatta, Broadmeadow and Riverina Children’s Courts was \$3,711 for clients who were involved in matters finalised during the intervention period and who were involved in a DRC, and \$3,632 for clients involved in matters finalised prior to the introduction of the DRC. The average total fee paid for court time was lower for clients involved in a DRC, which appeared to offset the additional cost associated with conferences. Conversely, the average fee associated with court time for clients involved in matters that were finalised during the intervention period but were not referred to a DRC was the same as the pre-intervention period. This suggests that the total amount of time spent in court for clients involved in matters that were referred to a DRC was lower, which is consistent with the earlier finding that matters in the Parramatta, Broadmeadow, Albury and Wagga Wagga Children’s Court were less likely to proceed to hearing.

**Table 56** Cost savings comparison, by Children's Court and date of finalisation (\$ average per client, excluding GST)

	n	Conference fee paid	Court time fee paid	Total disbursements paid	Total fee paid	Total grant paid
<b>Parramatta, Broadmeadow, Albury and Wagga Wagga Children's Courts</b>						
1 July–31 December 2010	568	-	1,228	111	3,521	3,632
1 July–31 December 2011 (no conference)	160	-	1,262	122	3,258	3,378
1 July–31 December 2011 (conference)	185	321	933	104	3,606	3,711
<b>Bidura Children's Court</b>						
1 January–30 June 2010	139	-	1,861	190	4,132	4,322
1 January–30 June 2011 (no conference)	51	-	1,594	100	3,369	3,469
1 January–30 June 2011 (conference)	20	641	900	451	3,540	3,991

Source: Legal Aid care and protection claims data [computer file]

In the Bidura Children's Court, the average total grant paid was \$3,991 for clients who were involved in matters finalised during the intervention period and that were involved in a Legal Aid Pilot conference and \$4,322 for clients involved in matters finalised prior to the introduction of the Legal Aid Pilot. The average fee paid for court time for clients involved in the Legal Aid Pilot was less than half that for clients involved in matters before ADR was introduced, which offset the additional \$641 paid for conferences. Some care needs to be taken in interpreting these results, given the small number of clients who were involved in a conference during the intervention period (n=22). Nevertheless, this finding was consistent with what appeared to be a significant reduction in fees for court time across all matters (irrespective of whether the matter went to conference). These results are also consistent with the earlier finding that matters referred to the Legal Aid Pilot required fewer days to finalise than matters finalised in the Bidura Children's Court prior to the introduction of ADR and some evidence that these same matters required fewer court appearance events. Given that these results are for one Children's Court (rather than across 3 different courts), drawing definitive conclusions as to the reason for this decline is difficult. This report has

already highlighted the fact that in the period prior to the introduction of the Legal Aid Pilot, matters in the Bidura Children's Court took much longer to finalise than in the other Children's Courts and reducing the total number of days to finalisation brought it into line with these other court locations. It also coincided with a new Children's Court Magistrate and may reflect procedural changes in the way the court operated between 2010 and 2011.

Overall, these results show that in both programs, the average total fees paid for actual court time appears to have been lower for clients involved in matters that were referred to ADR, which would suggest that the length of time that practitioners (and therefore clients) spend in court appears to have declined. This was difficult to assess with the court file data, due to the absence of a reliable measure of the time spent in regular court appearance events (ie as opposed to hearings). Whether this is due entirely to the introduction of ADR is difficult to determine (particularly in the Bidura Children's Court), but reducing the time spent in the courtroom is an important outcome for parents and family members (and children) involved in care and protection matters.

# Conclusion

The evidence presented in this report has demonstrated that there have been a number of important outcomes that have been delivered through the introduction of ADR as part of care and protection proceedings within the NSW Children's Court. Specifically, the introduction of DRCs and the Legal Aid Pilot has resulted in:

- a high level of commitment to the use of ADR for care and protection matters in the NSW Children's Court and has led to important changes in the way that professionals approach care and protection matters;
- a large proportion of matters where the issues in dispute have been resolved or at least narrowed and a significant number of matters where ADR has resulted in agreement on final orders;
- a high level of satisfaction among conference participants, including parents and families involved in care matters, legal practitioners and Community Services staff, particularly with the conference process;
- improved perceptions of Community Services and improved relationships (or a belief that relationships will improve) between families and Community Services in a large proportion of matters; and
- a reduction in the proportion of matters in the Parramatta, Broadmeadow and Riverina Children's Courts that involved a hearing.

Further, the evaluation has demonstrated that while there have been some implementation challenges, the program has largely been implemented as it was intended. The standard of ADR delivered in both programs has been high and appears to have improved over time as the level of experience, knowledge and skills among those parties involved in the conferences has increased. There have been a high number of referrals to both programs (relative to their size), the majority of referrals proceed to conference and the number of conferences has gradually increased over time. There are still a number of issues to overcome, including continuing to build support for some Magistrates, legal representatives and Community Services staff for the use of ADR and to develop strategies to ensure the sustainability of ADR processes in the longer term.

This final section of the report outlines a number of important considerations for the continued involvement of ADR in the care and protection jurisdiction, including the requirements for supporting the use of ADR, considerations for the expansion of the Legal Aid Pilot, the role of court-referred ADR in resolving contact disputes and as part of the care and protection continuum, and the need for better monitoring of the impact of ADR. The report ends by making a number of recommendations to inform the future operation of ADR in care and protection proceedings within the NSW Children's Court.

## Embedding alternative dispute resolution processes in care and protection proceedings

The evidence presented in this report supports the continued involvement of ADR processes in care and protection proceedings in the NSW Children's Court. The results from a quantitative and qualitative assessment of DRCs and the Legal Aid Pilot demonstrate that there has been a range of benefits delivered by both programs. There appears to be a growing acceptance among stakeholders involved in the management and delivery of DRCs and the Legal Aid Pilot that ADR processes should and will continue to be an integral feature of care and protection proceedings within the NSW Children's Court.

In order for ADR to continue to operate effectively in the NSW Children's Court, stakeholders involved in the management and delivery of DRCs and the Legal Aid Pilot highlighted the need for:

- ADR to continue to operate in accordance with the model(s) that have been developed and implemented during the Pilot period (and the principles for effective court-referred ADR identified in this report);
- the high number of referrals of care matters to ADR to be sustained over time;
- strong leadership and high level support for the use of ADR in care and protection proceedings, including from the President of the Children's Court, Children's Court Magistrates and the ADR Steering Committee;
- adequate resourcing to support the continued involvement of the Children's Court, Legal Aid and Community Services;
- maintaining appropriate governance arrangements, program oversight and monitoring to ensure that a process of continuous improvement is sustained;
- an ongoing program of training and development for parties involved in ADR; and
- program and administrative staff to assist with organising conferences and program management.

Therefore, besides addressing the implementation challenges identified in this report and continuing to build support for ADR, there was limited support for making substantial changes to either program. Stakeholders highlighted the need for the enthusiasm and momentum from the Pilot period to be sustained in order to continue to deliver positive outcomes for families, the Children's Court, Legal Aid and Community Services. This requires recognition of ADR as an integral part and fundamental step in care proceedings.

The Legal Aid Pilot currently operates exclusively in dealing with Bidura Children's Court matters. DRCs operate across New South Wales in all other Children's Courts, including both metropolitan and regional locations. This has a number of important implications for the implementation and operation of ADR beyond the evaluation. The current model, whereby the Bidura Children's Court refers care matters to external mediation and all other Children's Courts refer matters to a DRC, is not sustainable. A decision needs to be made about the expansion of the Legal Aid Pilot to other Children's Court locations and how the two forms of ADR can work together most effectively.

It was not the purpose of this evaluation to directly compare DRCs and the Legal Aid Pilot in terms of their overall performance or the outcomes that have been delivered. However, the evaluation did attempt to determine whether the two models of ADR were better suited to resolving different types or matters or issues. The evaluation found that there was little evidence that certain types of disputes were more likely to be resolved (or issues in dispute narrowed) or that parties were more likely to reach agreement on final orders in one program or the other, taking into consideration the differences in the way information about the conferences was recorded. Where there were measurable differences between the two programs, such as in the proportion of matters that involved a hearing, the difference can be largely attributed to factors outside the conferences. In this example, there was limited support among the Magistrates for the Legal Aid Pilot which, given that a similar proportion of conferences in both programs reached agreement on final orders, may have limited the impact of mediation on the proportion of matters that proceeded to hearing.

However, when stakeholders were asked to comment on whether external mediation was better at resolving certain issues or working with particular families, a number of themes emerged. A common view expressed was that DRCs were better at resolving legal issues (and reaching agreement on issues such as restoration or parental responsibility) because of the experience of Children's Registrars in the care and protection jurisdiction—'the nuts and bolts of care matters' (Magistrate personal communication 2012). Conversely, it was argued that external mediation is more suited to dealing with the practical issues associated with care matters, such as supervision arrangements for contact and the amount of contact for parties (and how certain orders would work in practice), because mediators are more adept at dealing with relationships between the parties (ie families and Community Services) and more focused on promoting success for the family.

It was also suggested that referring a matter to external mediation may be more effective for matters where there is a long history of contact between families and Community Services or between parents, Indigenous families (because of the involvement of Indigenous mediators and capacity of the program to deal with larger groups of extended family members) and s 90 applications (because mediators were more effective in reflecting on the progress that had been made by the parties involved). There was also some suggestion from those stakeholders involved in the Pilot that external mediation could be conducted in locations where there was no Children's Court and could be conducted at short notice, allowing a greater level of flexibility, although submissions from the Children's Court suggest that there may be little difference between the two programs in this regard. There were different views about the value of an external ADR program conducted in an independent setting; some stakeholders argued that moving the conference away from the Children's Court could facilitate more open communication, while others suggested that parents were unlikely to view Legal Aid premises as a neutral venue or have the insight to understand the difference between the models.

There were different views in terms of the expansion of the Legal Aid Pilot and how it might continue to operate alongside DRCs. Several models were proposed:

- Model 1—certain families or issues (such as those described above) may be more suitable for external mediation and where a matter involves these types of families or issues, then that matter could be referred to external mediation. This would require clear operational guidelines that can be used by parties to a care application to make a submission to the Magistrate to refer a matter to external mediation (rather than a DRC) and to assist the Magistrate to decide whether a matter should be referred to a DRC or external mediation. The major challenge in implementing this model would be ensuring that there are a sufficient number of referrals to external ADR to sustain the program (eg to justify the investment in maintaining a skilled pool of mediators).
- Model 2—external mediation could be used where a DRC has been unable to resolve a matter in its entirety, but where the parties agree that further ADR may be beneficial. There was limited support for this model, primarily because it would be a costly approach.
- Model 3—given the additional time currently allocated to external mediation, in the event that the length of DRCs remains two hours, matters that are identified as requiring additional time could be referred to external mediation.
- Model 4—the two models of ADR could be integrated into a single program, whereby certain matters are co-convened by a Children's Registrar and mediator. There was some concern that this model may be difficult to implement within the existing legislative framework and there would be a need to clarify the responsibilities of the two parties. Feedback from mediators since the Legal Aid Pilot moved to a single mediator mode of operation suggests that co-convening ADR can be difficult, but is a useful approach in certain situations, such as where there are a large number of participants or there is significant conflict between parties.
- Model 5—families are empowered to decide whether they would prefer that a matter be referred to external mediation. Their legal representative(s) would make a submission to the Magistrate requesting that a matter be referred to external mediation who would then decide on the most appropriate referral. This may present some challenges in terms of helping parents and family

members to understand the differences between the two models (and the advantages and disadvantages of each), which would be the primary responsibility of their legal representative, or where there is disagreement between family members on the best option.

There was also a view among some stakeholders that continuing to operate two models represented a duplication of services and that, in the absence of measurable benefits of retaining external mediation, there was little value in extending the Legal Aid Pilot beyond the evaluation period.

Irrespective of the model that is adopted, staff involved in the Legal Aid Pilot were supportive of the program being expanded to other Children's Court locations. Several factors were identified as necessary in order to expand the Legal Aid Pilot into other locations.

- an established pool of mediators with experience in the Family Dispute Resolution Service, who can be provided with additional training to enable them to convene conferences as part of the care and protection jurisdiction;
- availability of suitable facilities that can accommodate conferences involving multiple parties;
- a sufficient number of matters that would be eligible for referral to external mediation, with Magistrates who are supportive and willing to refer matters to external mediation;
- clear guidelines that allow an assessment of the suitability of matters for external mediation and that enable certain matters to be referred to external mediation on a regular basis;
- a program supervisor, mediation organiser and administrative staff that can support the expansion of the Legal Aid Pilot into that location; and
- adequate resourcing to enable Legal Aid to continue to deliver external mediation in accordance with Legal Aid Pilot model.

## Alternative dispute resolution and the resolution of contact disputes

An important component of this evaluation has been to examine which ADR model is best placed to deal with contact disputes, the level of demand for a review mechanism for matters in which ADR is not able to resolve contact disputes and the implications of the Children's Court retaining jurisdiction to make final contact orders in the event that ADR is unsuccessful. It was beyond the scope of this evaluation to make specific recommendations about the mechanism that should be used to resolve contact disputes; rather, the evaluation has examined the effectiveness of ADR in resolving contact disputes.

Contact disputes include disputes about contact between the child and their parents or other family members, such as grandparents and siblings. Under s 86 of the Care Act, the Children's Court has the power to make both interim and final orders concerning contact in all matters, often in varying amounts of detail, including orders that prohibit contact or that allow supervised or unsupervised contact. The court may also make final orders about parental responsibility where responsibility for contact is specifically mentioned.

Wood (2008: 461) recommended that

the [Care and Protection] Act should be amended to limit the power of the Children's Court to make contact orders to those matters where the Court has accepted the assessment of the Director-General that there is a realistic possibility of restoration.

In response to this recommendation, the *Children's Legislation (Wood Inquiry Recommendations) Act 2009* (the Wood Amendments Act) included amendments to the Care Act that limit the Children's Court power to make contact orders to:

- interim orders; and
- final orders, but only where restoration is a realistic possibility (ADREWP 2009).

Despite making these recommendations, Wood (2008) and the Wood Amendments Act do not specify what should occur if ADR fails to resolve a contact dispute.

Recognising that ADR would not necessarily resolve all contact disputes and that there would be a need for an appropriate review mechanism, the ADR Expert Working Party proposed two different models for resolving contact disputes in cases where the court has determined that there is no realistic possibility of restoration, but where ADR has been unsuccessful in resolving the dispute:

- Model 1—once ADR has been attempted and has failed to resolve a contact dispute, the Children’s Court would have the power to make final orders regarding contact.
- Model 2—once ADR has been attempted and has failed to resolve a contact dispute, parties would commence proceedings in either the Administrative Decisions Tribunal (if the Minister for Community Services had parental responsibility) or the Family Court (if a third party had parental responsibility).

It was decided that DRCs and the Legal Aid Pilot would be implemented and evaluated prior to commencing the amendments to limit the Children’s Court’s powers to make final contact orders where there is no realistic possibility of restoration. During this period, DRCs and the Legal Aid Pilot have attempted to deal with contact disputes and the Children’s Court has retained the power to make contact orders where ADR has failed to resolve the dispute (ie Model 1).

The evidence presented in this report has demonstrated that, while a large proportion of matters referred to a DRC or the Legal Aid Pilot are able to resolve issues and disputes about contact between the child and parents (or other family members), there is a large proportion that are not resolved through ADR. The finding that contact disputes are fully resolved through the use of ADR in 40 percent of DRCs and 26 percent of conferences

in the Legal Aid Pilot is important in the context of the Wood (2008) recommendations. While it is not possible to differentiate between matters where there was a realistic possibility of restoration and those where there was not, these results indicate that the majority of contact disputes that are referred to ADR are not resolved (or are only partly resolved) during the conference.

This highlights the need for an appropriate review mechanism for resolving contact disputes when ADR is unsuccessful in resolving contact disputes or where full agreement cannot be reached (but the issues in dispute have been narrowed). This review mechanism should be capable of dealing with a large number of matters. For example, using the data from the post-conference reports, a total of 395 DRCs and another 57 conferences in the Legal Aid Pilot that involved contact disputes were unable to fully resolve contact during the conference.

Views regarding the most appropriate mechanism were explored by the ADR Expert Working Party, but were also briefly canvassed as part of the AIC evaluation. Overall, it would appear that the views of the parties towards the need for the Children’s Court to retain the power to make final orders in contact orders remain unchanged from the positions that have been outlined in the ADR Expert Working Party’s (2009) report, with the majority of stakeholders in support of the Children’s Court retaining power to make orders. Most stakeholders involved in the management and delivery of DRCs and the Legal Aid Pilot conceded that a large proportion of contact disputes could not be resolved through ADR and that the Children’s Court was best placed to adjudicate on contact disputes and determine the most appropriate resolution. Children’s Court Magistrates recognised the importance of ensuring that there was some flexibility to enable contact arrangements to be modified over time. They reported that they were more likely to make shorter term orders for contact (usually 2 years), after which time Community Services was responsible for determining contact (with parents or family members having the option of submitting a s 90 application to vary these arrangements), or make contact orders by way of notations on the final orders.

## Alternative dispute resolution as part of the care and protection continuum

As was described in the introduction to this report, the ADR Expert Working Party recommended four models of ADR to be used, occurring at different stages of the child protection system (ADREWP 2009). The purpose of introducing ADR at various points in the child protection system was to improve the resolution of care and protection cases prior to and during court proceedings by providing collaborative, inclusive and empowering decision-making processes for children and families (Urbis 2011).

The Nowra Care Circles Pilot and the Family Group Conferencing Pilot program have also recently been evaluated. An important eligibility criterion for families to be referred to a Family Group Conference is that an application is not currently before the Children's Court. Care Circles are held during care proceedings, but are restricted to Indigenous families in Nowra. Therefore, matters that are dealt with as part of DRCs and the Legal Aid Pilot are not eligible for referral to the Family Group Conferencing Pilot program (as it currently exists) or the Nowra Care Circles Pilot (with the exception of Indigenous families in Nowra). Therefore, DRCs and the Legal Aid Pilot provide an important opportunity to attempt to resolve child protection matters through the use of ADR.

The outcomes delivered by DRCs and the Legal Aid Pilot demonstrate the value of court-referred ADR processes for care and protection proceedings. While almost all stakeholders were in agreement that ADR should take place as early in the process as possible, including prior to a care application being filed (where possible), there was strong support for the use of ADR in resolving disputes where the matter is before the Children's Court.

## Monitoring the implementation and outcomes from alternative dispute resolution

The lack of data readily available for the evaluation relating to key outcomes from DRCs and the Legal Aid Pilot has already been highlighted in this report. Recommendation 11.3 of the Wood Inquiry stated that

[d]ata in relation to all aspects of proceedings pursuant to the *Children and Young Persons (Care and Protection) Act 1998* should be kept by DoCS and the Children's Court and made public (Wood 2008: 462).

Monitoring the implementation and outcomes from ADR processes is important for ensuring that there is a process of continuous improvement, that accountability requirements are met and that reporting on the contribution of court-referred ADR to the objectives of the NSW Government's five year plan for improving the safety and wellbeing of children and young people is undertaken. This information may also be used as part of a future evaluation to measure the longer term impact of ADR on care matters, including an assessment of the impact of ADR in reducing the number of children and families who return to the Children's Court.

As part of the evaluation of DRCs and the Legal Aid Pilot, DAGJ, NSW Children's Court and Legal Aid have implemented a number of routine data collection processes to collect information relating to the activities and outputs of ADR. This includes the post conference reports completed by Children's Registrars and mediators, and the post conference surveys completed by conference participants.

The post-conference surveys completed by participants were intended for the evaluation and are no longer being distributed. However, there may be

value in running the survey in a selected number of sites for short periods. This would help to monitor whether participant satisfaction with the program remains high and whether any changes with the program or a decline in the enthusiasm or support for the use of ADR are leading to a reduction in the level of satisfaction with the conference process or outcomes.

Post conference reports are an important source of information on the outcomes from each conference, as well as information about the conference itself. There may be scope to reduce the length of these forms and eliminate non-essential items, but it should be completed for all conferences and a central database maintained.

Given the problems highlighted in this evaluation in terms of developing a reliable estimate of the referral rate for ADR, there is a need to ensure that information on whether each care application is referred to ADR is recorded on a more regular basis. There have been some steps to collect this information as part of the care register in some Children's Courts, but this could be instituted as part of a standardised care register maintained by each Children's Court.

Finally, the need to develop a data collection framework and manually extract data from Children's Court files for the purpose of this evaluation has highlighted the limitations in the data currently being collected on care and protection matters more generally. Given that many of the most important outcomes from the use of ADR were measured using this manually extracted data, there may be a need to institute a formal information management system to increase the availability of administrative data for future evaluations.

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

## Recommendations

This report concludes by making a number of recommendations to improve the operation and effectiveness of DRCs and the Legal Aid Pilot and to ensure the long-term involvement of ADR in care and protection matters.

### Recommendation 1

The findings presented in this report have demonstrated that the introduction of DRCs and the Legal Aid Pilot have delivered a range of benefits for the parties involved in care and protection proceedings in the NSW Children's Court. As such, the NSW Children's Court, Legal Aid and Community Services are encouraged to continue to support the use of ADR in care matters and court-referred ADR should continue to operate as an integral feature of care and protection proceedings in the NSW Children's Court.

### Recommendation 2

The current model, whereby the Bidura Children's Court refers care matters to external mediation and all other Children's Courts refer matters to a DRC, is not sustainable in its current form. DRCs should be expanded to the Bidura Children's Court.

A decision needs to be made about the expansion of the Legal Aid Pilot to other Children's Court locations and the model that should be adopted. Irrespective of the approach, a continuation of ADR in the Children's Court will require that the following conditions be met:

- availability of an established pool of convenors with training in ADR and knowledge of the care and protection jurisdiction;
- availability of suitable facilities that can accommodate conferences involving multiple parties;
- Magistrates who are supportive and willing to refer matters to ADR;
- administrative staff to support the program;
- adequate resourcing to enable ADR to be delivered in accordance with the current standard; and

- if both programs continue, clear guidelines that allow for an assessment of the suitability of matters for each program and that enable certain matters to be referred to either program on a regular basis.

### Recommendation 3

The NSW Children's Court, Legal Aid and Community Services should continue to be funded for their involvement in ADR in care and protection proceedings to ensure their continued support and participation. DAGJ should continue to be funded to provide cross-organisational support to both programs. DRCs and external mediation should continue to be funded to allow conferences to be delivered in accordance with the current standard.

### Recommendation 4

Stakeholders involved in the management and delivery of ADR in care and protection proceedings should be supported by an ongoing program of training and professional development, and funding should continue to be allocated for this purpose. Training needs to be targeted at those professionals with identified needs and available to those professionals new to the care and protection area and/or ADR processes. This includes formal training for existing Children's Registrars and mediators to maintain a high standard of conciliation and mediation, training for new Children's Registrars (ADR) and mediators (care and protection matters), and training for Magistrates, legal representatives and Community Services.

### Recommendation 5

In addition to formal training opportunities, Children's Registrars and mediators should be encouraged to continue observing one another (ie the cross-observational program) and there should be regular opportunities for conference convenors to meet and discuss how they deal with particular issues and to identify opportunities for formal training in areas that might assist them to perform their role.

### Recommendation 6

The decision to refer a matter to ADR should remain at the discretion of the Magistrate or Children's

Registrar based on an assessment of the merits of individual matters and their suitability and appropriateness for ADR (ie additional eligibility criteria should not be imposed). However, there needs to be greater clarity as to the 'circumstances, identified by the Children's Court Rules, in which the requirement for a dispute resolution conference may be dispensed with' (s 65 *Children and Young Persons (Care and Protection) Act 1998*). The same applies to external mediation. Magistrates and parties to an application need to be provided with clear guidance that can be used to determine whether a matter is unsuitable for ADR.

### Recommendation 7

Given the range of benefits associated with the use of ADR in the care jurisdiction, there is a need to continue to build support for the use of ADR among Children's Court Magistrates, legal representatives and Community Services. Along with training, this can be achieved through the distribution of information about the program (including the findings from the evaluation) and through the advocacy role performed by program staff, including Children's Registrars and mediators.

### Recommendation 8

The regular attendance and participation of Community Services legal representatives, Managers Casework and Caseworkers at conferences is essential to the ongoing success of ADR in the care jurisdiction and should remain an integral feature of both programs.

### Recommendation 9

There is a need to address the perception among all parties, including families, that some Community Services staff are reluctant to participate in conferences, approach ADR with fixed positions and appear unwilling to work with families. This will require a significant cultural shift among Caseworkers and Managers Casework, which can be achieved over time through training, promoting success and identifying Community Services representatives who are supportive of ADR and can act as champions in their region.

## Recommendation 10

There is a need to more clearly define the role of Indigenous mediators in the Legal Aid Pilot and the rationale for appointing Indigenous mediators to conferences involving Indigenous families, and communicate this to the other parties involved in conferences. This should focus on their role of engaging Indigenous participants in the conference and encouraging them to speak openly, their understanding of cultural issues that should be considered during the mediation and their understanding of issues in the community that may impact upon the family and therefore need to be raised during the mediation.

## Recommendation 11

Cultural awareness training should continue to be provided to professionals involved in ADR and families should continue to be offered the opportunity to have a conference convenor from the same cultural background as their own, wherever possible. Drawing on Care Circles, consideration should be given to the following options to further increase the cultural appropriateness of DRCs and the Legal Aid Pilot for Indigenous families:

- using a co-conciliation model in DRCs for Indigenous families, whereby the Children's Registrar is assisted by a representative of the Indigenous community, such as an Elder (giving consideration to the necessary requirements in terms of relevant knowledge and expertise);
- inviting Elders to be in attendance at the conference to provide advice on cultural matters (but not with a co-conciliation or co-mediation model);
- introducing an Indigenous support worker who can talk to and provide advice to Indigenous parents and families prior to the conference on how the two programs operate, what will happen and what will be expected of them; and
- conducting conferences away from the Children's Court in a more neutral environment.

A review of these options should also consider the relevant practical and resource implications. Additional resources should be provided to ALS to enable them to be involved in a higher proportion of matters involving Indigenous families.

## Recommendation 12

While there should continue to be flexibility and discretion in the timing of a referral to ADR, more effort is needed to ensure that conferences are held as early as possible in proceedings while also allowing sufficient time for all the parties to form an opinion about the matter and to obtain, prepare and respond to any reports. Where possible, ADR should take place prior to a care plan being completed. While it does not appear to impact on the likelihood that the issues in dispute will be resolved or that agreement will be reached on final orders, this may help to provide greater opportunity for parents and family members to contribute to the final care plan and to encourage Community Services and families to work together (both at the conference and afterwards).

## Recommendation 13

This evaluation has demonstrated the importance of ensuring that all participants are prepared for the conference. Legal representatives and Community Services should ensure that they are adequately prepared for each conference. Any steps that need to be taken by the relevant parties and the timeframe in which they need to be completed should be agreed upon at the time of referral.

## Recommendation 14

The majority of parents and family members who participated in ADR reported that they felt prepared for the conference and knew what to expect and what would happen, but there is room for improvement. Legal representatives for parents and family members should be encouraged and supported to increase their client's understanding of what ADR involves and what will happen at the conference prior to a referral being made. This includes the dissemination of pamphlets that have been developed and are already available in a number of languages.

## Recommendation 15

Given the proportion of matters where an AVO is present, along with the safety concerns raised by a small number of participants, the Children's Registrar or Legal Aid conference organiser should continue

to screen matters to ensure that the matter is appropriate for ADR and to ensure the safety and wellbeing of participants.

### **Recommendation 16**

There is a need to increase the length of DRCs to three hours to allow sufficient time for all of the issues to be discussed at the conference and to provide sufficient opportunity to resolve the issues in dispute and reach agreement. This will require adequate funding to enable legal representatives to be paid for the three hours they attend the conference.

### **Recommendation 17**

ADR works most effectively when all participants can attend the conference in person. The use of teleconference and audiovisual facilities, while not ideal, is sometimes required to enable parents or family members to participate in a conference. The accessibility of these facilities, along with the availability of a suitable room to hold the conference in, should be considered when scheduling conferences. The need for adequately sized rooms to conduct conferences in should be taken into account when planning new Children's Court facilities.

### **Recommendation 18**

There is a need to clarify the terms of confidentiality for reporting on conference outcomes (including areas where agreement has or has not been reached) and communicate these to all parties involved in both DRCs and the Legal Aid Pilot, to ensure that as much information is being reported to the court as possible without infringing on these confidentiality provisions. There should also be a greater focus on ensuring that there is adequate time allocated at the end of every conference to reach agreement on what information will be reported to the court.

### **Recommendation 19**

Processes for monitoring the implementation and outcomes from ADR processes need to be established and/or maintained, including:

- regularly completing a shortened version of the post-conference report;
- distributing post-conference surveys at a select number of sites for short periods to assess participant satisfaction; and
- instituting a standardised care register that enables information on the referral rate for ADR to be recorded on a routine basis (along with other information on care matters).

### **Recommendation 20**

The lack of a formal information management system represents a significant challenge to the evaluation and ongoing monitoring of programs like DRCs and the Legal Aid Pilot. While this will require significant short-term funding, the establishment of a formal information management system will support the continued improvement of NSW Children's Court processes. The NSW Children's Court should be provided with adequate resourcing to establish a formal information management system to increase the availability of administrative data for future evaluations of programs operating in the care and protection jurisdiction.

### **Recommendation 21**

ADR processes in the NSW Children's Court should be subject to an evaluation to measure the longer term impact of ADR on care matters, including the impact on costs to the NSW Children's Court, Legal Aid and Community Services.

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All URLs correct at September 2012

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# Appendices

# Appendix A: Responses to the participant survey (new survey only)

**Table A1** Satisfaction of mothers that participated in a DRC (%)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I understood why the conference was going to be held	342	1	1	2	57	39
I understood what was going to happen at the conference	340	1	3	9	60	27
I was worried about my safety at the conference	342	40	37	12	6	5
I was worried I wouldn't be listened to at the conference	338	19	33	20	20	7
I felt prepared for the conference	337	2	7	17	54	20
I was worried about the Community Services Caseworkers being at the conference	337	21	34	19	18	9
Everyone who should have been at the conference was invited	337	2	4	5	58	31
I understood what was going on	332	0	2	4	61	33
I felt safe during the conference	332	0	0	3	59	38
I was able to tell my side of the story	330	1	3	12	55	30
Other people at the conference listened to me	327	0	4	10	58	28
The other people at the conference cared about what I had to say	325	1	6	17	53	24
The Children's Registrar treated me fairly	325	0	1	3	54	42
The conference was run in a way which suited me and my family	326	1	3	9	59	28
The other participants cared about the safety and wellbeing of the children	323	1	1	7	57	35
I had enough support at the conference	326	1	2	7	58	32
Community Services seemed willing to work with me during the conference	323	8	11	16	45	20
Community Services gave me a fair go	321	9	11	18	43	20
I was happy with how the conference was run	322	0	4	12	56	27

**Table A1** (continued)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I better understand the concerns about the children	324	2	4	15	49	30
I was able to contribute to the end result	322	3	7	19	48	22
A good outcome was reached for the children	318	8	11	23	38	20
The agreed plan can be put in place	311	6	5	19	47	22
The conference was useful	320	3	6	11	53	27
I am happy with the outcome from the conference	316	8	8	22	41	22
My relationship with Community services will be better after the conference	317	7	11	26	38	18
The conference will help resolve conflict between me and my family	316	5	5	25	45	19

Note: The number of total respondents for each question varies due to missing data

Percentage totals may not equal 100 due to rounding

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table A2** Satisfaction of mothers that participated in a Legal Aid Pilot conference (%)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I understood why the mediation was going to be held	25	0	0	4	44	52
I understood what was going to happen at the mediation	26	0	8	12	50	31
I was worried about my safety at the mediation	27	44	33	15	7	0
I was worried I wouldn't be listened to at the mediation	27	19	22	19	33	7
I felt prepared for the mediation	27	4	15	15	52	15
I was worried about the Community Services Caseworkers being at the mediation	27	15	26	15	26	19
Everyone who should have been at the mediation was invited	25	8	4	4	40	44
I understood what was going on	26	4	0	8	46	42
I felt safe during the mediation	27	4	0	4	63	30
I was able to tell my side of the story	25	4	0	12	48	36
Other people at the mediation listened to me	24	4	0	8	58	29
The other people at the mediation cared about what I had to say	26	4	12	12	42	31
The mediator treated me fairly	27	4	7	4	33	52
The mediation was run in a way which suited me and my family	26	4	0	12	50	35
The other participants cared about the safety and wellbeing of the children	26	4	8	4	50	35

**Table A2** (continued)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I had enough support at the mediation	26	4	4	4	50	38
Community Services seemed willing to work with me during the mediation	25	12	12	4	40	32
Community Services gave me a fair go	25	12	24	4	36	24
I was happy with how the mediation was run	26	4	8	8	46	35
I better understand the concerns about the children	27	4	7	22	44	22
I was able to contribute to the end result	26	8	4	19	46	23
A good outcome was reached for the children	26	8	12	31	27	23
The agreed plan can be put in place	26	8	12	15	42	23
The mediation was useful	26	15	4	12	46	23
I am happy with the outcome from the mediation	24	17	4	25	29	25
My relationship with Community Services will be better after the mediation	27	15	19	30	15	22
The mediation will help resolve conflict between me and my family	24	17	13	21	25	25

Note: The number of total respondents for each question varies due to missing data

Percentage totals may not equal 100 due to rounding

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table A3** Satisfaction of fathers that participated in a DRC (%)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I understood why the conference was going to be held	231	1	1	1	52	45
I understood what was going to happen at the conference	231	2	3	7	59	29
I was worried about my safety at the conference	228	56	21	11	9	3
I was worried I wouldn't be listened to at the conference	229	28	24	18	21	9
I felt prepared for the conference	229	6	7	12	52	24
I was worried about the Community Services Caseworkers being at the conference	230	29	31	20	13	8
Everyone who should have been at the conference was invited	233	2	4	6	55	33
I understood what was going on	223	1	2	4	60	34
I felt safe during the conference	222	1	1	1	56	40
I was able to tell my side of the story	220	2	4	6	55	32
Other people at the conference listened to me	224	3	4	9	56	28
The other people at the conference cared about what I had to say	220	4	8	15	49	24

**Table A3** (continued)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
The Children's Registrar treated me fairly	223	0	2	4	48	46
The conference was run in a way which suited me and my family	220	1	3	14	50	32
The other participants cared about the safety and wellbeing of the children	218	3	4	9	48	36
I had enough support at the conference	219	1	3	8	54	34
Community Services seemed willing to work with me during the conference	216	6	10	14	44	26
Community Services gave me a fair go	215	9	8	13	42	27
I was happy with how the conference was run	216	2	3	9	54	32
I better understand the concerns about the children	217	1	1	12	55	30
I was able to contribute to the end result	213	2	5	18	50	26
A good outcome was reached for the children	211	5	8	29	36	21
The agreed plan can be put in place	211	5	3	21	48	23
The conference was useful	215	2	4	11	54	29
I am happy with the outcome from the conference	214	8	6	16	49	21
My relationship with Community Services will be better after the conference	212	9	8	23	35	24
The conference will help resolve conflict between me and my family	213	8	7	25	41	19

Note: The number of total respondents for each question varies due to missing data

Percentage totals may not equal 100 due to rounding

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table A4** Satisfaction of fathers that participated in a Legal Aid Pilot conference (%)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I understood why the mediation was going to be held	25	0	4	4	48	44
I understood what was going to happen at the mediation	25	0	4	8	52	36
I was worried about my safety at the mediation	25	48	24	12	8	8
I was worried I wouldn't be listened to at the mediation	23	22	30	26	9	13
I felt prepared for the mediation	25	0	0	28	48	24
I was worried about the Community Services Caseworkers being at the mediation	25	32	32	16	8	12
Everyone who should have been at the mediation was invited	23	0	13	13	43	30
I understood what was going on	23	0	0	13	74	13

**Table A4** (continued)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I felt safe during the mediation	25	8	0	12	52	28
I was able to tell my side of the story	25	0	4	16	56	24
Other people at the mediation listened to me	25	4	0	16	56	24
The other people at the mediation cared about what I had to say	25	8	12	28	32	20
The mediator treated me fairly	25	0	0	16	40	44
The mediation was run in a way which suited me and my family	24	4	8	25	46	17
The other participants cared about the safety and wellbeing of the children	25	0	8	20	36	36
I had enough support at the mediation	24	0	0	8	58	33
Community Services seemed willing to work with me during the mediation	24	8	8	25	38	21
Community Services gave me a fair go	24	13	8	25	38	17
I was happy with how the mediation was run	25	0	12	16	48	24
I better understand the concerns about the children	24	0	4	25	54	17
I was able to contribute to the end result	24	8	8	29	38	17
A good outcome was reached for the children	24	4	21	25	38	13
The agreed plan can be put in place	23	0	4	48	39	9
The mediation was useful	23	0	13	9	70	9
I am happy with the outcome from the mediation	24	4	17	25	42	13
My relationship with Community Services will be better after the mediation	25	4	12	32	32	20
The mediation will help resolve conflict between me and my family	23	0	13	26	39	22

Note: The number of total respondents for each question varies due to missing data

Percentage totals may not equal 100 due to rounding

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table A5** Satisfaction of other family members that participated in a DRC (%)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I understood why the conference was going to be held	177	1	1	2	51	45
I understood what was going to happen at the conference	176	1	5	9	54	31
I was worried about my safety at the conference	176	55	27	10	3	4
I was worried I wouldn't be listened to at the conference	172	38	28	17	9	8
I felt prepared for the conference	178	3	7	16	54	20
I was worried about the Community Services Caseworkers being at the conference	173	40	28	13	10	9
Everyone who should have been at the conference was invited	177	6	4	7	50	34
I understood what was going on	164	1	2	2	60	35
I felt safe during the conference	164	1	1	2	51	46
I was able to tell my side of the story	163	1	5	10	49	36
Other people at the conference listened to me	163	1	4	12	50	32
The other people at the conference cared about what I had to say	161	4	7	13	51	25
The Children's Registrar treated me fairly	162	0	2	3	48	47
The conference was run in a way which suited me and my family	161	2	3	9	52	34
The other participants cared about the safety and wellbeing of the children	157	3	6	8	45	38
I had enough support at the conference	160	3	5	6	50	36
Community Services seemed willing to work with me during the conference	158	11	5	9	45	29
Community Services gave me a fair go	157	11	4	13	41	31
I was happy with how the conference was run	162	1	5	6	49	39
I better understand the concerns about the children	154	1	5	15	51	27
I was able to contribute to the end result	156	3	4	17	51	26
A good outcome was reached for the children	156	7	10	24	39	20
The agreed plan can be put in place	155	5	8	23	41	23
The conference was useful	159	1	6	9	57	27
I am happy with the outcome from the conference	155	5	7	21	43	25
My relationship with Community Services will be better after the conference	155	8	8	28	36	19
The conference will help resolve conflict between me and my family	151	5	5	31	41	18

Note: The number of total respondents for each question varies due to missing data

Percentage totals may not equal 100 due to rounding

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table A6** Satisfaction of other family members that participated in a Legal Aid Pilot conference (%)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I understood why the mediation was going to be held	24	0	8	0	33	58
I understood what was going to happen at the mediation	23	0	9	9	30	52
I was worried about my safety at the mediation	24	54	29	8	4	4
I was worried I wouldn't be listened to at the mediation	24	17	42	17	17	8
I felt prepared for the mediation	21	5	10	14	38	33
I was worried about the Community Services Caseworkers being at the mediation	23	30	39	9	13	9
Everyone who should have been at the mediation was invited	22	0	14	23	18	45
I understood what was going on	24	0	8	0	54	38
I felt safe during the mediation	24	0	0	4	50	46
I was able to tell my side of the story	23	0	4	4	52	39
Other people at the mediation listened to me	22	0	5	9	50	36
The other people at the mediation cared about what I had to say	23	0	9	26	43	22
The mediator treated me fairly	23	0	0	4	48	48
The mediation was run in a way which suited me and my family	22	0	9	9	36	45
The other participants cared about the safety and wellbeing of the children	23	4	0	9	48	39
I had enough support at the mediation	20	0	10	0	45	45
Community Services seemed willing to work with me during the mediation	20	0	0	25	30	45
Community Services gave me a fair go	21	0	5	19	33	43
I was happy with how the mediation was run	23	0	0	9	43	48
I better understand the concerns about the children	21	0	10	14	38	38
I was able to contribute to the end result	23	0	4	17	39	39
A good outcome was reached for the children	22	0	5	23	36	36
The agreed plan can be put in place	20	5	0	15	45	35
The mediation was useful	21	0	0	10	57	33
I am happy with the outcome from the mediation	22	5	5	18	36	36
My relationship with Community Services will be better after the mediation	23	0	4	35	48	13
The mediation will help resolve conflict between me and my family	21	5	5	29	48	14

Note: The number of total respondents for each question varies due to missing data

Percentage totals may not equal 100 due to rounding

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table A7** Satisfaction of legal representatives for the parent(s) that participated in a DRC (%)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I was worried about the safety of my client at the conference	565	41	28	24	4	2
I thought the conference would be useful to my client	581	2	3	12	59	24
I thought the conference would assist with the resolution of this matter	581	3	6	16	51	25
The Children's Registrar treated my client fairly	570	0	0	2	38	59
The Children's Registrar gave my client an opportunity to tell their side of the story	566	0	1	2	38	58
Other people at the conference listened to my client	566	1	3	6	58	32
The conference was run in a way which suited my client	562	0	2	9	57	33
The Children's Registrar acted impartially	582	0	1	1	41	57
I was happy with how the conference was run	578	0	2	3	46	50
I was able to contribute to the end result	553	1	4	11	54	30
The mediation was useful	565	1	3	9	52	35
I am satisfied with the progress made with regard to proposed orders	538	2	7	16	48	27
This conference will lead to a better outcome for my client	537	3	6	22	43	26
This conference will help improve the relationship between Community Services and my client	549	4	7	21	43	24
Overall I am happy with the outcome from the conference	558	2	4	13	51	30
The best possible outcome was reached with regard to parental responsibility	381	5	8	27	30	30
The best possible outcome was reached with regards to establishment	235	4	7	47	23	19
The best possible outcome was reached with regards to placement	347	4	10	27	32	27
The best possible outcome was reached with regard to contact	367	4	10	26	36	25
The best possible outcome was reached with regard to a care plan	346	4	5	29	33	28
The best possible outcome was reached with regard to permanency planning	354	4	6	28	33	28

Note: The number of total respondents for each question varies due to missing data

Percentage totals may not equal 100 due to rounding

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table A8** Satisfaction of legal representatives for the parent(s) that participated in a Legal Aid Pilot conference (%)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I was worried about the safety of my client at the mediation	48	38	25	33	4	0
I thought the mediation would be useful to my client	50	2	4	8	58	28
I thought the mediation would assist with the resolution of this matter	49	2	10	10	49	29
The mediator treated my client fairly	49	0	0	2	51	47
The mediator gave my client an opportunity to tell their side of the story	49	0	0	2	47	51
Other people at the mediation listened to my client	49	0	2	2	65	31
The mediation was run in a way which suited my client	49	0	2	10	65	22
The mediator acted impartially	50	0	2	0	48	50
I was happy with how the mediation was run	50	0	2	6	50	42
I was able to contribute to the end result	49	2	2	22	47	27
The mediation was useful	50	2	6	6	56	30
I am satisfied with the progress made with regard to proposed orders	44	0	14	23	43	20
This mediation will lead to a better outcome for my client	49	0	14	22	45	18
This mediation will help improve the relationship between Community Services and my client	46	2	17	15	43	22
Overall I am happy with the outcome from the mediation	49	0	12	20	43	24
The best possible outcome was reached with regard to parental responsibility	41	7	7	32	24	29
The best possible outcome was reached with regards to placement	40	8	8	30	25	30
The best possible outcome was reached with regard to contact	39	8	13	26	31	23
The best possible outcome was reached with regard to a care plan	38	8	13	32	24	24
The best possible outcome was reached with regard to permanency planning	37	5	14	32	27	22

Note: The number of total respondents for each question varies due to missing data

Percentage totals may not equal 100 due to rounding

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table A9** Satisfaction of legal representatives for the child/young person that participated in a DRC (%)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I was worried about the safety of my client at the conference	265	39	19	37	3	2
I thought the conference would be useful to my client	409	1	4	8	63	23
I thought the conference would assist with the resolution of this matter	415	2	6	11	59	23
The Children's Registrar treated my client fairly	270	0	0	11	39	50
The Children's Registrar gave my client an opportunity to tell their side of the story	221	0	0	18	40	43
Other people at the conference listened to my client	224	0	1	13	55	30
The conference was run in a way which suited my client	220	0	1	11	55	33
The Children's Registrar acted impartially	429	0	0	1	43	55
I was happy with how the conference was run	430	0	0	2	47	51
I was able to contribute to the end result	198	0	2	28	43	26
The mediation was useful	421	0	4	7	55	34
I am satisfied with the progress made with regard to proposed orders	412	1	7	13	48	31
This conference will lead to a better outcome for my client	412	1	4	16	49	30
This conference will help improve the relationship between Community Services and my client	410	1	6	26	43	23
Overall I am happy with the outcome from the conference	438	1	4	8	55	31
The best possible outcome was reached with regard to parental responsibility	258	3	7	25	27	38
The best possible outcome was reached with regards to establishment	149	3	5	42	21	29
The best possible outcome was reached with regards to placement	229	3	7	26	30	34
The best possible outcome was reached with regard to contact	259	3	5	28	33	31
The best possible outcome was reached with regard to a care plan	243	2	5	27	33	33
The best possible outcome was reached with regard to permanency planning	248	3	6	25	31	35

Note: The number of total respondents for each question varies due to missing data

Percentage totals may not equal 100 due to rounding

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table A10** Satisfaction of legal representatives for the child/young person that participated in a Legal Aid Pilot conference (%)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I was worried about the safety of my client at the mediation	19	26	37	26	11	0
I thought the mediation would be useful to my client	31	3	10	10	68	10
I thought the mediation would assist with the resolution of this matter	30	0	20	20	50	10
The mediator treated my client fairly	15	7	0	13	53	27
The mediator gave my client an opportunity to tell their side of the story	13	8	0	15	46	31
Other people at the mediation listened to my client	14	7	0	21	50	21
The mediation was run in a way which suited my client	12	8	0	33	42	17
The mediator acted impartially	29	3	0	0	55	41
I was happy with how the mediation was run	28	4	4	7	46	39
I was able to contribute to the end result	10	0	0	30	60	10
The mediation was useful	28	4	4	0	64	29
I am satisfied with the progress made with regard to proposed orders	30	3	0	23	50	23
This mediation will lead to a better outcome for my client	29	3	0	31	45	21
This mediation will help improve the relationship between Community Services and my client	30	3	3	43	37	13
Overall I am happy with the outcome from the mediation	30	3	0	17	53	27
The best possible outcome was reached with regard to parental responsibility	24	0	0	38	29	33
The best possible outcome was reached with regards to placement	24	0	4	29	33	33
The best possible outcome was reached with regard to contact	23	4	0	35	30	30
The best possible outcome was reached with regard to a care plan	20	0	0	40	25	35
The best possible outcome was reached with regard to permanency planning	21	0	0	33	29	38

Note: The number of total respondents for each question varies due to missing data

Percentage totals may not equal 100 due to rounding

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table A11** Satisfaction of legal representatives for Community Services that participated in a DRC (%)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I was worried about the safety of my client at the conference	405	39	31	23	4	3
I thought the conference would be useful to my client	414	2	8	13	50	27
I thought the conference would assist with the resolution of this matter	410	4	11	14	43	28
The Children's Registrar treated my client fairly	414	1	1	3	45	50
The Children's Registrar gave my client an opportunity to tell their side of the story	413	0	1	3	43	52
Other people at the conference listened to my client	414	2	7	3	49	39
The conference was run in a way which suited my client	414	1	5	5	51	37
The Children's Registrar acted impartially	414	1	1	4	42	52
I was happy with how the conference was run	413	2	3	4	43	47
I was able to contribute to the end result	403	1	4	7	47	40
The mediation was useful	407	2	7	9	43	39
I am satisfied with the progress made with regard to proposed orders	375	3	10	17	36	34
This conference will lead to a better outcome for my client	373	3	8	25	33	31
This conference will help improve the relationship between Community Services and my client	381	4	9	24	35	27
Overall I am happy with the outcome from the conference	392	2	7	13	42	36
The best possible outcome was reached with regard to parental responsibility	271	4	10	24	23	39
The best possible outcome was reached with regards to establishment	155	6	8	41	17	28
The best possible outcome was reached with regards to placement	245	5	11	25	25	35
The best possible outcome was reached with regard to contact	265	4	12	21	32	31
The best possible outcome was reached with regard to a care plan	255	4	8	26	27	34
The best possible outcome was reached with regard to permanency planning	253	4	10	26	24	35

Note: The number of total respondents for each question varies due to missing data

Percentage totals may not equal 100 due to rounding

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table A12** Satisfaction of legal representatives for Community Services that participated in a Legal Aid Pilot conference (%)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I was worried about the safety of my client at the mediation	29	28	28	34	10	0
I thought the mediation would be useful to my client	30	3	17	10	53	17
I thought the mediation would assist with the resolution of this matter	30	3	17	10	47	23
The mediator treated my client fairly	30	3	3	3	63	27
The mediator gave my client an opportunity to tell their side of the story	31	0	0	0	74	26
Other people at the mediation listened to my client	31	0	6	3	68	23
The mediation was run in a way which suited my client	30	0	0	13	60	27
The mediator acted impartially	30	0	7	0	60	33
I was happy with how the mediation was run	29	0	10	14	52	24
I was able to contribute to the end result	31	0	0	26	55	19
The mediation was useful	31	6	10	10	58	16
I am satisfied with the progress made with regard to proposed orders	28	7	14	18	43	18
This mediation will lead to a better outcome for my client	30	0	20	40	20	20
This mediation will help improve the relationship between Community Services and my client	26	4	15	35	27	19
Overall I am happy with the outcome from the mediation	30	3	10	20	47	20
The best possible outcome was reached with regard to parental responsibility	22	0	0	32	41	27
The best possible outcome was reached with regards to placement	22	0	0	27	36	36
The best possible outcome was reached with regard to contact	22	5	0	32	36	27
The best possible outcome was reached with regard to a care plan	22	0	0	41	41	18
The best possible outcome was reached with regard to permanency planning	22	0	0	36	45	18

Note: The number of total respondents for each question varies due to missing data

Percentage totals may not equal 100 due to rounding

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table A13** Satisfaction of Community Services Caseworkers and Manager Casework that participated in a DRC (%)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I was worried about my safety at the conference	696	57	31	6	4	2
I thought the conference would be useful	695	4	13	12	52	19
I thought the conference would assist with the resolution of this matter	699	5	17	16	47	15
I knew what to expect heading into the conference	701	2	6	10	58	24
I was familiar with this case before the conference	699	1	1	2	42	54
I felt safe during the conference	699	2	1	2	40	55
I was given an opportunity to give my professional opinion	699	0	1	5	50	44
Other people at the conference listened to me	698	0	2	7	53	38
The Children's Registrar behaved impartially	700	1	1	1	37	61
The family seemed willing to work with Community Services to resolve matter	696	5	11	17	45	22
I was happy with how the conference was run	700	0	1	3	54	42
I was able to contribute to the end result	680	1	2	10	63	25
The previous work I had done with the family was taken into consideration	669	1	4	20	57	19
The conference was useful	675	1	6	8	59	25
I am satisfied with the progress made with regard to proposed orders	616	2	10	16	45	26
This conference will help improve the relationship between Community services and the family	637	3	13	29	39	17
Overall I am happy with the outcome from the conference	647	2	7	14	51	26
The best possible outcome was reached with regard to parental responsibility	456	5	9	25	30	31
The best possible outcome was reached with regard to establishment	312	6	9	43	19	22
The best possible outcome was reached with regards to placement	386	5	9	28	32	26
The best possible outcome was reached with regard to contact	444	4	10	23	40	23
The best possible outcome was reached with regard to a care plan	422	5	8	28	36	22
The best possible outcome was reached with regard to permanency planning	400	7	10	28	32	24

Note: The number of total respondents for each question varies due to missing data

Percentage totals may not equal 100 due to rounding

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table A14** Satisfaction of Community Services Caseworkers and Manager Casework that participated in a Legal Aid Pilot conference (%)

	Total (n)	Strongly disagree	Disagree	Neither	Agree	Strongly agree
I was worried about my safety at the mediation	73	52	32	10	3	4
I thought the mediation would be useful	72	3	14	28	40	15
I thought the mediation would assist with the resolution of this matter	72	4	22	18	40	15
I knew what to expect heading into the mediation	72	4	4	4	67	21
I was familiar with this case before the mediation	72	0	1	1	54	43
I felt safe during the mediation	73	0	0	3	58	40
I was given an opportunity to give my professional opinion	72	0	0	3	68	29
Other people at the mediation listened to me	71	0	1	4	72	23
The mediator behaved impartially	73	1	4	10	52	33
The family seemed willing to work with Community Services to resolve matter	67	0	13	25	40	21
I was happy with how the mediation was run	74	0	8	15	55	22
I was able to contribute to the end result	67	0	1	19	57	22
The previous work I had done with the family was taken into consideration	65	0	8	18	57	17
The mediation was useful	70	0	7	17	54	21
I am satisfied with the progress made with regards to proposed orders	63	2	11	27	37	24
This mediation will help improve the relationship between Community Services and the family	63	3	13	33	41	10
Overall I am happy with the outcome from the mediation	69	3	7	19	51	20
The best possible outcome was reached with regard to parental responsibility	60	3	8	35	27	27
The best possible outcome was reached with regards to placement	52	4	8	37	21	31
The best possible outcome was reached with regards to contact	57	4	7	37	32	21
The best possible outcome was reached with regards to a care plan	55	4	9	42	24	22
The best possible outcome was reached with regards to permanency planning	55	4	7	36	27	25

Note: The number of total respondents for each question varies due to missing data

Percentage totals may not equal 100 due to rounding

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

# Appendix B: Responses to the participant survey (new and old surveys appended)

The Tables in this Appendix present the results from the analysis of data from both the new and old versions of the participant survey. Data from the new and old version of the survey were appended, where questions were found to be consistent across the two surveys. Prior to merging the data on questions that appeared in both versions of the survey (or, where they were changed, the changes were relatively minor), tests were conducted to ensure that the wording of the questions and the shift from a yes–no response to a five point Likert scale has not inadvertently changed the results.

**Table B1** Parents and family members who participated in a dispute resolution conference and agreed or strongly agreed with the following statements

	Mother		Father		Other	
	n	%	n	%	n	%
I understood why the conference was going to be held	500	96	333	97	249	97
I understood what was going to happen at the conference	453	88	293	85	215	84
I was worried about my safety at the conference	57	11	37	11	20	8
I was worried I wouldn't be listened to at the conference	145	28	91	27	38	15
I was worried about the Community Services Caseworkers being at the conference	119	23	59	17	36	14
I felt safe during the conference	488	97	322	97	236	96
I was able to tell my side of the story	445	88	299	90	213	87
Other people at the conference listened to me	424	86	295	88	204	84
The Children's Registrar treated me fairly	466	94	312	93	229	94
I better understand the concerns about the children	380	78	266	83	174	77
I was able to contribute to the end result	333	69	239	75	165	72
A good outcome was reached for the children	269	57	182	59	127	57
The conference was useful	392	82	265	84	194	84

Note: The number of total respondents for each question varies due to missing data

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table B2** Parents and family members who participated in a Legal Aid Pilot conference and agreed or strongly agreed with the following statements

	Mother		Father		Other	
	n	%	n	%	n	%
I understood why the mediation was going to be held	49	96	46	96	33	94
I understood what was going to happen at the mediation	41	80	41	85	30	88
I was worried about my safety at the mediation	5	9	5	10	2	6
I was worried I wouldn't be listened to at the conference	15	28	11	24	9	26
I was worried about the Community Services Caseworkers being at the mediation	15	28	11	23	7	21
I felt safe during the mediation	50	94	42	88	32	97
I was given an opportunity to tell my side of the story	47	92	41	85	32	94
Other people at the mediation listened to me during the mediation	45	92	39	81	27	87
The mediator treated me fairly	49	92	42	88	33	97
I better understand the concerns about the children	35	67	35	80	26	84
I was able to contribute to the end result	33	66	30	64	24	75
A good outcome was reached for the children	28	56	29	62	22	71

Note: The number of total respondents for each question varies due to missing data

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table B3** Legal representatives who participated in a dispute resolution conference and agreed or strongly agreed with the following statements

	Parent's lawyer		Child or young person's lawyer		Community Services lawyer	
	n	%	n	%	n	%
I was worried about the safety of my client at the conference	54	6	22	4	45	7
I thought the conference would be useful to my client	746	81	526	82	463	75
I thought the conference would assist with the resolution	644	70	479	74	404	66
The Children's Registrar treated my client fairly	878	98	438	93	589	96
The Children's Registrar gave my client an opportunity to tell their side of the story	863	98	329	89	588	96
Other people at the conference listened to my client	799	91	245	88	543	90
The Children's Registrar acted impartially	907	98	653	99	586	95
I was able to contribute to the end result	738	86	234	72	541	91
The conference was useful	770	89	572	91	500	85
The best possible outcome was reached with regards to parental responsibility	361	64	271	71	269	67
The best possible outcome was reached with regards to establishment	165	48	112	54	115	51
The best possible outcome was reached with regards to placement	328	63	241	71	226	64

**Table B3 (continued)**

	Parent's lawyer		Child or young person's lawyer		Community Services lawyer	
	n	%	n	%	n	%
The best possible outcome was reached with regards to contact	340	62	261	68	247	65
The best possible outcome was reached with regards to permanency	335	64	248	71	235	65

Note: The number of total respondents for each question varies due to missing data

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table B4 Legal representatives who participated in a Legal Aid Pilot conference and agreed or strongly agreed with the following statements**

	Parent's lawyer		Child or young person's lawyer		Community Services lawyer	
	n	%	n	%	n	%
I was worried about the safety of my client at the mediation	3	3	2	4	6	10
The mediator treated my client fairly	103	98	31	89	63	95
The mediator gave my client an opportunity to tell their side of the story	103	98	29	88	67	100
Other people at the mediation listened to my client	94	92	21	84	59	89
The mediator acted impartially	104	97	62	93	62	91
I was happy with how the mediation was run	97	93	59	92	51	81
I was able to contribute to the end result	83	81	25	86	54	84
The best possible outcome was reached with regard to parental responsibility	39	49	29	63	28	70
The best possible outcome was reached with regard to the care plan	37	49	22	56	30	70
The best possible outcome was reached with regard to permanency planning	38	50	28	64	29	67

Note: The number of total respondents for each question varies due to missing data

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table B5 Community Services Caseworkers and Managers Casework who participated in a dispute resolution conference and agreed or strongly agreed with the following statements**

	n	%
I was worried about my safety at the conference	68	7
I thought the conference would assist with the resolution of this matter	611	58
I felt safe during the conference	1,020	96
I was given an opportunity to give my professional opinion	1,014	95
Other people at the conference listened to me	984	93
The Children's Registrar behaved impartially	1,034	97
The conference was useful	822	86

**Table B5 (continued)**

	n	%
The best possible outcome was reached with regards to parental responsibility	495	67
The best possible outcome was reached with regards to establishment	181	45
The best possible outcome was reached with regards to placement	422	66
The best possible outcome was reached with regards to contact	487	68
The best possible outcome was reached with regards to permanency planning	372	62

Note: The number of total respondents for each question varies due to missing data

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

**Table B6 Community Services Caseworkers and Managers Casework who participated in a Legal Aid Pilot conference and agreed or strongly agreed with the following statements**

	n	%
I was worried about my safety at the conference	9	6
I thought the mediation would assist with the resolution of this matter	61	42
I felt safe during the conference	143	97
I was given an opportunity to give my professional opinion	143	98
Other people at the conference listened to me	138	96
The mediator behaved impartially	124	84
I was happy with how the mediation was run	108	78
The best possible outcome was reached with regards to parental responsibility	64	55
The best possible outcome was reached with regards to the care plan	54	50
The best possible outcome was reached with regards to permanency planning	60	53

The number of total respondents for each question varies due to missing data

Source: DRC and Legal Aid Pilot participant survey data [Computer file]

# Appendix C: Survey scales

**Table C1** Scales developed from post conference survey of mothers and fathers

	Survey of mothers				Survey of fathers					
	Total n	Valid n	Cronbachs alpha <sup>a</sup>	Mean score	Std deviation	Total n	Valid n	Cronbachs alpha	Mean score	Std. deviation
<b>Understanding of what was going to happen at the conference</b>	348	339	0.70	8.42	1.20	235	229	0.68	8.50	1.25
I understood why the conference was going to be held										
I understood what was going to happen at the conference										
<b>Apprehension about participation in a conference</b>	348	334	0.74	7.23	2.87	235	224	0.73	6.74	2.97
I was worried about my safety at the conference										
I was worried I wouldn't be listened to at the conference										
I was worried about the Community Services Caseworkers being at the conference										
<b>Satisfaction with the conference process</b>	348	307	0.90	37.62	4.68	235	203	0.92	37.35	5.67
I understood what was going on										
I felt safe during the conference										
I was able to tell my side of the story										
Other people at the conference listened to me										
The other people at the conference cared about what I had to say										
The Children's Registrar treated me fairly										

**Table C1** (continued)

	Survey of mothers				Survey of fathers					
	Total n	Valid n	Cronbachs alpha <sup>a</sup>	Mean score	Std deviation	Total n	Valid n	Cronbachs alpha	Mean score	Std. deviation
The conference was run in a way which suited me and my family										
The other participants cared about the safety and wellbeing of the children										
I had enough support at the conference										
<b>Perception of whether Community Services gave them a fair go</b>	348	318	0.92	7.14	2.24	235	213	0.93	7.44	2.28
Community Services seemed willing to work with me during the conference										
Community Services gave me a fair go										
<b>Overall satisfaction with the outcomes from a conference</b>	348	293	0.93	25.98	6.14	235	202	0.92	26.43	5.85
A good outcome was reached for the children										
I better understand the concerns about the children										
The agreed plan can be put in place										
The conference was useful										
I am happy with the outcome from the conference										
My relationship with Community Services will be better after the conference										
The conference will help resolve conflict between me and my family										

a: Cronbach's alpha is a measure of the internal reliability or consistency of the scales included in the model

Source: DRC and Legal Aid Pilot participant survey data [Computer file]