C O R R E C T E D V E R S I O N

LAW REFORM COMMITTEE

Inquiry into alternative dispute resolution

Melbourne — 10 December 2007

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Judge P. Grant, president, Children's Court of Victoria.

The CHAIR — Welcome, Judge Grant, to our hearing. What we are saying will be recorded, as you know. I do not think it needs any explaining to you that this committee operates under parliamentary privilege, so whatever you say is protected.

Judge GRANT — Okay. Thank you.

The CHAIR — You may want to reconsider when you go outside the building. We have about an hour, so we will throw it open to you to comment or submit according to our terms of reference, and then we will have a discussion. Thank you.

Judge GRANT — Thank you. I have some materials for distribution. I will pass them across to you. This is some material on group conferencing; that is some statistical material that I will refer to. This is a speech I delivered to Youthlaw on the Koori Court. I have made that available, because there are some comments in the discussion paper on the Koori Court. This next document is headed 'Guidelines for Dispute Resolution Conferences', which are conferences conducted in the family division of the Children's Court. This is also some statistical information on dispute resolution conferences in the family division of the Children's Court.

The CHAIR — Thank you very much.

Judge GRANT — I thought I would provide that information to you. I am sorry I have not had the opportunity to prepare some sort of written response to the discussion paper, but hopefully I will be able to cover some of the matters that you raise in that paper.

The CHAIR — That's fine.

Judge GRANT — Thank you, Chair and members of the committee, for inviting me to present material to the committee. I have had the opportunity of reading the discussion paper on alternative dispute resolution that has been prepared. In that discussion paper I note that there are comments on three processes that are used in the Children's Court: group conferencing; the children's Koori Court; and dispute resolution conferences, which are conducted in the family division of our court. I am in a position to provide information on all three of those processes. If suitable to the committee, what I thought I would do is provide a brief introduction to group conferencing, answer any questions you may have and then move on to the other two topics.

Group conferencing is now mandated by legislation. Sections 362(3) and (4) and sections 414-416 of the *Children, Youth and Families Act 2005* provide legislative endorsement to group conferencing. Prior to the commencement of the act on 23 April this year, group conferencing operated only as a pilot project in the Melbourne metropolitan area, Gippsland and Hume.

The program was evaluated, I understand, by an organisation called Effective Change Pty Ltd for the Department of Human Services, and they have provided me with a report and an executive summary of the report, and I am sure when they attend before the committee they will provide you with this information. That report, which was delivered in January 2006, concluded amongst other things firstly that the group conferencing program successfully diverts young people away from supervisory court orders and from further penetrating into the criminal justice system. Secondly, the group conferencing program contributes to a reduction in frequency and seriousness of reoffending behaviour.

As a result of the new act, group conferencing is now available as a statewide program. The program is effectively administered by the Department of Human Services, and the department has approved, pursuant to section 480 of the legislation, a number of community agencies who deliver the service in different regions of Victoria. For example, in metropolitan Melbourne Jesuit Social Services provide group conferencing to the Children's Court at Melbourne and to other suburban children's courts; Anglicare Gippsland services Moe, Sale, Korumburra and Bairnsdale; Salvation Army Brayton Youth and Family Services does group conferencing for the courts in the Hume region, which are Shepparton, Seymour, Wangaratta and Wodonga; Centacare's Loddon Mallee and Grampians Regional Parenting Services deliver the same service through Bendigo, Ballarat, Horsham, Mildura and other courts in those areas; and, finally, VSA and Brophy Youth and Family Services deliver group conferencing in the courts from Geelong right through to Portland.

I understand that the department is in fact collecting statistics on the referrals for group conferencing from each region. All that I am really able to do is to provide you with figures for the Melbourne metropolitan region, and I

have that in that handout that I have delivered to you. That is a document that is headed 'Table 1 — Community justice group conference referrals'. This material has been kindly provided to me by Tony Hayes, the coordinator of group conferencing attached to Jesuit Social Services.

Table 1 indicates the number of community justice conference referrals from each of the courts in the Melbourne metropolitan area. You will see underneath that the number of conferences is slightly more than the number of referrals, and that is because over 2006-07 some of the referrals were made in one year and the conference took place in the other year, or vice versa. Over the period there has been a gradual rise so that, for the 2006-07 year, 40 matters were referred from courts in Melbourne.

Table 2 is an analysis of the referrals from the Melbourne Children's Court — you will see on table 1 there were only 12 referrals from Melbourne — and this table indicates the breakdown of DHS regions.

Table 3 is a broader breakdown of referrals from all of the courts — or conferences for all of the courts — with DHS region specified.

Finally, there is a table, which you may find helpful, about victim involvement in conferencing, explaining when victims have attended, when representatives for victims have attended, when both have attended and when conferences were conducted where there were no victims or VSA representatives present.

The court itself does not have a sophisticated record-keeping system. What we are able to do is to keep a record of the orders we make for defendants, but we do not have a sophisticated breakdown of the number of young people who we send off for group conferences. The best source of material for that information will be the Department of Human Services. This material that I have given you is very accurate, because it comes from the service provider in the Melbourne metropolitan region. I thought that would probably be a sufficient introduction on that topic. I am happy to answer any questions or, if you would rather — —

The CHAIR — We will take a couple just now.

Judge GRANT — Certainly.

The CHAIR — Can I just say to you we did hear from the Salvation Army, which talked to us about its work in Hume. Could you talk to us about how the actual process works from the court's perspective? You talked about the data on the table and about the broad outlines of its background — how it is developed up. How is it working out?

Judge GRANT — The process is that a young person who comes to the court charged with offences has to be at a particular level of penalty before they can be considered for a group conference. In some states— and certainly in New Zealand — lots of what we call 'low-end' offenders are referred into the conferencing process. In Victoria I can only consider a group conference if a young person is at the probation or youth supervision stage.

In the Children's Court of Victoria our most common orders are good behaviour bonds and fines. A person has to have committed a relatively serious offence to be at the probation or youth supervision level. There are a whole lot of people who are excluded from conferencing. I think that that is not a bad thing.

From my point of view, sitting on the bench, I have to first come to the conclusion that this offending warrants a probation order or a youth supervision order. Then I have an assessment made by a youth justice worker, because the legislation requires the secretary to have some input into this process, and the delegate for the secretary of the department is a youth justice worker attached to our court. If I get the report back that the person is suitable for a conference, then I adjourn the case — I defer sentence for a period of time, usually about six to eight weeks. That means that the case sentence is deferred and the conference is then to take place during the period of the deferral. A youth justice worker contacts Jesuit Social Services, telling them that their referral is coming. As I understand it, the conference facilitator will contact the defendant. The defendant's family meet with the facilitator. The facilitator explains to them what the conference is about, how it is going to be conducted. The conference is then conducted. There are a number of participants who are required to be present— the police informant, for example, the defendant's lawyer. Family members are encouraged to attend and also victims are encouraged to attend or victim's representatives are encouraged to attend.

Once the conference is conducted, a report will be provided back to the court, and it is then a matter for the court to decide what order should be made. A very important legislative provision says that if a person has participated appropriately in a conference, then a court can make a lower order than the one that was originally anticipated. The research that has been done by the Department of Human Services indicates that in about 86 per cent of the cases, people who have gone through the conferencing process have then ended up with a good behaviour bond. The order they have received is less onerous than they would have got if they had not participated in the conference.

Mr FOLEY — How does that measure against pre-mandatory conferencing arrangements?

Judge GRANT — DHS has done that research. It is fairly old research, because it is research that was done in 2003–04. It tried to compare three different groups. The first group were those who participated in conferences and successfully completed them. The second group was a much smaller group — those who were considered suitable for conference but, for one reason or another, did not do it. The third group was a group of straight probationers — in other words, people who got a probation order and had not participated in any form of conference. The figures certainly from this group were fairly startling from this research. I am sure the department would not mind me providing it to you; I am sure they are going to provide it to you anyway — I hope they will. This is their research, not mine. It showed that there was a very distinctive difference between the group conference group, the control group and the probation group. I can go through that, if that would be of assistance to you. It is fairly detailed.

The CHAIR — If you can, could you give us a bit of an overview so we can have a conversation?

Judge GRANT — The conclusion was, as I outlined earlier, that the program successfully diverts young people away from supervisory orders. The obvious test of that was the figure I have referred to — 86 per cent of young people who went off and did the group conference ended up getting good behaviour bonds. All those people got probation — so that is the higher-end order. Importantly, they also discovered that there was a significant reduction of reoffending amongst those who had done a group conference as against the control group, as against the probation group. It was a very significant reduction in reoffending.

Mr BROOKS — Do they have figures there on that reduction?

Judge GRANT — Yes:

> Of the nine young people who participated in a group conference and reoffended, five demonstrated a reduction in the frequency of reoffending behaviour over 12 months. In other words, over 12 months, only 4 of the 54 young people who had participated in a group conference increased the frequency of their reoffending behaviour. Those in the control group also demonstrated a significant reduction in the frequency of reoffending. But as a smaller group, these results are less persuasive. Of the 17 young people in the probationers group who reoffended, 41 per cent demonstrated a reduction in the frequency of reoffending, but a further 47 demonstrated an increase, and 12 per cent showed no change.

Based on that, the writers of the report say the results are unequivocal in terms of seriousness of reoffending. They say that that is a significant result in favour of the group conferencing process.

Mr BROOKS — You mentioned that the report is a little bit dated?

Judge GRANT — Yes, this report is called the *Report on the Juvenile Justice Group Conferencing Program*. It was prepared by Effective Change Pty Ltd in January 2006 for the Department of Human Services. I have got an executive summary, but there is also a very substantial and detailed report. As far as I am aware, that is really the only recent analysis of group conferencing that has been conducted in Victoria. I am not familiar with what interstate or overseas research is showing. I just cannot tell you.

The CHAIR — The way I was thinking of organising this was perhaps if we could just ask a couple of clarification questions as you go through the three areas and then we will come back and maybe pull some things together that we have got on our schedule.

Judge GRANT — Would it help if I made this substantive report available to Kate? I do not have DHS's permission to do this.

The CHAIR — That is up to you, Judge.

Judge GRANT — They released it to me, and I told them I was coming here so they must have known I was going to speak to it.

Mr BROOKS — That is as good as approval!

The CHAIR — That is a matter that's up to you. You might want to check with them first.

Judge GRANT — All right. Perhaps if I could just check with DHS; if I clear that, I can send it to you.

The CHAIR — Because once it has crossed that table, it is in the public realm.

Judge GRANT — It's gone? DHS might be commissioning some updated report, so perhaps that might be a good thing. Is there anything else that you would like?

The CHAIR — You were going to talk through that.

Judge GRANT — I will just talk briefly on the Koori Court because there was a discussion variously throughout the report on the Koori Court and I note on page 82 of the discussion paper it said that while the Koori Court incorporates informality and increased involvement of the community, the victim and the offender, they involve traditional court and decision-making structures. At one level that is true but at another level it is not, because it is a very different process that is conducted in the Koori Court. I have provided to you, as one of the papers, a speech that I delivered recently at Youthlaw which talks about the Children's Koori Court Criminal Division. I am sorry, I could not get that to you before today but if you read that, it sets out the different process that is adopted in the Koori Court.

The Koori Court, as you are all aware, comes out of the Victorian Aboriginal Justice Agreement. That agreement was initially entered on 31 May 2000 and it proposed, amongst other things, the establishment of a Koori Court in Victoria. The agreement speaks of the very high over-representation figures for Aboriginal people within the criminal justice system and the fact that that had to be addressed. The development of a court with participation of elders from the Koori community was seen as one part of a comprehensive strategy to address Aboriginal over representation. Koori Courts started in the Magistrates' Court at Shepparton in October 2002 and Broadmeadows in April 2003. We now have Koori Courts sitting in the adult jurisdiction in Warrnambool, Mildura, Morwell and Bairnsdale. The attorney has recently announced that there will be another court established at Swan Hill in the middle of next year. The Shepparton and Broadmeadows courts were evaluated and there was found to be a significant reduction in recidivism coming out of both those courts. The evaluation highlighted a major achievement of the court as being the manner in which it served to increase indigenous community participation in the justice system and recognised the status of elders in respective persons.

We have a Children's Koori Court which operates as a pilot court out of Melbourne Children's Court. It commenced sitting in October 2005. It deals with all Koori offenders who are youths, or young people within the meaning of the *Children, Youth and Families Act*, and who reside or commit offences in the north or west regions of Melbourne. There are particular sections in the *Children, Youth and Families Act* which covers the operation of the Children's Koori Court. Those sections are sections 517 to 520 of the act. For a person to come into the Koori Court, the defendant must firstly, be an Aboriginal; secondly, the offence must be within the jurisdiction of the court, but sexual offences are expressly excluded. That was as a result of the Koori community requesting that sexual offences not be dealt with in the Koori Court. The defendant must have pleaded guilty, intended to plead guilty, or been found guilty of the offence. That means a person can still plead not guilty, and still have the matter heard at the sentencing stage in the Koori Court and the defendant consents to the proceeding being dealt with by the division.

The court, it is true, does not have any different sentencing powers to what a court would have in the mainstream system, but what is different is the process and procedure in the Koori Court. I am not sure if any of you have had the opportunity to witness a Koori Court in operation but those who have actually comment on its similarity to a conferencing-type process because what happens is that the magistrate, or in my case, the judge, comes down from the bench and sits on the same level as the offender. If I was sitting in the Koori Court I would be sitting with two elders and I would have a particular designated officer within the court who is called the Koori Court officer, and is a Koori person who works within the court system to assist in the operation of the court to assist managing the young person prior to coming into court, if possible, but certainly through the court process and then after particular orders have been made.

Also seated at the table is usually a representative of youth justice, and at the moment that representative is a Koori woman. We have the prosecutor, we have the offender's lawyer, the offender and family members. Other community members who may be engaged in supporting that young person will be present in court, and they are entitled to and indeed will participate fully in the hearing.

Unlike a normal court proceeding where an offender would be seated behind their lawyer, their lawyer would do the plea and the offender would be addressed only at the end of the proceedings to have the sentence explained to them, in the Koori Court sittings the offender is expected to participate fully. There is a dialogue that goes on around the table, with the Elders being particularly keen to talk with the young person, to find out what is going on in that young person's life, to find out what the particular problems are that are behind the offending and to try to get the young person to commit to making changes so that they will not end up coming back into court again. It is a very different process to mainstream court in the sense that the offender is engaged. I do not know that the lawyers enjoy the process so much, but the offender is expected to participate, think about their behaviour, think about what is behind their behaviour and think about making changes.

The other great thing about the Koori Court is it brings into the hearing Aboriginal agencies that can support the young person. So we constantly have representation from the Bert Williams Hostel, for example, and we have Uncle Lester Green, who is an Aboriginal man who works for the Whitelion mentoring and employment agency, always present at court. If someone is in custody, Aboriginal workers from a youth justice centre will attend court to support that person and to give us information. It enables the court to make a well-informed decision about what should happen in this young person's life, so I think it is a very, very good process and one that is not too dissimilar to conferencing. The difference with conferencing, of course, is that victims or victims' representatives are invited to attend as a matter of right.

In the Koori Court victims will only attend if they feel up to it, if they want to and if the police have advised them. We do not always have victims there. We encourage the police prosecutor to represent strongly to the offender the impact of the offending on the victim. In that sense we try to get the offender to have a clear understanding as to the harm suffered by the victim.

The CHAIR — Can I just ask you about the differences there between a non-Koori Court and a Koori Court in a similar situation? Are you saying that in the Koori Court it is up to the person who has been offended against whether they come, and also that it is on the basis of advice?

Judge GRANT — No, it is not really any different to a mainstream court. It depends on the police contacting them, telling them that a court case is on a particular date and encouraging them really to attend, which I do not think happens that often in any court process. Sometimes in the Koori Court it may happen because — not often — there are occasions where the victim might be an Aboriginal person and the Aboriginal person might be interested in coming to court anyway to see this process and to get an understanding of how they fit into this process as a victim. We have had some victims attend, although it is a very rare thing, at Melbourne, but we have had them attend more frequently at Mildura, which is a small community, where the victim has perhaps been encouraged by the police to attend and has done so. That is some information on the Koori Court. I have tried to set out in the document I have prepared some of the procedural differences and how dynamic, in fact, the proceedings can be in the Koori Court, because it is not just a matter of engaging the offender. Often people from the offender's community will come along, speak up and ask to be heard, and provide information about the young person.

The CHAIR — Is there the potential in that process that you described to utilise a restorative justice process and to have an outcome plan?

Judge GRANT — It is a bit harder, because with group conferencing there is a specific legislative endorsement for an outcome plan to be prepared and to be provided to the court, whereas in the Koori Court what we are actually required to do in the end is to sentence the person for their offending behaviour. That does not mean we should not consider, in determining an appropriate penalty, something that might be said to us about a person doing some sort of community work or doing something that might give back to the community. What we tend to do more in the Koori Court is defer sentence and see how a person might respond with the supports that are put around them, because what we are really trying to do is strengthen that young person within their community so that they do not reoffend and, if they have got particular problems such as drug and alcohol abuse, to lock them into agencies that will treat that, or, if there is some problem with attending school, to get them engaged in some form of day programs or get them to participate in some form of schooling or work program. We are really trying to

explore those ways of using the community services to strengthen that young person's position within their community.

The CHAIR — When the deferral is over?

Judge GRANT — Then we have to make a sentencing order.

The CHAIR — But their progress would go to mitigating sentence?

Judge GRANT — It would, yes. I think it is a fairly clear sentencing principle that in determining a sentence you should take account of a person's response during a period of deferral. If I have got a person whom I have deferred for three or four months and they have responded very well, it will mean that the order I make takes account of what they have done during that deferral. It might simply be making a 12-month order a 9- month order to reflect the fact that they have already done 3 months, but I would like to think that that is happening fairly regularly in the Children's Court, because we have the power to defer across not only the Koori Court but in the mainstream as well.

Mr BROOKS — Can I just ask: your paper sets out that the sentencing powers for the Koori Court are no different to other children's courts, and I am just wondering if the sentencing outcomes are significantly different?

Judge GRANT — It is hard to say. We are being evaluated at the moment, and I should have explained that. The Koori Court is being evaluated by Professor Allan Borowki and Dr Mark Harris from La Trobe University. Their evaluation will go over a two-year period, and we expect that towards the middle of next year the result of that evaluation will be available.

They will have to somehow try to do some comparative analysis, I think, of what we are doing in that court compared to what happens in mainstream court. But what I do know, having sat in mainstream courts and having sat in the Koori Court, is that I am able to make a much more informed decision in the Koori Court, because I am given a lot more information. Indeed, the legislation says that I am entitled to consider any oral statements made to me by an Aboriginal elder or respected person and lets me take into account any reports, statements or submissions from the Koori Court officer, from the youth justice worker, from health service providers, from victims and from family members. So I am receiving a lot of information. I end up knowing a lot more about the defendant in the Koori Court than I know about defendants in mainstream courts. I think that is helpful, because it enables me to construct particular orders dealing with that young person's problems.

Mr BROOKS — Following up on that, do you then see other sections of the community that a similar model — albeit, differently — could apply to?

Judge GRANT — This process is incredibly resource intensive. We would hear no more than five cases a day. If those five cases were dealt with in mainstream, they might be one of 30 cases and they might be dealt with in 15 minutes. It is nothing for us to spend an hour and a half to two hours on a particular case really trying to get an understanding of what is behind the offending behaviour and how we could tackle it. We have been approached by the Sudanese community, for example, who say, 'Elders are very powerful in our community, please run a Sudanese court', but we are just not resourced to do it; we just would not have the capacity to do it. But it is an argument that is commonly raised. We have had visitors come and watch our Koori Court. The heads of all youth justice units from all around Australia came on one occasion to watch our court. They spoke with the elders and with me after that and they said, 'We are so impressed with the process, we just want to know why you don't do it for everybody'.

The answer is: because the system would grind to a halt if we tried to do it for everybody. We are just not resourced — we do not have the capacity, we do not have enough courtrooms or judicial officers to enable us to offer this different sort of process for every offender. But it is a very good process. If you spoke to — there are, as well as myself, three other magistrates in the Children's Court at Melbourne who sit regularly in the Koori Court, and they all think it is an outstanding process.

Mr FOLEY — What might be an alternative that still applies those principles but perhaps not in such a resource-intensive manner?

Judge GRANT — That is right. You really have to look at how you might be able to develop that. One of the unique things about the Koori Court is the position that the elders have in the Koori community. They are authoritative figures, they are respected, so when the young person sits opposite them across the table the young person knows that these are people to whom you must pay attention. How you replicate that through all communities I am not sure, but it seems you would be able to into the Sudanese community, for example. But part of this is also about obtaining information and being able to spend time to get the information. Those of us who have had the experience of sitting in the Koori Court are starting to apply some of the things we have learnt in that court into mainstream. But it means that the mainstream cases are taking longer because we are spending more time on them, because we think that is significant.

The CHAIR — Judge, I will ask you one more question before we ask you to move on. Evidence that has been provided to the committee suggests that participation in conferencing by offenders from marginal groups, including indigenous groups, is low?

Judge GRANT — Yes.

The CHAIR — Is that the case? And if so, why do you think it is that way?

Judge GRANT — There are two things I would say on that, and I thank you for reminding me of that point. Again I come back to the research that was done for youth justice and the report on juvenile justice group conferencing. What the research found — and this is in the discussion in the executive summary but is also in the main report — was that :

> An encouraging proportion of group conferencing participants are young people from an Aboriginal Australian background, 13 per cent of participants. To date all of these young people are from the Gippsland and Hume regions, none are from metropolitan Melbourne.

So the research that was done in 2004-05 found that certainly the group conferencing processes in Hume and Gippsland were involving young Aboriginal people. They were engaged, they were participating and there was a significant number of participants — 13 per cent.

In Melbourne there was none who had participated in group conferencing. It is an interesting question, though. Because I think going into Koori Court is much more onerous than being dealt with in the mainstream court, there is a question, then, of whether you would subject a young Aboriginal person to the process of Koori Court and then require them to participate in a conference. Because it is really requiring them to participate in two fairly significant and fairly onerous processes. People might say to you, 'Well, if the Koori Court is so onerous, they don't have to go into it', and that is true, they have to consent to go into the process, but we are finding overwhelmingly that young Aboriginal men and women are consenting to go into the process. But it is true; I have sat in the Koori Court at Melbourne over the last 18 months, and I have not sent one young Aboriginal person off for a group conference.

The CHAIR — What do you reckon ought to be done?

Judge GRANT — We are aware of it and we need to consider it, but I do not think we should be sending people to conferences just for the sake of it; you have to have the right sort of case. Some of the young people I have dealt with — a small percentage, but some — have been charged with very serious offending.

The view I took, even though they might have been suitable for, say, a youth supervision order, was that the offending was so serious — armed robbery, for example — that I did not think a conference would be very helpful. Then at the other level I have dealt with a whole lot of people charged with very minor offences, and they do not get to the threshold where I could send them off. Because the Koori Court has dealt with — I have to be careful here because I do not know exactly and we do not have the result of the evaluation - but it has probably dealt with about 70 young people over two years, which is not a huge amount. But some of them unfortunately keep coming back — a small percentage, but they do. But you are right. One thing I can say is we are alert to group conferencing. I head a particular committee that meets regularly on group conferencing. I am aware of it. If I had a case where I felt an Aboriginal person should participate, I would not hesitate to refer it, but I have not had one. I would also just say that I would be a bit careful of engaging someone in two onerous processes. I think it is tough enough to come into the Koori Court.

The CHAIR — Okay. There are no more questions thus far so the next bit you were going to talk on is the family division?

Judge GRANT — Yes, it is. I have, I think, provided two things to you there: some statistics and also the guidelines. I will just briefly introduce the dispute resolution conferences and explain how they operate. These conferences are held pursuant to sections 217 to 227 of the *Children, Youth and Families Act 2005*. These conferences were previously called pre-hearing conferences under the old legislation.

> The purpose of a dispute resolution conference —

in the family division —

> is to give the parties to the application an opportunity to agree or advise on the action that should be taken in the best interests of the child.

That is a direct quote from section 217(2) of the act, but I think that is an important legislative provision to note. What makes dispute resolution different from the normal form of mediation is that in the normal form of mediation you have parties coming together to try to agree to settle their dispute. But in this case you have a party involved — namely, the child — and any order that is agreed upon must be an order in the best interests of the child. It is not just the case of parents and the departmental workers negotiating a solution that they are happy with; it has to be a solution that is in the best interests of the child. That is different from a normal form of mediation because you have to take into account that consideration.

The dispute resolution conference is, as you are probably all aware, an exercise in negotiation and joint problem solving. It establishes a process for parties to an action and other certain approved persons to meet together in an environment that is controlled by an independent convenor. Through the process the participants, with the assistance of the convenor, attempt to identify and clarify disputed issues, identify and clarify areas of agreement, develop options and consider alternatives, enhance communication and reach agreement on issues of dispute between the parties in order to avoid or limit the scope of a hearing. A dispute resolution conference gives participants a greater opportunity to be heard and speak for themselves than the traditional court proceedings.

The new legislation created two types of conference. We had never had two types of conference before. Those two types of conference are named facilitative and advisory and it is the convenor who is empowered to determine which type of conference takes place. This new system only commenced operation on 1 October this year, and I can report to you already that lawyers for family members have made it clear that the report-back provisions, which come out of the advisory conference process, have made that form of conference very, very unpopular, and so lawyers are really advising their clients not to engage in that form of conference. This has meant that since 1 October just about every conference that has been conducted in Melbourne, or in country Victoria, has been a facilitative conference.

The court has published guidelines which I have made available. The guidelines set out, amongst other things, firstly, the purpose of a dispute resolution conference, the responsibilities of the participants, the roles of the convenors, lawyers, protective workers and family and community members, and the process for conducting the conference. In its annual report the Children's Court includes statistics that relate to the conduct of a dispute resolution conference and what I have provided to you today is a draft of the material which we expect will be contained in our report that will be presented to Parliament just after the New Year.

Prior to 2005 and 2006 our annual report only contained statistics on pre-hearings conducted at Melbourne, but the figures you have in front of you show the 2005-06 figures, both for Melbourne and country regions, and the 2006-07 figures for Melbourne and country regions. You will see from those figures that a significant number of pre-hearings are listed; and that about 325 resulted in settlements in 2005-06. Perhaps if we look at last year, 2006-07, of 1152 pre-hearings listed at Melbourne, 360 resulted in settlements, 311 resulted in contested hearings and 481 resulted in adjournments. These figures really, in my view, underestimate the importance of pre-hearing conferences because a significant number of our contested hearings are resolved before the actual contest date. In order words, when the matter goes from pre-hearing it is booked in for a contest which might be 20 weeks down the track. We have a directions hearing just prior to the final hearing and matters settle often at directions hearings and sometimes they settle on the day of the contest. It is just very hard to know how significant the work was at pre-hearing in eventually resulting in a matter settling. I think these figures that you have underestimate the impact of pre-hearings and the pre-hearing process in encouraging settlement of cases in our court.

Mr BROOKS — Sorry, just to clarify. Those figures you have provided — —

Judge GRANT — They are not very good figures and that is because we do not have a sophisticated computer system as far as our family division is concerned.

Mr BROOKS — So in which column, for example, would your settlements occurring at the court door on the day of the final hearing be listed?

Judge GRANT — They will be listed in the finalised matters, and in fact they are not listed here because what happens is that after the matter leaves the pre-hearing, it will go into the courtroom. We book matters in in our family division for pre-hearings at 9.30, 11.30 and 2 o'clock, and the pre-hearings usually go for about an hour and a half. Whatever happens, there is a report back to the court. If the matter is settled, I will be given a sheet of paper that says 'Matter settled. Proposed orders'. I will then have to read the court file to see if I will endorse the order because, as you will understand, it is the court that has to endorse the order, and every now and again — it is very rare — we will not approve a particular settlement. It is very rare; generally we do. So these figures come from the reports back into court where we have either noted a settlement, adjourned the matter for a contested hearing or else adjourned the hearing for some other reason — most frequently for what we call further mention. What that normally means is that the parties are engaged in discussion or they want some more time. The mother might have been asked to participate in a drug treatment program, so the matter might have been adjourned for three or four weeks to see if she does that. If that occurs, the matter then might settle and come back and be endorsed as a settlement, but we do not record that as a settlement coming out of the pre-hearing. That is why our figures really are not that good and this material is not going to be that helpful to you, really. It is not that helpful to me, but we do not have a sophisticated statistical gathering capacity within the court. But I can say — and I cannot release this information because it is only in draft form — that we have had the Boston Consulting Group doing some work in our court at the moment, particularly because of workload issues. They have done a lot of work on our pre-hearing conferences, and particularly they have analysed them over the last five years, and they have said that that column 'pre-hearings resulting in settlements' has generally run anywhere between about 31 per cent to 36 per cent each year over the last five years. That is the sort of range of matters that are settled at the pre-hearing conference, but we still think that the conference process is significant in encouraging settlement further down the track.

The CHAIR — Judge Grant, the role of the convenors, just looking at your paper, is clearly pivotal?

Judge GRANT — It is clearly pivotal.

The CHAIR — Could you tell us a little bit about how these people are selected?

Judge GRANT — Certainly.

The CHAIR — And trained and regulated, if they are?

Judge GRANT — Convenors under the legislation are appointed by the Attorney-General, so the Attorney-General has to be satisfied that they are fit and proper persons. Historically convenors have been of two different types. In Melbourne we engage sessional convenors. They are people with significant social work qualifications, mediation qualifications or, in one case, a legal qualification. So we have five convenors who work out of Melbourne court. They are sessional workers. We engage them as we need them. They work in other areas. One of them works at a university. One is a lawyer. They come into our court and do the conferences. In rural Victoria our conferences are done by registrars, and they usually are senior registrars or registrars who have had some years experience working in the court system, and they conduct the conferences in country Victoria. We have two different ways of doing it.

Mr FOLEY — Are they considered officers of the court?

Judge GRANT — Yes, they are, and we make it clear — and the guidelines make it clear when you look at the first paragraph — that the role of the convenor is to act as an independent chairperson under the authority of the court. I think in Melbourne we have had particular difficulty with some of our lawyers being particularly adversarial in the process and some of our convenors finding that difficult to deal with. We also have a problem in Melbourne that the department generally is not represented by senior people at the pre-hearings.

The CHAIR — Are you talking about the protective workers now?

Judge GRANT — Protective workers, yes. The protective workers that would go into the pre-hearing often are fairly young, fairly inexperienced and, although they may be managing the file, they are not authorised to make any decisions, so often they are required to leave the conference to ring someone else in another office to get that person's permission to sign off on some agreement, and we find that frustrating because the person in the office has not been part of the process, has not heard the discussion and we do not think that is very helpful. So we think in Melbourne we have two particular problems that are hard to address. One of them is encouraging our lawyers to be less adversarial, and the other one is encouraging the department to be represented in this process by a person who is senior enough to make decisions. We have tried to set that out in the guidelines by making it clear that the role of the lawyers is not to be adversarial and we have tried to emphasise that over and over again. We have also said under the role of protective workers that the process is assisted where protective workers are legally represented or have the necessary authority to negotiate a range of possible outcomes and make decisions that would lead to settlement. So we are frustrated by the process in Melbourne not being as effective as it could be, we think.

Mr FOLEY — By definition, is it therefore more effective in the region using registrars and that sort of thing?

Judge GRANT — I actually have a view that we are getting very good results in country Victoria. Part of that is a willingness of the department in some regions to be represented. I have travelled all around the state and I know, for example, that in Bendigo at all the pre-hearing conferences the department is represented by a lawyer, and that is incredibly helpful, and that is a lawyer who seems to be well regarded by other practitioners that deal with that lawyer, so it encourages a much more fruitful conference. Similarly, when we went down to Morwell, the department is not represented at their conferences by a lawyer; they are represented by a very senior worker who has the authority to make decisions. We have also found that because I think in country courts the lawyers have to work together all the time they are much less adversarial and much more open to the process.

Mr FOLEY — Does that perhaps speak something more broadly of the status of the Melbourne-based protection officers, not in just this range but a whole range of understanding? There is a high degree of turnover, they are invariably first or second-year-out graduates, so that it is almost a seniority and life experience type of thing?

Judge GRANT — I think it is.

Mr FOLEY — Does that come into it?

Judge GRANT — Yes, I think that comes into it. The Melbourne court is incredibly busy. In the past calendar year we had a 20 per cent increase in the number of family division applications coming into our court. This is part of the reason why we have Boston Consulting doing the work to try to make the appropriate bid for more resourcing. We are really under pressure at Melbourne. I think it is a very hard environment. We have workers coming into our court from the north-west regions, the southern regions and the eastern regions. Invariably they are the youngest, most junior workers, whereas in country Victoria that is not always the case. Often some of the senior workers are able to go along to the court and be involved in the court process.

The CHAIR — Just going back a little bit to the convenors, protective workers and lawyers, you talked about lawyers being adversarial. I am wondering whether they have been trained in mediation?

Judge GRANT — No. When pre-hearings were introduced into the Children's Court — it was probably in about 1995 — I think there was a real burst of training there for convenors. I do not know that there was any training for lawyers, and I do not know what sort of training the department delivers to its workers about pre-hearings either. I started in the Children's Court in only May of last year, but it was apparent to me that we needed to bring the city convenors and the country convenors together, because they have different skills. We wanted them to talk together and to try to get consistency. We needed to run a training program. We are not funded to do that. We sought funding but did not obtain funding. About a month ago we funded within our own budget a training program which, to my knowledge, was the first time we had ever brought the convenors together. The only training that I am aware of that we have done in this area is for convenors and it is not very detailed.

The CHAIR — For the protective workers, other than the seniority issue you raised, the training would be a DHS issue?

Judge GRANT — Training would be a DHS issue.

The CHAIR — Coming back to the lawyers, we have heard from legal people who talked to us about a number of lawyers who have trained in mediation and various ADR strategies — and that is a good thing — and told us that increasingly many of them work in that area. Not to put words in your mouth, but there is clearly some advantage here?

Judge GRANT — No. I would agree absolutely. It would be very good to try to bring lawyers on side for them to understand that this should not be an adversarial process.

Mr FOLEY — To the point of making it mandatory or recommending that they be accredited, if there were national accreditation standards for mediation?

Judge GRANT — At the moment the legislation says that a family member or a child is entitled to be represented at the conference by a lawyer, so it does not put that limitation on the process. Any lawyer can represent the family or child in the process. I have no power to issue guidelines to limit that, but it may be that there could be some form of legislative intervention to recognise that lawyers who participate in the process need to have mediation training or mediation skills or understanding of the process and be committed to it, because at the moment some lawyers are not — not all, but some.

Mr BROOKS — I was just going to make the comment — you might correct me if I am wrong — those lawyers would be arguing that they are simply trying to pursue the best interests of their clients.

Judge GRANT — They would. The other thing lawyers would say is that DHS is a very powerful organisation. I think Dr Rosemary Sheehan has written on this in the past, the fact that you have to be very careful in this process to make sure that there is a discussion amongst equals. Some of the families who come into the court do suffer significant disadvantage and are not able to well represent their own cause. The lawyers would say, 'We protect their interests. We're the people who stand between them being completely railroaded, if you like, by the department and getting a fair result'. That question that often arises in mediation of the need for equality is something that would need to be considered also.

The CHAIR — Just another matter we want to raise with you is that evidence that the committee has suggests that there is a need for increased post-conference follow-up with the offender and the victim.

Judge GRANT — In group conferencing?

The CHAIR — Yes, particularly in relation to the outcome of them. How do you think that could happen?

Judge GRANT — Certainly from my point of view if I get an outcome plan that suggests someone needs to do 10 hours of community service or something, I would try to incorporate that in the order I make. So I would make a good behaviour bond with the condition that the person completes the outcome plan that has been negotiated. If the person did not do it, it could be brought back before the court as a breach of the bond. Again, it is very hard for the court to control the process beyond what we are empowered to control, which is what happens in the courtroom. The department, perhaps in the way it approves those service providers for group conferencing, could frame the approval in such a way that the conference provider has to do that post-conference work with victims to make sure the victims are satisfied with the process, and do the work with the offenders to make sure the offenders are complying with the outcome plan.

The CHAIR — Do you believe that the restorative justice process, such as group conferencing, should be expanded into other Victorian courts that hear criminal matters? The examples that we were thinking of are the Magistrates' Court and the Supreme Court.

Judge GRANT — I am not sure how it would work in the Supreme Court. I know that they have been doing some work in Western Australia on some form of conferencing. The Supreme Court is generally dealing with murders — that is its criminal base, if you like — and I do not know how you could conference those sorts of cases. But from the point of view of the Magistrates' Court, especially in Victoria, one of the great things we have in Victoria is the dual-track system. We have the ability in the Magistrates' Court to have 18, 19, 20-year-olds in youth justice facilities rather than jail. I think if you are offering that sort of support to that group of offenders, why could they not also be involved in conferencing? I do not understand why conferencing could not be expanded out

into the Magistrates' Court. If you wanted to limit it in some way, you could maybe limit it to that group of young people for whom deferral is available. I think it is under 25; it is a while since I have looked at the *Magistrates' Court Act*. I think you have the power in the Magistrates' Court to defer sentence for an offender under 25. Perhaps that cohort of offender, 18 to 25, could have available the same sort of process that we have got in the Children's Court. I think it would be a good thing. I cannot see any reason why it should not be available. There may be a good reason; I just do not know what it is.

The CHAIR — Thank you for that.

Mr FOLEY — I will take a guess and say resources might be — —

Judge GRANT — I think resources might be the factor, but philosophically I do not think there could be any objection to it. I accept resourcing might be the answer to it completely, but it is still a good system. I think it works. The material that I have seen from the department seems to indicate it works. But it is very satisfying for those of us in the court to get the reports back from conferences to see how well often the offenders have responded to that process. It is a good process. And I think it is also a very good process for victims. It gives the victims a voice which is not that well heard in the court process generally and not that well heard by offenders. In mainstream court the offenders just sit there and even if there are victim impact statements it all just washes over them. I think if they are in a conference and they are hearing from the victim about how much it cost that victim because she did not have her car and she could not take her child to hospital and she could not get the shopping and she could not go to school — these are powerful testaments that I think offenders should hear and listen to.

Mr FOLEY — Have the organised so-called victims groups commented on or had exposure to how it works in your jurisdiction?

Judge GRANT — When group conferencing — the legislation and the statewide rollout — was launched I had the opportunity to speak with Minister Garbutt at the launch. I noticed that Noel McNamara was there, and he is a fairly vocal person on behalf of victims. He indicated to me that he thought this was a good process.

Mr FOLEY — Has he been back to have a look?

Judge GRANT — No, he has not, but that is what he said at that time, which was about August last year.

The only other thing I should show you is this, which I would urge you to get the department to give you. It is my own copy so I will have to ask you to get this from the department. It is a DVD that has been prepared really by the department and by the courts and by Justice on group conferencing. There is a short introductory 16 minutes or so which says in a nutshell what group conferencing is about, but there is also a very detailed DVD which talks about the role of different participants in the process. I think it is a very good DVD. I certainly urge the committee to obtain it from the department.

The CHAIR — We will do that. Judge Grant, thank you very much for your generous allocation of time to us this afternoon. Thank you for preparing and providing the documents that you did. An hour has gone very rapidly. There are some other things that we would have liked to have discussed with you, but probably enough is enough for today. I hope you do not mind if Kate and/or Kerryn get in touch with you or your office to maybe chase up some more information.

Judge GRANT — I am happy if I can provide you with any more information. I would be happy to do so. If I could ever find the time I could provide you with some more written material as well.

The CHAIR — That is good. You will receive a copy of the Hansard transcript for you to have a look at. Thank you very much.

Committee adjourned.